Summary*

*Icy haze*: Dutch civil law notaries and the legacy of the war.

The topic of spoliation and restitution of Jewish property in the Netherlands has been researched in depth, but not much is known about the role of civil law notaries in that process. This study aims to fill the gap in our knowledge about the behaviour of notaries during and after the German occupation of the Netherlands. The anti-Jewish measures in the Netherlands, like the spoliation of Jewish property, were instigated by order of the German occupying authorities (the *Reichskommissariat*). Nevertheless they were mainly organised and executed by the Dutch administrative and legal system. Civil law notaries were, as they are today, an important group in the legal professions. Although they were formally considered to be public officials, notaries were not on the payroll of the state: they earned their living by charging for every transaction they dealt with, and charged a fee per deed. On one hand, the notary as a public official was considered to be an official witness, who only formalized the deal and was not in any way morally responsible for it. On the other hand, it was clear that the notary had a financial interest in every transaction that he formalised. My study researches what the hybrid character of his profession meant for his moral position, especially when dubious transactions were presented to him. The moral context defines the central problem for this study: how did Dutch civil law notaries respond to the anti-Jewish measures during the German occupation and how did they deal with the legal and moral consequences of the German occupation after the war?

Dutch historians who write about the Second World War have shied away from the moral position since the latter part of the twentieth century. In my study the contemporary moral and ethical perspectives are the

* Met dank aan Hannah Berliner Fischthal en Michiel Schwartzenberg voor hun opmerkingen, suggesties en correcties naar aanleiding van het concept van deze tekst.
central subjects of research. I am focussing on the attitude that individuals and organizations assumed when they were confronted with the German regulations, especially the decrees against Jewish property and assets. This attitude can be found in the archived minutes of the Fraternity of Notaries (Broederschap der Notarissen), correspondence between notaries and the Fraternity, diaries and in the official communication with the notaries. The effect of this attitude can be found in empirical data, registers of the transactions with Jewish property.

Chapter 2 treats a striking dichotomy in the legal history of the twentieth century. Firstly, in international law there was a tendency to codify the rules that applied to war and occupation. This was a result of the widely supported enlightened ambition to make the world a more humane place, and to mitigate the consequences of mass violence like war. The Hague Convention defined the rights of non-combatant individuals like civilians, wounded soldiers and prisoners of war. It also defined the rights and duties of the occupying power as well as those of the occupied people and their administration. The aim of legal process was to limit the implications of war to the combatants. Secondly, however, the twentieth century was the age of total war. International trade increased and led to multiple ties between economies, multinational companies and communities of expatriates in many countries. As a result of legal measures taken against the enemy's economy on the national level, the concept of the enemy was explicitly extended to civilian persons and civilian legal entities. The intertwined, mutually strengthening processes of warfare and economic crisis destined the social and political climate in Germany that undermined the democratic Weimar Republic. It also provided the ingredients for a new, radicalised enemy-concept which was not military, but was aimed at civilians.

Chapter 3 treats the spoliation of the German Jews was organized by the Nazi-state, the position of the German notaries in that process, and the stance of the Belgian notaries under German occupation. In Germany, the legal protection of individuals, especially the Jews, was immediately abolished when Hitler came to power in January 1933. Dutch communist Van der Lubbe was sentenced to death in 1934 for setting fire to the Reichstag on the basis of a law that did not exist when he (supposedly) committed the crime. In 1935 the racist Nuremberg laws against Jews were introduced. The German administrative machinery facilitated the spoliation of Jewish assets and property. The chapter describes the stance of notary Wolpers,
who was the leader of the German notaries and who supervised the merge
of his professional group into the national-socialist governing structure. He
facilitated the anti-Jewish measures and openly supported the ideology of
Adolf Hitler, but he claimed after the war that he had been nothing but
an opportunist. Soon after Belgium was occupied by the German military,
anti-Jewish measures were introduced. Belgian notaries first decided to de-
lay and obstruct when they were confronted with transactions to Aryanise
Jewish property. Late in 1942 the Attorney-Generals in Antwerp and Brus-
sels informed the district leaders of the notaries that the forced transfer of
Jewish property by the German orders was contrary to requirements of the
Hague Convention. Belgian notaries could not authenticate transactions
that implied the Aryanization of Jewish property. The German and the Bel-
gian cases represent the two extremes, pragmatic and ethical, on the moral
scale that was available to the Dutch notaries when they were confronted
with the anti-Jewish measures.

