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Picking up the pace – legal slowness and the authority of the judiciary in the acceleration society (a Dutch case study)

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ABSTRACT

This paper inquires into the nature of the crisis haunting the judiciary in our contemporary society. Drawing upon the work of Hartmut Rosa, it is stated that our society is an acceleration society and that this puts the judiciary under great pressure. The resulting crisis is twofold since it is both of an organizational and fundamental nature. The focus of this paper is on the – in our view – underexposed latter crisis because of its effect on the very core of the judiciary, namely the legitimacy and authority. The judiciary is confronted with the demand to speed up, whereas the nature of the legal system seems to reject an accelerated tempo and even needs a certain degree of slowness to communicate its accuracy. It is not just the process of acceleration that erodes or at least changes the authority of the judiciary but it concerns a complex interplay of expectations induced by acceleration, both externally by justice seeking citizens and internally by the judiciary's own management and politics, and how these expectations are met, or not. This is illustrated by a case study on the position of the Dutch judiciary, but holds true for other national and international adjudication as well.

Introduction

In recent decades, the Dutch judiciary seems to find itself in an enduring state of crisis. Tell-tale signs are abundant and indicative for kind of crisis the judiciary is in. The judiciary struggles to master the ever increasing influx of cases. It is also a struggle to administer justice within a reasonable period of time and in accordance with all the material and procedural thresholds and safeguards a democratic *Rechtsstaat* demands. Complaints from both private and public actors about the slow delivery of justice are the rule rather than the exception. This 'system overload' in terms of cases not only roots in the increased demand for justice by its 'consumers' – first and foremost the autonomous and emancipated citizens – but is exacerbated by the managerial reforms imposed upon the Dutch judiciary in the last decades. These reforms are without exception presented as measures to improve and guarantee the quality of the administration of justice

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but bring along massive financial cutbacks and an irreversible turn from 'institution' to 'business'.[1] It illustrates that the judiciary suffers from a crisis at the level of its organization, to say the least, and has to deal with the challenge to augment its production with still fewer means, in order to meet the wants and demands of the 'market'.

The focus of the press, the public and politics is primarily on the organizational problems, but the crisis is actually of a twofold nature, that is to say that besides the rather obvious organizational problems, there is a fundamental crisis going on as well.[2] That fundamental crisis, pertaining to matters as legitimacy and authority of the judiciary, remains somewhat underexposed in the general discussion or surfaces as an organizational problem also. The academic debate that identifies the more fundamental concerns more explicitly does so in terms of an almost unbridgeable gap between the judiciary and its so-called consumers, i.e. the citizens seeking justice.[3]

To a certain extent, the fundamental and organizational aspects of the crises are inevitably closely intertwined, be it through their possible solutions, or in their causes or consequences. Causes are without doubt plentiful and multidimensional[4] but in this contribution we want to inquire into one specific aspect, namely a dimension of time that definitely puts its mark on the crisis, i.e. social acceleration.[5] Social acceleration quite literally puts the judiciary under pressure and affects both the organizational and fundamental aspects of the crisis. At the organizational level, the problem is usually addressed in terms of workload, the pace of adjudication so to speak, with the increase in influx of cases,[6] the use of production standards,[7] the general perception of an ever increasing complexity of cases[8] and so on. At the more fundamental level, this crisis affects the very core of the judiciary, in terms of its function and position in a complex society. It manifests itself as a change in the perception of the authority of the judiciary.[9]

To be clear, our focus is not as much on the organizational crisis as on the concurring fundamental crisis, the changed perception of the authority of the judiciary.[10] In our view, this changed perception is related to a profound change in the temporal dimension of contemporary society.

If it is so that our complex society is characterized by a structural, and not incidental, acceleration than it cannot but affect the legal system and more specifically the judiciary as well.[11] Social acceleration affects the judiciary in the sense that citizens not only expect but also demand 'fast justice'. As the judiciary for the greater part fails to meet these expectations and demands despite all kind of reforms implemented to speed up the system, the existing temporal differentiation between the judiciary and its consumers, between the public and the private, is becoming more and more problematic. A consideration could be that this mismatch of expectations and performances contributes to the idea of erosion and decay of the authority of the judiciary.[12] Such a point

of view is voiced by for instance the Council for the Judiciary.[13] Consequently, possible solutions should seek to speed-up the administration of justice.

