The rubber bands are broken; opening the 'punctualized' European administration of justice

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Thesis

Currently the platform of the Dutch administration of justice can appropriately be characterized as unstable. This instability is analyzed by the judicial professionals themselves as a series of separate defects, each requiring an adequate measure of the institution itself to solve the problem. None of the problems really raises doubt about the fundamental legitimacy of the institution and none of the measures really affects its fundamentals.

This response fits into the analysis that Bruno Latour has made of the French Conseil d'État[1]. Many aspects of his analysis are meaningful for continental European legal institutions in general. Paradigmatic are his observations on the construction of a seemingly controversial decision. I quote a few lines. Writing about a commissioner of law, Latour observes: "He wants the judges to 'make a significant move' while asking them to do nothing more than 'draw the consequences' of 'their' decisions of 1906!" (p.187), "making them say nothing other than what they have always said, even if it was not clearly today" (p.188), "the only thing that is supposed to have happened is the clear affirmation of something that had already existed" (p.191), "everything has changed and yet nothing has changed at all" (p.191).

Latour compares the modernistic Enlightenment institution of the Law with that other one, Science. "[U]nlike scientists, who dream about overturning a paradigm […]

[1] Latour, B. (2010). *The making of law. An etnography of the conseil d'état.* Cambridge, Polity Press.

commissioners of the law invariantly present their innovations as the expression of a principle that was already in existence, so that even when it deeply transforms the corpus of […] law it is 'even more' the same as it was before" (p.219)[2].

In this brief paper the speculative thesis is explored that in our era of digital connectivity, the remarkable capacity of a legal institution to absorb a huge amount of social dynamics as if it is a priori already present in a closed, 'punctualized' institution[3], leads to a serious loss of public legitimacy. The main argument is that such response to alternative, 'rich' narratives isolates the institution in an era in which digital technology creates actants that make such isolation untenable.

The response of the legal institution as well as its self perception and corresponding self presentation, are based on modernistic Enlightenment ideology of an anonymous, abstract Justice, with a claimed right to preserve a narrative monopoly in its domain, and a claim that this monopoly ought to be respected, even by the legal subjects being judged about. This claim is based on the myth that legal truth is 'found'[4] instead of a legal decision being the product of a constitutive act of a subject. The standard values of the constitutional state (separation of powers, legal stability, and equality before the law) are involved in this ideology, but also a specific carry-over of these values into an institutional culture. When a concept of 'true knowledge' is presupposed, legal authority implies a reasonable claim on a narrative monopoly[5].

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[2] I do not fully agree with Latour's description of the scientist, observing how conceptual systems are 'saved' by absorbing empirical tensions too, but I consider his characteristic of the judicial practice evocative.

[3] "Punctualization is always precarious, it faces resistance, and may degenerate into a failing network. On the other hand, punctualized resources offer a way of drawing quickly on the networks of the social without having to deal with endless complexity", John Law writes in 'Notes on the Theory of the Actor-Network: Ordering, Strategy, and Heterogeneity'. In*: Systems Practice* 5, 1992. p. 379-393.

[4] *Legal construction* is in Dutch 'rechtsvinding', literally *justice-finding.*

[5] I do not elaborate here on this claim about the ideological foundation of the European system of the administration of Law. See Israel, J.I., 2001, *Radical Enlightenment. Philosophy and the Making of Modernity 1650-1750.* Oxford: Oxford University Press, Toulmin, Stephen 1990, *Cosmopolis. The hidden agenda of modernity.* New York: The Free Press and my remarks in 'Sign Processes in the Law Court and the Functions of

The current instability however, requires a fundamental debate about this image of the institution of the administration of justice as an ideologically motivated, theoretical 'punctualization', as a unity, rethinking it as being a network of particles. However, thus far the response of the institution seems to be to strengthen the ideological illusion of the valid Law and the true Facts that decide. My thesis is that it is necessary to open 'Pandora's box' (Latour's image[6]), to rediscover that many of its particles are situated in complex, material-semiotic actor networks that reach far beyond the ideological borders of the institution. Latour's image however could not be chosen more appropriate; who wants to listen to a plea to open Pandora's Box?