Chapter 4 looks at the post-war ethical framework of the Dutch notaries.
It focuses first on the legal requirements of the notarial office, which was de-
defined in the Notarial Law of 1842. This law stated that a notary, when he was
requested for his assistance by a citizen, could only refuse on ‘well-founded’
reasons. The law of 1842 did not define these ‘well-founded’ reasons, but
its legal history makes clear that the reason behind it was to assure every
citizen of notarial assistance, when needed. The legislator was committed
to the laisser-faire ideology, but intended to assure the social function of
notaries with this clause. But on this article the notaries developed their
dogma of total passiveness: they regarded themselves as official witnesses,
who authenticated the deeds and who were not in any moral or legal way
answerable for the legal consequences of the transactions. However, in the
late 1930s new visions on the social function of the notary came about. In
that same period there were several fraudulent bankruptcies of notaries, that
led to high media attention and damaged the reputation of the profession.
The new vision implied that a notary did indeed have a social responsibility,
but it was not accepted generally by the profession. Although it led to a fresh
ethical framework for notaries in the district of Amsterdam, the Fraternity
and the ministry of Justice were unreceptive. Their assessment was that all
problems with notaries would be solved in the long run.

Chapter 5 deals with the question how the notaries and the fraternity were
affected by the break-out of the war and its immediate aftermath, within
the overall and administrative context. The Dutch Queen and the cabinet all fled the country. After the capitulation of the Netherlands, the secretary-generals of the ministries in The Hague (soon to be called Departments) negotiated an arrangement with the German occupying authorities. For the Dutch the starting point of negotiations was the continuity of government and they hoped that the occupying authorities would respect the autonomy of Dutch justice and administration. Jurisdiction was no longer done in the name of the Queen, but in name of the law, which in fact meant: Nazi-law. The oath of office, which had established the loyalty to the Queen, was considered by the Fraternity to be null and void. The overall administrative context was set by the stance of the secretary-generals, which resulted in a position of accommodation and the Fraternity could only accept it, as did all other governing bodies and the judiciary in the Netherlands. When it was confronted with the plight of Rotterdam notaries, whose offices had been destroyed by the bombardments, the Fraternity decided first not to assist them. Only after an anonymous protest they reversed the decision, and provided some small scale help. This demonstrates the reticent position of the Fraternity during the early months of the occupation.

Not every Dutch jurist and not every notary or deputy-notary adopted this absolute passive attitude, as chapter 5 proves. It focuses on the battlefield and the role of the resistance. Notaries and deputy-notaries were part of the Dutch military and some of them played an important role during the battles of May 1940 and the liberation of the country in 1944 and 1945. There was a close link between the active efforts for the military on the front and illegal activities for the resistance during the years of German occupation. The choices people made often had serious consequences, resistance members were arrested and died in the camps. In this chapter all the resistance activities and the individual fates of the notaries in resistance are reconstructed.