In opposition to that perspective, we would like to propose the thesis that the administration of justice always was and still is well served with a certain degree of slowness.[14] This of course does not imply that judicial decisions can or may take forever for the sake of their quality. But the judiciary needs to deliver, in the first place, good if not excellent quality. It is one of the safeguards of the democratic *Rechtsstaat* so high standing adjudication is its main performance: well-considered decisions, based of thorough argumentation and this in general is time-consuming, it takes time. It is this cautious and even slightly slow mode of the judiciary that communicates its accuracy, the non-arbitrariness if you like, of its output. And this is pivotal to the authority of the judiciary. It requires taking the time it needs for its decisions, for its interpretations of the law – speed is not of the essence.

Of course, these crises are most certainly not an exclusive Dutch issue.[15] It holds true for other national and international adjudication as well, and very much so for other parts of the legal system such as legislation.[16] In this contribution, we will focus on the Dutch judiciary and utilize it as an illustration. We are well aware that these crises might not only be part and parcel of the Dutch system but that other 'traditional' loci of authority encounters similar problems as well.[17] For now, however, we want to address the problem constituted by the relation between social acceleration and the authority of the judiciary. Our main, but not sole, purpose is to analyze this relation since the mapping of this complex situation is a necessary step to eventually come to a much needed normative reflection.

Therefore, we will first sketch the outlines of the theory of the acceleration society as formulated by Hartmut Rosa. Then we move on to the organization of the Dutch judiciary, followed by illustrations why and how it is supposed to accelerate and a reaction of the judiciary to the expected speeding-up. This contribution concludes with a few observations concerning the authority of the judiciary including suggestions for further research on this topic.

The acceleration society

The possible effects of social acceleration on the position and authority of the judiciary in our society cannot be framed without taking some time to reflect upon the phenomenon of social acceleration as one of the most striking features of the late modernity. To this end, we will turn to the work of Hartmut Rosa who most prominently features this development and we will briefly sketch the societal framework wherein the judiciary is subject to change. Within the framework of this contribution, it is not possible to give a full account of Rosa's work on social acceleration but we would like to highlight some of the main observations regarding contemporary society, in terms of their relevance for understanding the developments within the judiciary.

Social acceleration is, as such, not a new phenomenon.[18] Modern society has been confronted with 'growth spurts' every once in a while, illustrative is the period of industrialization. In that period, the law needed to speed up as well and produce social regulation to protect the interest of the workforce.[19] That type of acceleration was, however, of an incidental nature. What is new, and famously elaborated by Rosa (2003, 2005), is the experience of acceleration as a structural feature of the late-modern society.[20]

Rosa places the process of social acceleration firmly within the framework of modernization theory. He considers the temporal dimension, and more specifically social acceleration, as a constitutive feature of the Western society. Changes in the temporal structure of society are bound to affect our individual identity, culture and social structure. Notwithstanding this importance of the temporal dimension and the fact that it pervades all other processes of modernization, modernization theories centre on the description of individualization, rationalization, differentiation and domestication of nature – or so Rosa argues. Notably, social acceleration is not a constant process but fluctuates, due to ups and downs in technological innovations and socio-economic changes. Highlighting the process of social acceleration would also offer the best clarification of the frequently debated difference between modernity and late modernity or postmodernity. However, this requires a clearly defined concept of acceleration and this was, according to Rosa (2003, pp. 6–7, 2013, pp. 71–74), an omission in the sociological debate on time so far. It is his aim to fill this gap. In order to do so, he provides a detailed analysis of the 'acceleration society' and to this end he distinguishes between three different analytical and empirical aspects of acceleration. The first and probably most well-known category is technological acceleration. Illustrative for technological acceleration are the speeding up of transport, communication and production. Technological acceleration is, according to Rosa, relatively easily to observe and to quantify. It also a process of acceleration that takes place *within* society. The manifestations of this type of acceleration and its effects are well-known. For example, within a couple of hours we can travel by plane to places that with horse and carriage would have been out of reach or would have taken weeks. Communication, due to the technological innovation of the internet, no longer requires face-to-face interaction in order to be instantaneous. The mediation of information occurs at a unprecedented high speed. And it is, according to Rosa (2005, pp. 124–129), not only transport and communication that have accelerated. The same goes for the production of goods and services as well. This, in its turn, goes together with an acceleration in distribution and consumption (Rosa, 2005, p. 128). As we will show later, it will be clear that the digitalization of communication in particular and the concurring acceleration of information mediation have a direct effect on the judiciary. In general terms, the upside is that information is readily available and almost limitless. Speedy communication between judges, legal professionals, clients and the media is not only a

real option but has also become a generalized expectation. An obvious downside is the matter of the so-called trial by media.