Tearing down the myth that underpins the punctualization means recognizing that judges are constantly changing subjectivities, embedded in complex actor networks. Courts are networks, the particles of which (people, products, procedures, material parts) are elements in numerous other networks, in diverse and dynamic ways. These other networks transgress the ideologically constructed borders of the institution. The architectural and procedural rituals that symbolize the punctualization are like the fluent lines of a designer that are meant to make you forget that a unity is a theoretical conceptualization. To understand the institutional practice and its critique however, one needs to 'look under the hood'[7].

In this 'depunctualization', the dynamics of technological developments need to be recognized as mediating actants. As far as they are currently recognized, they are treated as *intermediaries*, as actants that do not execute a force (or that should not execute a force). However, individual broadcasting, internet debate, social media relations should be recognized as *mediating* actants. 'Depunctualization' of the institution brings the identities of the individual judges as persons to the front, as well as the court rooms as broadcasting and broadcasted locations. This introduces many mediating actants in the material-semiotic network called the administration of justice.

Reservation

Judicial Argumentation in the West'. In: Takeshi Suzuki, Takayuki Kato, Aya Kubota (eds.), *Argumentation, the Law and justice. Proceedings of the 3rd Tokyo Conference on Argumentation*. The Japan Debate Association. Tokyo. 82-86 and 'The unchangeable judicial formats', to appear in *Argumentation*.

[6] In his beautiful *Pandora's hope. Essays on the reality of science studies*. Cambridge, Harvard University Press, 1999.

[7] Referring to John Law's metaphor to clarify the concept of punctualization.

It is not possible to argue this thesis with all its presuppositions properly in a limited paper. Even if there were no such restrictions, applying a decent ethnographic methodology that actor network theory requires is impracticable. One can just admire the efforts that Bruno Latour made to obtain permission and actually to perform his anthropological study of the French Conseil d'État. I can only illustrate the claimed instability and the typical responses of the institution, presenting two critical incidents that demonstrate the mediating force of social networks, internet debate and individual broadcasting. Such mediation can be perceived as fundamentally destabilizing dynamics (conceptualized as a peril) or as dynamics in a process of reorientation (conceptualized as a promise). The argument is empirically based on interviews, visiting sittings of the courts[8], a close reading of reports, verdicts, public debate. In other words, the underlying basis is not a decent anthropological study. Its status can thus only be to challenge the debate.

Signs of instability

Analyzing the Dutch newspapers, magazines, television, relevant internet debates and responses in social media shows a massive amount of critical reactions on the administration of justice. In 2010, seven Dutch newspapers published 18.242 articles about the adjudication of justice, 7.3% of all articles, with a length above average[9]. Most of the articles have a slightly negative voice (though because results are gained by means of automatic content analysis and many article deal with negative phenomena such as crime, one must be careful interpreting these results). In weekly magazines one finds many more lengthy articles, but also many letters to the editor, often from professionals, complaining about the refusal of the courts to reckon with their (client's) stories. In 2010 an experienced judge and university professor, Rinus Otten, publishes *De Nieuwe Kleren van de Rechter; Achter de Schermen van de Rechtspraak* [The new clothes of the Judge; behind the screens of the administration of justice] in which he criticizes the efficiency the courts from several perspectives. Several mistrials came to the light. The trial against Wilders, the Dutch politician also well-known in

[8] These observations are most significant, but it is hard to report about them. Filming in court is usually not permitted. Important are the observations how judges fall back on formal procedures and formal formulas when challenged to enrich the narratives, this being accompanied by a clear body language that tells: "This is not me, this is the formula of the institution".

[9] N. Ruigrok, N. Ismaïli, M. Goelema, *Rechtspraak in het nieuws, het jaar 2010* [Administration of justice in the news, the year 2010].

the American Tea Party movement, accused of sawing hatred, is a media spectacle, but also an occasion to publicly discuss many aspects of the system of (criminal) justice.

Perhaps most significant is the diversity of the critique. All aspects of the institution are criticized. Its capacity to respond adequately, the height of sanctions, the capability to listen, the political position of the administration of justice, the administrative role of the judge in juvenile law, the internal organization of the courts, some individual decisions. Obviously at the same time, 99% of the legal decisions pass unnoticed. They are accepted and the myth of the legal truth in retold simultaneously. So there is no immediate crisis[10], which makes it even more interesting to reflect upon possible explanations of the massive negative public debate.