Soon administrative measures were presented to mitigate the direct consequences of the war, some of which originated from before the capitulation. The Dutch notaries were involved in the administrative measures that were to facilitate the reconstruction of the country. This was especially important in cities like Rotterdam, that had suffered heavily. But the notary's offices also had to deal with all the measures concerning the freezing of enemy capital. These measures were new and were amended constantly, and most notaries did not know how to apply them.
Chapter 7 describes how this led to pressure on the Fraternity by the members, who wanted to be provided with detailed information about the German measures. On the basis of vo 26/1940 the German authorities, Abteilung Feindvermögen, established an administrative system (Deutsche Revisions- und Treuhand AG) to control the businesses, the capital and the property of those who were considered to be enemies. No word of Jews, yet. The management of capital and property was outsourced to private Verwalter. Notaries were affected by these measures when they had estates in which the testator of one of the entitled persons was considered to be an enemy. The regulations of public law by the occupier conflicted with the civic code and led to problems for the notaries, who asked the Fraternity for advice. The German occupier, in close collaboration with the Dutch secretary-generals who adopted the 'business as usual'-attitude, soon introduced rules that indeed had an ideological implication. An early example was the decree regarding the conveyance of agricultural landownership (Besluit Vervreemding Landbouwgronden). According to the decree, landownership was an exclusive right of the user of land (farmers). The only critical and principal comments on this decree were made by professor Van Oven, while most other jurists who wrote articles on this decree, focused themselves on the question how this decree could be carried out. It illustrates the general attitude of accommodation by Dutch jurists. This chapter also describes the administration perspective. Many notaries wanted extra information about the regulations. In February 1941 the Fraternity considered the precarious financial situation of the individual notaries and decided to facilitate the governmental measures. The employment of notaries to execute decrees was seen by the Fraternity as a recognition of their social usefulness by the authorities. It was decided that the main ambition of the Fraternity was to strive for the indispensable position of the notaries' profession. At the same time the Fraternity incited their members to observe all the regulations strictly and not to ignore any because of personal considerations. In fact, the Fraternity pressed the notaries to switch off their moral awareness when they practised their profession. This happened in the same month when workers in Amsterdam protested against the persecution of Jews by organizing the February-Strike. When the Jewish notaries were discharged by the Department of Justice, the Fraternity did not protest. At the same time, the Germans were preparing the legal body through which Jewish property was to be alienated, with the assistance of notary Groenier of Am-
sterdam, who had many connections with Germans. With his legal advice the Niederländische Grundstücksverwaltung was created, which would be the main vehicle to Aryanise Jewish property. In August 1941 the Liro-decrees were enacted, that deprived the Jews of their wealth and property through the use of Liro, which was in fact a confiscation agency disguised as a bank (Lippmann Rosenthal & Co). All the German discriminatory decrees about property wealth directly affected the work of notaries. The Fraternity did not change its attitude and chose to facilitate the anti-Jewish measures by providing detailed information to its members on how to carry out the discriminating measures. In the Correspondentieblad (Correspondence Journal) of the Fraternity, frequent questions like, ‘When is a mortgage considered to be Jewish?’ were answered: ‘When the creditor is Jewish.’ Without any apparent hesitation the fraternity facilitated the measures, and adopted the racist jargon. Some individual notaries tried to mitigate the consequences of the measures for their Jewish clients. They approached the NVv, but their requests were rejected. In its relentless pursuit of Jewish capital, Liro snubbed the notarial pledge of confidentiality and demanded inspection of testamentary dossiers of Jewish clients. In the spring of 1943 this led to indignation among many notaries, but the Fraternity accepted this violation without protest.

In the next three chapters the perspective changes to the human condition. The lifes and conduct of three notaries are described, who represent three moral positions: ethical, unprincipled and pragmatic. Chapter 8 is dedicated to a notary who explicitly took an ethical stance. Jan Kruisinga was a notary in a small rural village in the east of Holland. He had a wide range of interests and for him there was no wall between his professional life and his personal moral position. He confided his reflections to his diary and he also tried to make his local colleagues aware of their moral responsibility. When the anti-Jewish measures were decreed by public law, he realised that they should constitute an ethical dilemma for all notaries. The notary was still responsible for the legal protection of his clients, Jews or non-Jews. He warned his colleagues that they should not descend into a passive stance. Kruisinga, with his moral appeal assumed a completely different attitude than the pragmatist governors of the notarial Fraternity.