The second category is the acceleration of social change, that is the speeding-up of society itself: how fast do societal changes take place? Societal changes manifest themselves as alterations for example of lifestyles, fashions, attitudes, values, social languages and so on (Rosa, 2003, p. 7; Rosa, 2005, pp. 129–134). Fast changes of society itself, the increasing pace of changes as such, affects the institutional stability of a society. In late-modern societies, institutional stability is wearing thin. Drawing on the work of Lübbe and Koselleck, Rosa (2003, p. 7) puts it as follows:

> In other words, social acceleration is defined by an increase in the decay-rates of the reliability of experiences and expectations and by the contraction of time-spans definable as the 'present'. Now, according to Lübbe, we can apply this measure of stability and change to social and cultural institutions of all kinds […].

Empirical research of this category of social acceleration is not going to be as straightforward as the first one, even though theoretical and empirical back-up of the claim that institutional stability in our contemporary society is decreasing can be found in the work of Giddens, Lash and Beck (Rosa, 2003, p. 8). This category of social acceleration is however, as far as our research into the authority of the judiciary is concerned, the central one. Rosa (2003, p. 8) suggests inquiries into the basic structures of society because they 'organize the processes of production and reproduction'. Paramount are institutions such as family and labor, but also political institutions and technology. We would like to add that this is also the case for legal institutions, differentiated from political ones, as they clearly perform a primary function on behalf of society when it comes to stabilizing normative expectations, or to put it differently: safeguarding the democratic *Rechtsstaat*. This is in line with Rosa's own observation that acceleration is only possible if and when certain institutions and systems – such as the law - provide for the optimal conditions and stability, thus facilitating successful social acceleration (Rosa, 2003, p. 16). This, however, suggests that the legal system, including its organizations, is insusceptible to the consequences and expectations related to social acceleration *in* society. The 'insusceptibility' of the legal system is nevertheless under siege. We will return to this matter later on.

Finally, Rosa (2003, pp. 8–9) distinguishes the acceleration of the pace of life, i.e. the speed and compression of action and experience on a daily basis. It is not mentioned with so many words, but this is also a process *within* society rather than of society. One might conjecture that research of the judicial workload and time pressure could benefit from the analysis of this category of social acceleration.

As far as the connection between these three categories goes, Rosa (2003, pp. 10–11) observes a paradox between one, the technological acceleration,

and three, the acceleration of the pace of life. One would expect that the possibilities created by technological acceleration – to travel faster and further, to communicate via the internet, and so on – would slow down our daily pace of life as all technological innovations allow us to do the same things in less time but the contrary seems to be the case. Time is increasingly experienced as a scarce commodity, even though empirical studies show that the amount of free time in our era is unprecedented. It is this paradox that is, according to Rosa, constitutive for the existence of the acceleration society. Still, this paradox does not inform us about the relation between all categories of acceleration, it only ties the two taking place *in* society together. An inquiry into the connection between the three domains of social acceleration reveal, according to Rosa (2003, p. 10), 'a surprising feedback loop'. Technological acceleration brings along a range of social changes in 'social practices, communication structures, and corresponding forms of life'.[21] The internet did not only speed up communication as such but gave rise to new jobs, new ways of interacting and new types of social identities. The acceleration of social change is also tied to the speedy pace of life. Rosa, (2003, p. 11) here refers to what he calls the 'slippery slope' phenomenon: to stand still is to backslide, stagnation is decline:

> [T]aking a prolonged break means becoming old-fashioned, out-dated, anachronistic in one's experience and knowledge, in one's equipment and clothing as well as in one's orientations and in in one's language. Thus people feel pressed to keep up with the speed of change they experience in their social and technological world in order to avoid the loss potentially valuable options and connections (…).

Even though the findings of the analysis of the accelerating pace of life cannot be transferred unabridged to the judiciary, it is safe to say that the judiciary or at least its management seems to experience the slippery slope phenomenon, the fear of missing out and consequently losing touch with society.

Notably Rosa does not only analyse processes of acceleration but he also observes processes of slowing down, of deceleration, as the flipside of social acceleration both in terms of a reaction to or as an effect. Rosa argues that they are intertwined and that processes of acceleration do not exist without the simultaneous occurrence of processes of deceleration as well. Some processes are of a non-intentional, natural kind: for example, our psychical and mental limits. Very poignant is the limited capacity of the ecological system to process toxic waste and to reproduce natural resources (Rosa, 2005, pp. 139–140). Furthermore, there are 'isles of deceleration', parts of society that are left untouched by acceleration. Exemplary are the Amish communities (Rosa, 2005, p. 141). Rosa also identifies processes of deceleration that occur as non-intended consequences of acceleration. For example, the development of faster cars and the fact that almost everybody owns a car causes us to stand still in traffic jams (Rosa, 2005, pp. 144–145). Then there are processes of deceleration

of the intentional kind, that is either as an ideology or as an acceleration strategy. The former pertains to intentional resistance to acceleration, voiced as a fundamental criticism on modernization by for example ultra-conservative and religious movements. The latter, intended deceleration as a strategy of acceleration, we encountered earlier on when discussing the need for stability in order to enable successful acceleration. Rosa states that primary institutions of society, such as law and politics, should not be subjected to high-speed change as they need to provide the stabile framework for acceleration (Rosa, 2005, p. 150).[22]