In the continental European administration of justice, the dominant model is that lifelong appointed professionals[11] decide about the evidence, about the applicability of a legal rule, about the accountability of the offender, about the interpretation of the law, about the appropriate sanction. Taking a quick glance at the responses of this community of professionals on the critique, these are substantial. Many organizational interventions are implemented. A large amount of legislations is prepared, often based on the work of judicial advisory committees. Openness to the media has been increased. Speaking about the Dutch situation in criminal law, an ambitious, time and money consuming project is running since 2004 to improve the intelligibility of the taking of evidence (in Dutch: bewijsconstructie) and

[10] Compare also recently John Griffith, Vertrouwen in de rechtspraak [Confidence in the administration of justice}. In: *Nederlands Juristenblad* 2011, 794.

[11] April 26 2011, a three pages article in *Dagblad De Pers*, one of the free Dutch newspapers that all commuters read in the train, reports an interview with Harm Brouwer, the retiring Chairman of the Board of Procurators-General and thus the highest official of the Prosecution Counsel. This is his career. Born 1951, studied Law at Leiden University, worked 11 years as a lawyer for Philips Company. In 1988 he accepts a position as a judge in the Roermond court of law, in 1992 councilor at the appeal court of The Hague, in 1996 chief public prosecutor in Leeuwarden, in 1999 President of the court of law in Utrecht, in 2004 member of the Board of Procurators-General, in 2005 Chairman of the Board of Procurators-General. Two elements are untypical in this career: the 11 years in business life and its dazzling speed of his career after that. The fact however that Brouwer spends (up to now) 23 years of his career in legal adjudication, planning to add some more as a judge in a civil law court, every now and then changing his role (functions as judge and counselor for example are even combined, be it in different districts) is typical. Also giving up a lifelong appointment as a judge is quite normal, though most of the time to accept another one.

the determination of the penalty (in Dutch: straftoemeting). In civil law recently a committee reported its attempt to develop a monitor to measure the quality of the legal decisions[12].

Notwithstanding these numerous and substantial responses, it is intriguing to observe - generally speaking about the debate within the professional group - the minimal responsiveness to what may be a fundamental destabilization of this institutional platform in its current way of performing. This may be due to the fact that the administration of justice, especially criminal law, has been criticized ever since its 19th century establishment. So there may be a culture of imperviousness. As a symbol of bourgeois Enlightenment, the institution has been critically discussed from numerous disciplines, from numerous perspectives, two of the most well-known being the Marxist prediction that the end of capitalism will be announced by the loss of the criminal law system and Michel Foucault's part three, "Discipline" in *Discipline and punish: the birth of the prison*.

One of the 'academic' attacks on criminal law, in the 1970's in The Netherlands but with an international impact, has been the *abolitionist movement*, inextricably bound up with the name of Louk Hulsman[13]. Hulsman advocated the abolition of criminal law with several arguments. Most important was his thesis that the translation of a problem in terms of criminal justice seldom or never solves a problem, only creates problems. Besides that Hulman claimed that there is no relation between an act being lawful or a crime and an act being good or bad. Criminal punishment does not serve any socially valuable goal. And the institutions required by the system of criminal justice, such as the investigation services, produce criminal acts in stead of preventing them.

Some of his criticisms have been effectively absorbed in the institution, be it in the way that has been sketched above; his fundamental critique has been answered by defining a

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[12] An impressive amount of information can be found on the site of the Council for the Judiciary, http://www.rechtspraak.nl/Organisatie/Raad-Voor-De-Rechtspraak/Kwaliteit-van-de-Rechtspraak/Pages/default.aspx. In English/French: Quality of the judicial system in the Netherlands. Qualité du système judiciaire néerlandais, http://www.rechtspraak.nl/English/Publications/Documents/BrochKwaliteit_GBFR.pdf
The Promis reports (in Dutch) can be found on http://www.rechtspraak.nl/Organisatie/Raad-Voor-De-Rechtspraak/Kwaliteit-van-de-Rechtspraak/Pages/Project-Motiveringsverbetering-in-Strafvonnissen-(PROMIS).aspx. The report of the Toetsingscommssie civiele vonnissen (in Dutch) can be found on http://www.rechtspraak.nl/Procedures/Landelijke-regelingen/Documents/101209-rapport-toetsingscommissie-civiele-vonnissen.pdf.