Chapter 9 takes a closer look at the life of notary E.J.M. de Kat, himself a descendant of a wealthy banking family from Dordrecht, close to Rotterdam. He was a representative of a new kind of notary that emerged in
the twentieth century, with high entrepreneurial ambitions. However, the modern economic conditions proved to be very volatile. His family lost its capital and property during the economic crises of the early century. De Kat himself lost his wealth in the early 1930s, because he invested in the business of one of his clients, a property-developer. The disturbing case of De Kat, who would become one of the large facilitators of the alienation of Jewish property during the war, illustrates that the notary was only in theory impartial, but had many opportunities to pursue his own financial gain. The case also demonstrates the lack of authority of the notarial inspection and the ethical vacuum that was prevalent in the profession before the war. This culture of passivity combined with failing financial supervision and led to a high number of bankruptcies in the 1920s and, after new rules, still some major failings of notaries in the 1930s. These cases were however treated as incidents by both the profession and the Ministry of Justice. As a result of the crisis, the financial solidity of many notaries eroded during the 1930’s. The structural problems of the ethics of the notarial profession were not recognized and therefore not tackled in any way.

Chapter 10 describes the life and times of Dr. Ph. B. Libourel, who was probably the most influential Dutch notary in the years before, during and immediately after the war. Libourel, who was the president of the Fraternity of Notaries (Broederschap der Notarissen) during those years, was born in a bourgeois family of governmental functionaries. The chapter describes his personal background and his vicissitudes during, before and after the war. He was catholic and a conservative with a large network in the Dutch society. He had good relations with Dutch Jews and helped to organise a benefit party for Jewish refugees in 1937, that was organised by the Jewish art-collector Jacques Goudstikker. As an anti-communist, Libourel condoned the execution of the Dutch communist Van der Lubbe in 1934. In 1944 Libourel himself was arrested as retaliation for a resistance attack in Delft (with which he had nothing to do), and was taken as a hostage to the concentration camp Vught. He was released within four weeks and returned to the office.

Chapter 11 delves deeply into the shady trade in Jewish property. Who were involved and what did they know are the questions addressed, but most of all: what did the notaries know? Since notaries were required to research the origin of the property in the land registry office, they all knew. The other question is how the administrative contribution of the notary
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with the completion of the transactions influenced his impartial status. The notary's office facilitated the complete transaction, it directed the flows of money and it authenticated the transaction. Furthermore, the notary could choose, within the legal limits, to administer a transaction in such a way that it was hard to trace back. The transaction itself could be divided into two deeds, in such a way that the last buyer was not aware of the Jewish origin of the property. The notary was impartial witness only in theory. In fact he had a substantial influence on the completion of the transaction. The deed, with which the transaction was formalised, was only the last step in the process.

In Chapter 12 the perspective on the process changes. According to the official reports of the Dutch ministry of Finance, that were produced in 1999 for the Jewish Assets Commission, it was not possible to do independent research into the resale of Jewish property, since no archival records were available. However, in this chapter I show that there are indeed historical records available about the trade in Jewish property: the registers of the NGV, the registers of the notaries and the post-war forms on which notaries had declared the Jewish transactions. According to the dominant historical picture, based on the work of L. de Jong, the trade in Jewish property was delayed by the mortgage banks, while notaries also claimed that they had delayed the transactions. On the basis of the authentic historical records mentioned above, it is shown here, that the interest in Jewish property was high from the start. This means that the mortgage banks and all other involved functionaries, including the notaries, facilitated the trade in Jewish property willingly. When a special mortgage bank for loans on Jewish property was founded in October 1943, the boom was already over. The main reason for its existence was to take over the risky loans on property and to relieve the mortgage bank of this post-war problem.

On some policy issues the Fraternity did not cooperate willingly nor fully with the occupier. A waiting game was played with regard to the improvement of the social position of the deputy-notaries, mainly because the improvement of the terms of employment would cost money. The Fraternity was an association of employers after all. The other issue, on which the Fraternity was unwilling to cooperate in any way with the occupier, concerned the conversion of the Fraternity as a private association into a public order. When it came to protecting the Fraternity itself, no demarche was left unused and the plans of the department of Justice were successfully thwarted.
This was hailed as a major piece de résistance, but on nearly every other policy issue the Fraternity complied willingly with the occupying regime. The line of pragmatism was abandoned as soon as self-interest was at stake. Notaries were well-organized and the stance of their Fraternity influenced the decisions of individual notaries, when they were confronted with a request to authenticate the transfer of Jewish property.