The organization of the Dutch legal system: the judiciary

The foregoing highlights a societal development that might be considered defining for the late-modern society and it applies in full to the Netherlands. Before turning to the effects of social acceleration on the Dutch judiciary, a few words on its organization are in place.

The structure of the Dutch democratic *Rechtsstaat* is determined by the *trias politica*: in our era rather a division of labour, in a sophisticated system of checks and balances, than a separation of powers.[23] The judicial branch operates next to and, in some degree, with legislative and executive branches.[24] Crucial for the performance of the judiciary is its independence from the executive and legislative bodies, safeguarded by several institutions.[25] The judiciary itself, the organization of the courts, is arranged in a strict hierarchy, largely based on substantive and territorial jurisdiction. For this contribution, we believe that a general sketch of the court system in the Netherlands suffices. Primary law regarding the judiciary is formulated in the Judicial Organization Act.[26] The 'entrance' level is constituted by the district courts (11 in total). A district court is organized in sectors. These sectors always include: civil law, criminal law, administrative law and a sub-district law sector. The next level, appeal against the judgments of district courts, is provided for by four Courts of Appeal. Notably, administrative law has its own procedural route as regards appeals. The Supreme Court, located in The Hague, is the court of final appeal. It deals with appeals in cassation in civil, criminal and tax law cases. The function of the Supreme Court is geared towards maintaining legal uniformity and the development of law. This way, the Supreme Court provides guidance for and control on the administration of justice by the Courts of Appeal and the District Courts. In individual cases, the Supreme Court is the court of last resort and guarantees legal protection of individual citizens, also if the interests at stake have no bearing on the overall legal uniformity of development of law.

Even though the influx of cases differs between the three levels of courts and maybe even between areas of law, it is safe to say that on all levels of the judicial organization the case load exceeds the available capacity.[27] Notably, the increase of cases manifest itself mainly at the level of the district courts, without a noticeable trickle 'up' to the higher levels of adjudication. Nevertheless, all court levels

are under pressure to somehow increase their output. The quest for solutions has been in full swing and quite a few approaches seek to speed up the pace of the adjudication.[28] All, of course, against the background of the frequently expressed idea that the increase of the sheer quantity cannot prevail over the quality of the administration of justice. This development is especially propagated by the Council for the Judiciary. The Council for the Judiciary is a coordinating administrative body: 'The Council for the Judiciary, while forming part of the Judiciary, does not actually adjudicate itself. Instead, the Council is dedicated to ensuring that the courts of law can perform their (adjudication) duties effectively. The Council represents the interests of the courts in the political arena and in (national) administration and government, notably the Minister of Security and Justice.'[29]

Speeding up?

The slowness of the legal system is a well-known and rather notorious trademark. Slowness is its defining feature when it comes to for example processes of legislation, hence the coming into 'existence' of law and in the case of its manifestation (or realization) in courts. It takes time, in most cases, for the law to act upon social changes such as legislation concerning euthanasia in our era or, a long time ago, the de-criminalization of suicide.[30] Processing conflicts through courts sometimes consumes several years – depending on the complexity of the matter, the bureaucracy involved, strategic delay by parties and so on.[31] And, even though one has come to expect the law to be slow to some extent, its slowness is notwithstanding that expectation, a source of frustration and complaints. But, as such, the discrepancy between the expectations towards the legal system and the actual experience of legal slowness is nothing new.[32]