[13] see http://www.loukhulsman.org/

series of separate problems and incorporating a series of measures that are presented as adjustments within the system. The fundamental critique on the narrative monopoly of the legal system, which creates - in Hulsman's view - problems in stead of solving them, has not been answered. On the contrary, the tendency to bring numerous aspects of social dynamics 'sub judice' has only increased.

Nowadays there is no abolitionist movement. The dynamics are different. What is challenged now are the closed borders of the institution or, in actor network terminology, its punctualization. The narrative monopoly is not accepted anymore. Two critical incidents may suggest this as an important aspect of the current instability.

The virtual charm

In February 2009, in *Opportuun*, the journal of the Dutch Prosecution Counsel, the public prosecutor Petra Hoekstra is remarkably frank about herself. She has been the prosecutor in the *RunEscape* case. With brute force two boys robbed another boy of a virtual charm. "What is this about? What is the problem?" were her initial thoughts. She had never heard about *RunEscape*[14]. At that time several millions of people were playing the massive multiplayer game on a regular base!

This is remarkable though not surprising in our era of global network connectivity, which creates numerous virtual (not fictional!) domains. On the one hand the digital connectivity enables an individual to enter or at least know about subcultural domains, which creates an expectation that public institutions gain at least some basic knowledge of such domains. On the other hand the vast number of subcultural profiles causes that a representative of a public institution can easily miss a profile, even one that is massively present is his or her immediate environment. This can happen when confronted with youth cultures, ethnic cultures, cultures of social classes, religious cultures, but this case shows that nowadays the dividing lines are often less traditional and predictable. Every legal subject has a position in his or her cultural mosaic that is distinguished from the position of the ones that judge him or her.

Some weeks after completion of the case, having had sufficient time for reflection, the public prosecutor still clearly shows that she lives in a different cultural mosaic than these boys. "You observe this more often in cases with adolescents, for example when they quarrel using MSN and the one blocks the other. On a session not so long ago, I got a boy who

[14] http://www.runescape.com/

completely freaked out. He had the feeling that he was not heard anymore and beat the other silly. He told that he felt like he did not exist anymore. Bizarre, but apparently the virtual world is an important part of the room of living of adolescents. For them it is reality. In the RunEscape case I have not heard or seen even one adolescent who doubted even one second that the virtual charm and mask had value and that therefore you could steal them, *while exactly that was the most important question in this case*. I do not think that you should have illusions that you will ever understand such things. It is a generation gap; we are not raised with internet and have an entirely different frame of reference. For me as a youth prosecutor it was an eye-opener."[15]

The italics (by me) probingly show the claimed narrative monopoly of the punctualized legal system; the prosecutor seems even astonished that someone can live in a world in which the legal question is not recognized as the essential question. At the same time she says that she cannot understand a live space in which virtual worlds are an integrated part of social reality, integrated with the world of the schoolyard, the boy's hierarchy, and so on. She will never understand, she says. This is a much stronger statement than saying that such experience is just not relevant in her personal life. Perhaps the prosecutor has no experience with a nightly fight between boys near the dance club too. But professionally confronted with such a situation, she would never use the expression "Bizarre". Taking the virtual world as an integrated part of reality is "bizarre", because Petra Hoekstra's sign VIRTUAL WORLD indicates situations that are *by definition* not integrated in 'the real world'. A GAME WORLD is a VIRTUAL WORLD; ergo it is or should not be integrated with 'the real world'. Confronted with her actions on the stock market or while doing her internet banking, she would probably deny that such actions are virtual, "because they have a relation with the real world and therefore are not virtual".