Chapter 13 tells the story of the dismissed Jewish notaries and deputy-notaries, a number of whom played an important role in the Jewish Council for Amsterdam. Under the constant pressure of arrests and raids (razzias) they tried to run the Council as a normal administrative body for Jews. The main conjecture of this chapter is that the Council behaved like a typical Dutch organization, which strived for administrative continuity and hoped to reach this in mutual agreement with the authorities. That was the same pragmatism that characterised the attitude of the Fraternity. However, the Jewish Council was blind for the tactics of the Nazis, who used the Council as an instrument for their anti-Semitic annihilation policies.

In chapter 14 the war comes to an end as it had begun: in chaos and destruction. All functionaries are held to account for their behaviour during the occupation. Traitors and collaborators are punished. But what happened to the notaries? The Fraternity of Notaries decided to wait and see, after they were confronted with the fact that many of its members facilitated the resale of Jewish property. In contrast, the separate Fraternity of Deputy-Notaries proactively purged its ranks from those who had collaborated with the occupier. The Fraternity of Notaries resisted the pressure of the minister of Justice to cooperate with the measure against notaries. In an ‘ideal’ situation the collaboration of Dutch notaries with the German authorities would have been restricted to the ideologically sympathetic NSB-members. But, also as a consequence of the attitude of the Fraternity, this was not the case. This constituted a major problem for post-war transitional justice and legal purge. In the end the pending tribunal-cases against notaries for economic collaboration were dismissed by personal order of the minister. Those who had cooperated willingly and had profited considerably, could continue their office. They had to reimburse 60 per cent of the income they had received from the transfer of Jewish property and were allowed to deduct the repaid sum from their annual tax assessment. The Fraternity was not held accountable in any way for its proactive role to facilitate the confiscation of Jewish property during the war. This led to a fierce internal discussion and the Fra-
ternity was criticized heavily, especially by the notaries who had been active in the resistance during the war. But this soon ended.

The last chapter looks at the post-war involvement of notaries in the restitution of rights process. The Fraternity, who had resisted all measures against notaries during the purge, assumed another proactive attitude towards the restitution process. The critical condition for the employment of notaries in the restitution process was that they would not be held accountable, individually or as a group, for their involvement in the resale of Jewish property. This had been the case in the judicial process of transitional justice after the notaries were exculpated by the minister of Justice. The Fraternity assumed a proactive attitude towards the restitution process and conferred with the Council for the Restitution of Rights. The Real Estate Division of the Council became dependent to a high degree on the work of the civil law notaries throughout the country, who tried to reach amicable settlements between the Jewish claimants and the new owners. In 1947 the number of amicable settlements declined sharply, because the new owners pointed at the notaries who had not informed them about the Jewish origin of the property. The Real Estate Division published judgements of local chambers of the Judicial Division, according to which the new owners were themselves responsible for making enquiries about the origin of property. In a dispute between a new owner and notary De Lange, a member of the board of the Fraternity, the Judicial Division ruled that the notary should reimburse 60% of his fee to the claimant, because the notary had been too eager to promote the deal.

The attitude of the notary became subject of a number of court cases. Shortly after the war, the courts followed the policy that was set out by the minister of Justice. The notary was considered to be completely passive and the buyers were responsible themselves for making enquiries about the origin of the property. However, since 1950 the courts decided incidentally that notaries were responsible for informing the clients adequately about the origin of the property. In one case the court ruled that the notary should also be judged by the norms of social and common decency. That judgement touched a sore spot: the relationship between social decency and the professional ethics of notaries. If the notary's main function was social, his ethical standards should be brought in conformity with the moral standards of society. This question was addressed by notary Claessens, who wrote an article about the position of the notary. He said that the doctrine of passive-
ness could not be maintained, since the notary's function was a social one. For a notary, formalising an injustice is the gravest offence a notary could commit. Now it is clear that he referred to the unpalatable events during the war, but the war was not mentioned. However, with his article Claessens defined the new social function of notaries and made it clear that their professional conduct should be judged against the moral standards of the modern society.