This expected slowness does not hamper the contemporary desire for speedy justice. Even more so, this desire is turning into a demand and the Dutch judiciary is not oblivious to the social demands that are bred by the process of social acceleration. Indeed, it finds itself confronted with the request to speed up, not only from an external point of view (i.e. society and the hence the consumers of legal services) but also by what could be considered as 'internal' and public actors such as its own management, the Council for the Judiciary and politics. In order not to widen the so-called gap between the judiciary and society, and to re-enforce the trust of the citizens in the adjudication, it is claimed, especially by the Council for the Judiciary, that it is of the utmost importance that the judicial tempo is in line with society's pace. Exemplary are the statements of the Council for the Judiciary in the Agenda of the Judiciary. High on the priority list of the Agenda 2011–2014 was, for example, the necessity for the judiciary to meet the demands of society and the first way suggested to realize this goal is timeliness.[33] Timeliness is operationalized in terms of standardized process times that become a goal in themselves and that are all geared towards a speedier

adjudication. The Courts of Appeal are especially mentioned as they lag behind on the issue of timeliness. The claimed urgency of judicial acceleration is even more prominent in the Agenda of the Judiciary 2015–2018 with its focus on the (re)connection with society.[34] It is titled 'Fast, accessible and competent adjudication for a changing society'.[35] This Agenda explicitly sets the task for the judiciary to speed-up and to produce 'socially relevant administration of justice' in fast procedures, in order for parties to be able to 'move on' thanks to his 'authoritative, meaningful and helpful decision'.[36] The very first key point of the Agenda 2015–2018 is 'Fast Adjudication', with a quantified goal: the time that legal procedures take have be shortened/cut back by 40%, compared to legal procedures in 2013. In order to achieve this goal, procedures need to be 're-designed'. The general idea is that there is time to be gained if waiting-time is minimalized and work becomes more efficient by digitalizing (parts of) the procedures.[37] Acceleration is not merely an option but a necessity, or so the Agenda suggests, to keep in line with the needs of society: the satisfaction of both citizens and professionals guides this key point. And even though it has already become apparent that the target of a 40% time gain is not going to be realized, the concept of the next Agenda already aims at even more ambitious numbers.[38]

To the judiciary, the demand for fast administration of justice presents itself primarily as an organizational problem. This is not surprisingly so as it translates into an expected increase in output – more judgments - in less time than was usual. Consequently and also unsurprisingly, reactions are likewise geared towards organizational solutions. Illustrative are projects that are initiated with the aim to shorten time-consuming procedures. For example, the Public Prosecution Service presented its new approach titled 'ZSM' which translates as 'ASAP'.[39] It aims to process the suspect as soon as possible, after his or her arrest, through an appropriate criminal procedure characterized by acceleration and aimed at settlement. An example of a project in civil law is, for example, VIA, short for '*Versneld Innovatief Appel*', translated 'Accelerated Innovative Appeal'.[40] A final example pertains to the entire judiciary and is called KEI, a Dutch abbreviation for Quality and Innovation. This mega-project seeks to contribute to the acceleration of adjudication via the path of technological innovation.[41]

Some projects look promising and may indeed shorten the time required by procedures, other projects fail or are ended because it turns out to be unfeasible for various reasons.[42] However this may be, the question still remains why this problem is dealt with by acceleration of procedures rather than by, for example, solutions that extend the 'workforce': the appointment of more judges and judicial assistants[43] *tout court*, a restriction of the inflow of cases,[44] and the appointment of specialized judges who work with very complex cases, and so on.[45]

The question for alternative solutions is all the more pressing since acceleration does not come natural to law and its organizations. Consequently, it is not surprising that the judiciary not only responds with projects that speed-up procedures, but that there is also resistance and a plea for slowing down. Exemplary is the

so-called 'Leeuwarder Manifest' from 2012, a statement of the Court of Appeal Leeuwarden, wherein the judges warn for the decline in quality now that the focus is on fast justice and quantity.[46] They argue that a lot of cases do not get the required attention and that production norms lead to irresponsible choices in important legal matters.[47] The observations of this Manifest are four years later again emphasized with a petition in which the judges directly call upon the legislator to address their concerns, which shows the urgency of the problem. The petition states that all limits of what can be considered as 'good justice' are reached because of limited time and inadequate funds for the task at hand. Good justice, the judges argue, requires time and money: time in court, but also time to reflect, to deliberate and overall sufficient time for conflict resolution.[48]

The demands of the judges for more time and funds seem reasonable in itself. However, in light of the acceleration of society at large, we also have to take into account that some degree of timeliness and acceleration is necessary for the judiciary in order to avoid the risk of becoming irrelevant or unnecessary in our society.[49] For instance, some degree of technological acceleration, like in the aforementioned KEI-project, seems necessary to prevent marginalization; without implementing some degree of digitalization, the judiciary may no longer connect to society. The friction between the need for speed and the need for time leads to a difficult balancing act for the judiciary. Telling in this regard is the mea culpa of the chairman of the Council for the Judiciary, Frits Bakker. In his new year's speech he admits that the Council may have gone too far in its ambition to speed up and professionalize. In his own words: 'We wanted too much too fast.'[50] The issue of the friction between the legal system and social acceleration is rooted in what seems to be the typical *Eigenzeit* of the legal system. The nature of the legal system seems to reject the tempo of society. This is so, according to Khan (2009, p. 81), because:

> [T]emporal inertia is law's core attribute. It ensures the systemic stability of law because one primary purpose of law is to provide stable rules that do not change over a period of time. […] Systemically, law is the opposite of arbitrariness because arbitrariness carries no temporal inertia. Without temporal inertia, law is an arbitrary and fickle order that can change without timely notice.