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[15] Italics are mine. The original Dutch text is: "Je ziet het overigens wel vaker in zaken bij minderjarigen, bijvoorbeeld als ze via MSN ruzie krijgen en één jongere blokt de ander. Ik had nog niet zo lang geleden een jongen op zitting die vanwege dit feit volledig door het lint ging. Hij had het idee dat hij niet meer gehoord werd en heeft degene die hem blokte in elkaar geslagen. Hij zei dat het net was alsof hij niet meer bestond. Heel bizar, maar blijkbaar maakt de virtuele wereld een belangrijk onderdeel uit van de leefruimte van jongeren. Voor hen is het de werkelijkheid. In de RuneScape zaak heb ik ook geen enkele jongere gehoord of gezien die er ook maar één seconde over twijfelde dat het virtuele amulet en masker waarde hadden en dat je het dus kon stelen, terwijl dat nu juist de belangrijkste vraag was in deze zaak. Ik denk niet dat je de illusie moet hebben dat je zoiets ooit zal begrijpen. Het is een generatiekloof, wij zijn niet met het internet opgevoed en hebben een totaal ander referentiekader. Voor mij als jeugdofficier was dit wel een eye-opener."

The Volendam headscarf

With its long history of traditional costume, one would not expect a conflict about wearing a headscarf on a catholic school in the famous Dutch village Volendam. However, when a young Muslima wishes to start wearing a headscarf when she is 15 years old, the school forbids her to do so. The Dutch Equal Treatment Commission decides that the school has to allow her to wear the scarf. The school refuses. Imane starts a law suit. The judge decides that the catholic school has the right to forbid her, as he sees a sufficient relation with the school religious identity.

Television news, talk shows, all newspapers report about the conflict. On April 6 2011, her father Mohammed is guest in the evening talk show *De Moraalridders* [The moral crusaders], to explain why he and his daughter have decided to appeal. He tells: "I do not have the feeling that I am taken seriously […] My daughter was not even allowed to speak. That is a. Point 2, the opponent's lawyer said: 'In Edam, municipality Volendam-Edam [a village just 3 kilometers away/pvdh], there is another school close by', so in Edam. Then the judge said, as a joke, 'A fisherman from Volendam is not allowed to enter Edam'. I thought, am I in the teahouse here? This is a hearing, it is important for many people in The Netherlands, so then, especially for my daughter, then you must really deeply investigate what is going on here". "So you did not get the feeling you were taken entirely seriously during the trial?", "No".[16]

During the interview there seems to be some embarrassment because Mohammed, living 27 years in The Netherlands now, formulating sharp, clear and in correct Dutch, does not answer the prototype of the Moroccan father. He shows and proves that his daughter takes her own decisions (his other daughter has decided not to wear a scarf and is free to do so) and he presents himself several times as a Dutch citizen and a regular member of the Volendam community.

[16] The original (oral) Dutch text is: "Ik voel mij niet serieus genomen". "Mijn dochter is niet eens aan het woord gekomen. Dat is a. Punt 2. De tegenpartij-advocaat die zei van 'In Edam, gemeente Edam-Volendam, daar is een school vlakbij', in Edam dan. Toe zei de rechter, als grap, 'Een visboer uit Volendam die mag niet in Edam komen'. Ik dacht, ik zit hier toch niet in een theehuis. Het is een rechtszitting, het is belangrijk voor veel mensen in Nederland, dus dan, vooral voor mijn dochter, dan moet je echt goed diep kijken wat hier aan de hand is". "Voelde u zich niet helemaal serieus genomen tijdens de rechtszaak?", "Nee".

This second case shows again the rich and complicated identities in the multiform community that judges (and talk show hosts) have to deal with. The two elements that I want to bring to the front are that this person - in the court room as well as on television - claims his right to participate in the direction of the legal procedure and - perhaps most important - that the legal narrative translation of his case has no monopoly anymore. Mohammed is able to broadcast his narrative, if not in the courtroom, then on public television or on youtube, facebook, twitter or other social networks.

Of course I could have chosen other examples. . In the Wilder's case the public media are constantly played on with alternative narratives. The protagonists, among them the defense lawyer Bram Moszkowicz who is a media celebrity, even get an opportunity to dial up in a TV show[17]. Or the case against a right-wing extremist Stefan Wijkamp who gets the opportunity to have a six minutes interview on a regional channel, placed on youtube and looked at almost 100,000 times[18]. Or the Luicia de Berk case, the nurse who was exonerated in April 2010 from a lifelong sentence: 60.000 google hits on the exact word combination, at least twenty directly relevant youtube items, episodes of all important talk shows. However, this relatively small Volendam case of further anonymous individuals seems more significant to illustrate the mediating force of digital technology as a mediating actant in a network that transgresses the borders of the legal institution[19].