My study has established that a significant number of the Dutch notaries, duly convened and facilitated by the Board of the Fraternity of Notaries ('Broederschap der Notarissen'), exercised a key role in the transfer of Jewish property. This was the direct result of the pragmatic attitude of the Fraternity, which aspired from February 1941 to attain the indispensability of the notaries under the New Order. The substantive facilitation of anti-Jewish measures also came about under pressure of members who demanded swift and adequate information on the implementation of the German measures. In early 1941, the dismissal of Jewish notaries was accepted and subsequently the Fraternity endeavoured to implement the regulations according to the spirit of the occupier. When in the course of 1941 the anti-Jewish measures in the field of equity and real estate were ordained, the Fraternity did not apply the brakes. To the contrary, it provided the notaries with a comprehensive guide about the execution of the regulations concerning Jewish property in the Correspondence Journal and in circular letters. For the Fraternity, ethical considerations played no detectable role. Nevertheless some notaries, such as Jan Kruisinga, explicitly addressed the ethical dilemmas. Kruisinga explained to his local colleagues in 1941 that they had to treat every customer, Jewish or not, equally and that legal security needed to be protected. Also, there were some notaries and junior notaries who actively fought against the occupation regime and sometimes even took up arms. A number of them paid for this with their lives.

Comparatively, in a context of relative administrative resistance, the Belgian notaries successfully applied delaying tactics on transactions with Jewish property. The role played by the Dutch notaries in the process of Aryanisation, resembles that of the German notaries. However, it should be noted that among the Dutch notaries there was no ideological affinity with Nazism, and that the Board of the Fraternity also harboured no sympathy for Nazism. The Fraternity did not know the fate of the Jews, but the anti-Jewish measures that were executed were contrary to core values of
the notaries. The pragmatic attitude of the Fraternity meant that the principles of notarial impartiality in relation to Jews was abandoned. The result was that many notaries formalized injustice by passing on deeds of Jewish premises. Confidentiality regarding Jewish wills was not maintained by the Fraternity. But when the Fraternity itself was threatened, the board slowed the process down and did not cooperate with the organisation of notary exams. Despite the repressive context, administrative resistance within narrow margins was apparently possible, since the Fraternity itself was saved by that strategy.

The accommodating attitude of the notaries can partly be explained by the prevailing doctrine of passivity. This meant that they could deny any responsibility for the consequences of the deeds they passed. For the Fraternity and the Ministry of Justice the pre-war failures of notaries had been no reason to tighten up the supervision or to develop ethical regulations. The pre-war initiative for an honorary code by the notaries in Amsterdam was not adopted elsewhere. The lack of professional ethics had led to fraudulent bankruptcies before the war and stood at the base of large-scale cooperation with the spoliation of Jewish property.

The empirical research in this study was based on three sources. First, the post-war returns of Jewish transactions that notaries delivered during the purge; second, the registers of the German organisation that directed the Aryanisation of Jewish property (Niederländische Grundstücksverwaltung); and third, the registers with transactions that the notaries were obliged to hand in yearly to the notarial supervisory body of the courts. On the basis of the data it must be concluded that the Dutch market for Jewish property in 1942 and 1943 was thriving. The traditional view of Dutch historians was that the sale of Jewish property, from the perspective of the occupier, had been disappointing. This opinion has now been corrected on the basis of empirical research.

During the legal purge after the war it soon became clear that a large number of Dutch notaries (57%) had cooperated and had passed the deeds of sold Jewish property. The Fraternity and individual notaries who were confronted by the judicial authorities with the number of Jewish transactions they formalised, clung to the doctrine of the passivity to legitimize their attitude during the occupation. In the end, the Fraternity with the support of the Minister of Justice was able to exculpate the profession to legal prosecution for economic collaboration. The Minister of Justice intervened
to dismiss the tribunal cases against a number of notaries from Rotterdam. This was an abuse of the principle of separation of powers (\textit{trias politica}) since the independence of the judiciary was violated. It is however consistent with the conclusion of the Dutch legal historian Joggli Meihuizen, that 'big fish' were often not prosecuted for collaboration. Since notaries were well-organised, they could wheel and deal on the highest political level. Policy wise for the Minister of Justice the economic interests prevailed over the legal principle of equality of justice. In the end, pragmatism triumphed again.