Moreover, it can be argued that law's inertia does not only secures its own stability but is also constitutive of the societal stability as such. Rosa (2003, p. 16) puts forward that processes of acceleration became possible and still are because of the stability provided for by institutions like law and democracy: 'Only within a framework formed by such institutions can we find the necessary preconditions for long-term planning and investment and thus for long-term acceleration.' But whereas acceleration started out as a means to progress it might now turn into acceleration for the sake of preventing decline, similar to the earlier mentioned slippery slope phenomenon. A consequence might be, according to Rosa, that the success of social acceleration becomes a threat to

the very pre-conditions that enable future acceleration or even a status quo. This observation might well hold for the acceleration of the adjudication and the legal system, if even partially so. Khan (2009, p. 80):

> […] the principle of temporal inertia that law exemplifies, creates, and enforces in various forms. Law maintains temporal inertia by resisting or refusing to acknowledge changes. […] This inertia is as much a human need as is change. Perpetual change, particularly when disorderly, devolves into chaos. Even well-structured change can cause disorientation when it occurs at a rapid speed. […] although law is an instrument of change, it is also an anchor for stability. Laws fortify the status quo.

Khan attributes the feature of temporal inertia to the entire legal system but we think that a differentiation into several temporalities reflects the actual state of legal slowness more adequately. Following Wistrich, there is a variety of methods of lawmaking and each of them has its own temporality. He distinguishes between methods that are predominantly future-oriented, like, for example, legislation, and those that are predominantly past-oriented. And adjudication is first and foremost past-oriented. It is of course not a new insight that adjudication 'is inherently backward-looking' nor does it represent the whole story.[51] What, however, is (relatively) new are the changed societal circumstances in terms of acceleration: 'Because of the accelerating rate change, people are more focused on the future now than at any previous time […].'[52]

The relationship between the authority of the judiciary and social acceleration basically seems to be a negative one. It is not the process of acceleration per se that erodes or at least changes the authority of the judiciary but a complex interplay of expectations induced by acceleration and how these expectations are met, or not. One memo of the Council for the Judiciary is illustrative as it states that authority, even in times of an increasing demand for impartial authority, needs to be earned as it is no longer self-evident. In order to earn its authority, the judiciary has to fully focus on its 'clients' and their expectations vis-à-vis the organization. [53] In a sense, this entails a shift from judicial decision to persuasion by judges which is a game-changer for the authority of the judiciary.

One of the most prominently voiced expectations is the one for fast justice, shorter and quicker procedures, and timely judgments. Not meeting this expectation seems to contribute to a loss of respect and esteem, the 'clients' become dissatisfied and impatient. This is also because authority refers to a certain status or prestige ascribed to the judiciary, and how we – as a society – judge the judges. It is connected to the practical authority of the judiciary, based on their legal expertise as well as a long institutional tradition.

Concluding remarks

Even though there are ample inquiries into the relation between time and law, the connection between social acceleration and its effects on the authority of

the judiciary has been left unaddressed so far. In this contribution we aimed to show that, even though law and its formal organization, the judiciary, have to provide stabile conditions for successful social acceleration, the judicial authority is bound to be affected by the structural rapid change in and of our society. This structural social change manifests itself as technological acceleration, the acceleration of society per se and as a speeding up of the pace of life. It confronts the judiciary with the demand to pick up the pace as well, and to deliver speedy justice or risk the possibility to become redundant and out-dated. However, we hold that the judiciary is well-served with some slowness as adjudication requires sufficient time to produce well considered output of high quality. In the case of the Dutch judiciary the 'need for speed' seems to be first and foremost a concern at the managerial level. The judges' response, however cautious, expresses an intentional slowdown.