Connectivity of particles

The issue in the debate about the instability of the platform should deal with this connectivity of its particles. Mohammed is Volendammer, father of two liberal daughters, employer, Moroccan, Dutchman, Muslim, guest in a talk show, plaintiff, debater in the tea house, and much more. This brings about that this 'subject' knows that he should be heard in his 'rich' narrative. This makes the utterances of Mohammed programmatic.

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[17] Although a bizarre incident, it illustrates the impact of individual broadcasting. The incident is on youtube, http://www.youtube.com/watch?v=tRl5rMP6GZ4&feature=related. But, as could be expected, also a parody on it can be found (both unfortunately in Dutch), http://www.youtube.com/watch?v=obi0gglMXA0. Searching youtube on the Wilder's trial results in 444 hits.

[18] http://www.youtube.com/watch?v=JxulJNxc8ws, and several item more.

[19] About 20 items about this case can be found on youtube, including 'discussion' statements, defined as reactions on statements. For example the pair http://www.youtube.com/watch?v=zu4ilU4VAr4 and http://www.youtube.com/watch?v=4VYIx5yGJJU

A contrast between the two cases is informative. In the RunEscape case, the 'enriched' narrative, results in a legally 'smooth' solution. Although judged as bizarre, the enriched vision on the boy's social reality can become part of the dynamics, because the narrative results in a traditional theft case. In the Volendam case however, this is different. Acknowledging that the administrative institution needs to be depunctualized, its particles transgressing its ideological borders, results in acknowledging that the decision taken does not solve the problem nor takes up many of the elements in the father's narrative and does not recognize many of the mediating actants in the material-semiotic network.

The issue of emancipated knowledge also illustrates the need of an actor network approach. The digital technology with its massive storage capacity that can be approached by any actant from everywhere, has changed the concept of information. In its initial stages the wiki- phenomenon has been approached with a bantering tone. Now the issue is how to deal with it. One does not have many excuses not to be informed about whatever issue one encounters professionally. Besides the wiki-media, the webcams, the youtube collections, the entrances to every museological collection in the world, and so on, the digital social networks create individual and group entrances to numerous persons.

This has significant consequences that legal professionals still seem to overlook with authoritarian denial. A consequence is that legal subjects expect the authorities to show knowledge of the many-colored identities that these subjects consider relevant in their narratives. A Dutch judge has an entrance to gain knowledge about the ethnic and geographical multiplicity of the Ghanaian Christian community, and therefore a legal subject with Ghanaian roots considers it a legitimate wish to recognize this knowledge. Apparently the administration of justice needs to categorize, to abstract, to classify, but the legal subjects expect that this happens in a portrayal in which they recognize themselves. This is entirely different than the three pages sketch that the famous Dutch jurist Jan Leijten publishes in 2003 in which he emphasizes (in a funny way) that the judge should avoid as much as he can any narrative in which the legal subject can recognize himself[20]. Leijten seems right that this is still the attitude of the judge, anonymous member of the punctualized institution. However, the legal subjects broadcast their narratives in what they perceive as the relevant network.

A second consequence is that legal subjects do know a lot more about legal narratives. The profession is confronted with a client and his or her acquaintances who explore their connections with the immense sources of information before they enter the professional

[20] Jan Leijten, 'The judge's story'. In: Kleine hebzucht loont niet. Kronieken. 2002. p.287-290.

practice. The traditional role of the legal mystic medium is largely played out. Subjects do not part with the direction of their own story. This is also because they do not draw the borders of the institution where the administrators of justice would like them to draw these. Websites, victim forums, 'friends' from social networks are all mediating actants that make sense in the narrative, together with the institutional ones. As do the camera's with the soccer referee. The legal administration resembles Sepp Blatter, the chainman of the Union of European Football Associations who does not want to accept the information of camera's (and other technical aids) as mediators in the ref network while millions use these in thre debate about the referees functioning and its implication.