Shortly after the liberation, a heated discussion erupted behind closed doors among notaries about the role of the Fraternity during and after the war. Soon however this discussion was stifled in order to save the reputation of the profession. As a consequence of this strategy of silence any reference to the heated debate was deleted from the minutes of the General Assembly that were published in the \textit{Correspondence Journal} in 1946. This policy was sustained until the beginning of the twenty-first century. Ultimately, even the notaries have now joined the ranks those legal professions whose wartime past has been the subject of research. Opportunism is the term that often occurs in the conclusion of these studies. According to Meihuizen anti-Semitism hardly played a role and the lack of empathy of the legal profession with the Jews in general and Jewish lawyers in particular was due to the pragmatism of the bar. The legal-historian Corjo Jansen notes that the conduct of the justices of the Supreme Court was marked by opportunism. Those conclusions also apply to notaries. The tax law specialist Peter Essers writes with regret that no tax official stood on principle against the injustice done to the Jews. Kruisinga was the notary who came closest to that, but his influence was local and limited. Because of the taboo on the subject of occupation, the role of notaries in the resistance was not previously described. Now the story of those in the notarial profession who were in the resistance movement, and those who died on the battlefield or in the camps because of their moral stance has been told. The same applies to the Jewish notaries and junior notaries who were dismissed and prosecuted.

During this study I discovered some interesting sources relating to the fiscal aspects of the spoliation of Jewish property rights and the post-war policy of the tax authorities concerning the registration fee that was paid on title-deeds. Even after the war the Dutch tax authorities maintained in court that that they considered the sale of Jewish property during the
occupation to be entirely legally valid. That fits in the picture of a stoney and
technocratic attitude of Dutch tax authorities as sketched by Essers. It was
established that the government through the tax system has benefited from
the spoliation of Jewish property rights and that after the war the Dutch tax
authorities, under the guidance of the ministry of Finance, made every ef-
fort to not fully compensate. This is certainly a subject for further research.

War history is a cocktail of malice and misunderstanding in which ad-
ministrative processes and individual decisions are intermingled. Decisions
were made under pressure by mortals who could not see into the future,
while we now retrospectively understand the consequences of their actions.
Moreover, their choices were limited by the difficult conditions in which
they found themselves. The purpose of research into the behaviour of people
and organizations under the extreme conditions of the war and occupation
is that it makes clear that humanitarian principles and professional ethics
are not vague abstractions. If legal equality is destroyed, individuals and
groups could will soon be deprived of their rights, their property and, in
the end, their lives. The injustice that was done to the Jews was contrary to
the core requirements of the notaries, who have to protect legal certainty.
The pragmatism of the Fraternity incited notaries to formalize the injustice.
Regarding Jewish wills the duty of confidentiality was violated. As a direct
consequence the post-war society including the few Jewish survivors faced a
legal chaos.

The main social function of the civi law notary is not just to efficiently
facilitate legal transactions. He is the keeper of legal certainty and legal
equality and this includes the careful identification of problems that certain
transactions can cause in modern society. A modern notary is not a robot
without ethical awareness that maintains the administrative and legal pro-
cesses. A robot operates only within the context of a process and has no sense
of human values, social decency or the difference between right and wrong.
At a time when legal organizations have to work cost-effectively, there is
hardly any place for reflection on notarial ethics and the social function of
the notary. Reflection on legal principles and professional ethics takes time
and money. But an ethically rudderless legal profession eventually destroys
the foundations of a democratic society. Therefore, a modern notary should
not be absolutely passive and should not be held responsible for the negative
effects of the transactions he formalised as an official. Today, the notary
bears moral responsibility for the legal and social consequences of his term

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of office. All legal and financial service providers should feel responsible for a just society. As my study shows, notaries who fail to act ethically cause real damage. If the rule of law is widely violated, only chaos and evil remains, covered by an icy haze of legal uncertainty and inequality.