A full inquiry into the relation between the authority of the judiciary and social acceleration requires an extensive elaboration of a theoretical framework, comparative and empirical research. It is necessary, as stated above, to describe and analyse this relation before a normative reflection is possible. The formulation of a theoretical framework, starting with this contribution, is aimed at an analysis of the relationship between time, law, authority. The empirical research is going to differentiate between the several levels of the judiciary. It seems likely that the effects of social acceleration on the authority of the judiciary differ between the courts of appeal and district courts. Furthermore, it is to be expected that there is also a difference between, for example, private law and penal law. Finally, we will juxtapose the matter of authority in modern society against authority in the contemporary acceleration society. We will broach the question if authority is subject to decay and erosion or if authority is shifted to non-traditional loci.

Notes

1. This development is corroborated by publications from the Council for the Judiciary in which an increasing emphasis on 'customer focus' comes to the fore. Exemplary are customer satisfaction surveys, for instance the survey *Open voor publiek. Klantwaarderingsonderzoek in zes rechtbanken* [Open for public. Customer satisfaction survey in six courts] (Prisma, 2002). Since 2001 there are periodic customer satisfaction surveys and since 2011 all courts conduct these surveys simultaneously and in the same way. Results are published annually in the reports '*kengetallen*' ['Key Figures']. See for the 2014 results, for instance page 12 ff, in *Kengetallen gerechten 2014* (Rechtspraak, 2014a).
2. The matter of a double crisis was addressed elsewhere: L. Francot (2011). That paper inquires into the possible consequences for the access to justice at the highest level, the Supreme Court. The press have been wallowing in detailed reports on recent miscarriages of justice. Most cases that found their way to the press are homicides in which a revision of the case has shown that the 'convicted suspect' could not have been the actual killer. Just to name a few: the so-called '*Puttense moordzaak*' (manslaughter

of a 23-year-old stewardess in the city of Putten), judgment on case-revision nr. ECLI:NL:GHLEE:2002:AE1877; the so-called '*Schiedammer parkmoord*' (manslaughter of a 10-year-old in the city of Schiedam), never officially revised since the actual killer was convicted in the meantime (see: ECLI:NL:GHSGR:2005:AU6566), judgment on non-revision no. ECLI:NL:GHAMS:2006:AW8279 and the case 'Lucia de B.' (multiple deaths of hospital patients under suspicious circumstances) case-revision no. ECLI:NL:GHARN:2010:BM0876. These miscarriages of justice seem to touch upon the matter of quality of adjudication and time available to deal with cases. However interesting, this matter is beyond the scope of this contribution. Informative in this respect: Fruytier et al., 2013, *Werkdruk bewezen. Eindrapport werkdrukonderzoek rechterlijke macht* [Workload demonstrated. Final examination of the workload in the judiciary], p. 24 and p. 116.

3. For instance, van den Brink (2008).
4. To name a few: individualization, the dominance of economic rationality, instrumentalisation and rationalization, leading to financial cutbacks, the ever-growing complexity of cases, and so on. More on this in: see fn. 1.
5. Cfr. Rosa, 2005; idem 2003, pp. 3–33.
6. In the Netherlands, the increasing influx of cases can observed at the level of district courts, and much less so at the level of courts of appeal or the Supreme Court, see, for instance, Kengetallen (2014) [Key Figures 2014], p. 9. 1.75 million cases in 2014 alone, lead time (attributed time to deal with cases) for a case in First Instance was met only in 55%. The percentage in appeal and Supreme Court appeal cases was even lower, see Kengetallen (2014) [Key Figures 2014], pp. 6–7 and 31 (Rechtspraak, 2014a). In the fourth section of this contribution we shall see that, even with these current percentages, the judiciary aims not only for a much higher percentages of cases in which the lead time is met but even for a 40% decrease in lead time overall (see 'Agenda van de Rechtspraak', the Agenda of the Judiciary 2015–2018, Rechtspraak, 2014b, p. 11). In general also documented in the report on '*Governance in de Rechtspraak*' [Governance in the judiciary] (Frissen et al., 2014), p. 11 for example.
7. The focus in the agendas of the judiciary (published every three years, see 'Agenda van de Rechtspraak' 2011–2014 and 2015–2018, Rechtspraak, 2010 & Rechtspraak, 2014b) and the year plans (see, for instance, 'Jaarplan van de Rechtspraak 2016', Rechtspraak, 2016a) seems to be on quality, but also more and more on timeliness, a steady case flow and especially on efficiency.
8. Notably, the increasing complexity of cases requires some differentiation. Based on the report *Ontwikkeling zaakzwaarte 2008–2014* [Developments in case weight, a report from the Council for the Judiciary] by van der Ploeg et al. (2015). It appears that divorce cases may have become more complicated but that this is not necessarily so for penal and commercial cases. One might conjecture that the increase in complexity of cases primarily pertains to cases about new types of technology and so on. For instance developments in biolaw leading to questions for both judges and legislators on how to deal with biomedical hybrids, human body material in patent law and nanotechnology. See: van Klink, van Beers, & Poort (2016).
9. This change is described as erosion and/or decay of the judicial branch' authority. These notions imply that there is a negative development that needs to be reversed or compensated for. The qualification of the transformation of authority triggers the observation that there is something like an authority-paradox going on, that is to say: the erosion of authority goes hand in hand with a call for more order and

authority. See, for instance, contributions in Jansen, van den Brink, & Kneyber (2012), for example pp. 11–18 and pp. 246–262.