The administration of justice is a particle in the dynamics of the 'internet-knowledge', or better: the particles of the network that we conceptualize as the administration of justice are particles in the dynamics of internet knowledge. The first issue of *Rechtstreeks* ['Direct', but in Dutch contains the element *recht* = justice as well as straight] of 2010 deals with digital sources for the administration of justice. Marc van Opijnen describes the possibilities of Web 3.0. In the near future it will be possible to find all jurisprudence about a subject, or the cases in all instances, and so on, just pressing the one button. It seems significant again that all examples that Opijnen gives, concern the institution internally. But Google gives now already a simple opportunity to find all or at least most of the internet discussions about a legal case, before and after the decision[21]. So maybe the most significant consequence of the digital technology is that there is no rubber band anymore that defines what is in the file, what not[22]

Legal subjects are well informed about their case. Of course their information may be biased emotionally and selective, but it is part of the 'story of the case'. Legal subjects have numerous forums to discuss and to test their position. This creates a reality in which the borders of the legal institution are symbolically visible, but are actually transgressed constantly. Legal subjects walk in, but also walk out. They have numerous media at their

[21] For example about the virtual charm case in English http://www.nytimes.com/external/idg/2008/10/23/23idg-Netherlands-tee.html and http://www.techdirt.com/articles/20081021/1752432610.shtml, and several hundreds in Dutch.

[22] In the Wilder's case, one of the judges, obviously irritated, stated that he now wants to have clearly determined what is part of the files and what is not. This was on the moment that there was a live covering going on, that every now and then was interrupted by switchovers to the studio in which experts brought up all kind of materials, insights, and so on. Of course his remark regarded the formal, traditional 'set of information' that functions as the evidential basis, but the situation clearly demonstrates how 'illusionary' this concept is.

disposal to make their perceptions public, as we saw in the Volendam case. While the administration of justice still discusses internally how far to go in its media policy, it is in fact fully broadcasted already, every moment that any observer wishes to do so.

A third consequence is the link-culture. "That is obvious", lost its validity in many discourse domains as an analysis of more serious internet discussion forums can teach us[23]. Because everything leaves its traces in the thousands of terabytes of the internet, it is expected that even trivialities are documented. This means that the extreme evidence culture of the legal narrative is in a way outdone in some non-legalized narrative realms.

The rubber bands are broken

Some developments have been distinguished here, as mediating actants in relevant networks. According to actor network theory, these developments should not be interpreted as single causes, but as theoretical conceptualizations of interconnected material-semiotic networks. Complex multiple connectivity (for example in social networks, customer profiles, classic communities) creates deliberate identities; deliberate, multicolored identities demand 'rich' narratives; rich narratives demand massive information; internet provides massive information, most often in multimodal formats, embedded in complex and dynamic evaluations; this massive information creates expectations to be answered by professionals in legal institutions and relates to clients that wish to co-direct the process.

Migration of many cultures into the European society, huge differentiation in subcultures, intensified experience with other cultures, globalization of experiences, subjective localizations, emancipation of information, expectations of legal subjects, together they create a multicolored mosaic. Actants as knots in such mosaic enter the courtroom, obviously recognizing its borders (the architecture of the courthouses and court rooms make absolutely sure that they cannot miss them) but experiencing the 'network of their case' as a transgression of these borders.

Clients are knots in a digital global network. They make use of this position to prepare themselves with respect to the content and the procedure. The network creates their expectation that the legal institutes can and will follow them in this development. This does not mean that the sittings should get the characteristics of internet discussions. But the

[23] See recently Marcin Lewinski, *Internet Political Discussion Forums as an Argumentative Activity Type. A Pragma-dialectical Analysis of Online Forms of Strategic Manoeuvring in Reacting Critically*. Dissertation University of Amsterdam, SicSat, Amsterdam, 2010 and my remarks about this study http://www.springerlink.com/content/t31h6232189jkk37/

professional actors are urged to allow and to create ‘rich’ narratives in stead of to reduce and monopolize them. The desirability to be receptive to a ‘complete’ story has recently been noticed influentially from within the community of judges[24]. But the depunctualization of the institution makes clear that a ‘complete story’ implies that the traditional, ideology symbolizing rubber bands are broken. Does that mean that Pandora’s Box is open? It can be a promise to develop the institutions of the European continental administration of justice into the era of digital connectivity.

[24] The President of the Amsterdam Court, Carla Eradus, in de ‘Rechtspraaklezing 2010 ′ [Court lecture 2010].