10. As said before, the two crises are closely related. We will not dwell upon the exact nature of this relation but one might conjecture that the organizational crisis (slow justice and workload) reinforces the fundamental one (transformation of authority, in terms of decay and reallocation). Our thesis is, however, that solving the first problem does not necessarily contribute to solving the second one as well.
11. The legal system plays, at its turn, a role in enabling acceleration as well, by offering stabile conditions that enable long-term decisions. An ambiguous role for the legal system since it needs to be both a condition for acceleration, but is also subjected to it. See: Rosa, 2003, pp. 4–6 and Rosa, 2014, key note Social Acceleration and the Temporal Dimension of Law at the Temporal *Boundaries of Law* conference on 30 June 2014 at Vrije Universiteit Amsterdam (VU University Amsterdam).
12. N.B. this is a complicated matter but we conjecture that a (perceived) incessant failure to meet expectations related to a function diminishes the authority inherent in that function.
13. See fn. 2 and fn. 9 on p. 2.
14. Cfr Latour (2010), pp. 91 and 250–251. Even though Latour addresses specifically French administrative law, it seems to us that this observation can be generalized and is hence applicable to other domains of law.
15. Cfr. Langer & Doherty (2011).
16. Most prominent on the screen are the (very) long procedures refugees have to go through when seeking asylum and that, in the light of current developments, need speeding up. In Germany, for example, the government aims at shortening a year-long procedure to three months. This is, at first sight, certainly an organizational problem. (See, for instance, the German *Treatment of Specific Nationalities* by the Informationsverbund Asyl und Migration).
17. Such as the state, the educational system, the medical profession, and so on. Informative in this respect: Jansen, van den Brink & Kneyber (Eds) (2012).
18. Nor is the ubiquity of time in law: Khan (2009); Wistrich (2012); Bjarup & Blegvad (1995); Ost (1999). For the variety of conceptualizations of time see: Cipriani (2013); also see Greenhouse (1989).
19. The effects of industrialization ignited social concerns that in their turn initiated the construction of social and legal arrangements to mitigate the misery of workforce. In the Netherlands: '*Kinderwetje van Houten*', for example, a law by Van Houten to protect children from appalling and inhumane work conditions (see, for instance, Schuyt, 1991, p. 3). Another example are the 1833 Factory Acts in the UK for better regulation of factory conditions to protect the workforce (see Parliament, 2016).

    Rosa states that empirical research shows that modernity is characterized by a 'wide-ranging speed-up of all kinds of technological, economic, social and cultural processes.' Rosa, 2003, p. 3.
20. Secundary literature on Rosa's work is beginning to emerge, for example in Scheuerman (2004), Vostal (2014) and Vieira (2011). Comments on Rosa (2003) can be found in Leccardi (2003), Scheuerman (2003) and Adam (2003). Space restraints, however, prevent us from offering an account of secundary literature.
21. Rosa, 2003, p. 3.
22. Rosa also mentions another category but that is not as much about deceleration as it refers to a full societal stagnation, the observation that 'real' change is in fact no longer possible: the system of modern society is closing in and history is coming to an

ending a 'hyper-accelerated standstill' or 'polar inertia' (Rosa, 2003, p. 16; Rosa, 2005, pp. 152–153).

23. This paragraph was first published in: see fn. 2 and was slightly revised for this paper in view of the changes in the Dutch court system, such as the results of the 2012 '*Wet herziening gerechtelijke kaart*' [Law for Revision of the Judicial Map, pertaining to territorial competences].
24. de Groot-van Leeuwen and De Groot (2003).
25. Cfr. Garoupa and Ginsberg (2009). Typical is for example that judges are lifetime appointees.
26. An English translation of this '*Wet op de Rechterlijke Organisatie*' can be found here. An outline of the court system in the Netherlands provided by the judiciary can be found here.
27. See fn. 6 on p. 2.
28. Extending the organization, and hence increasing the capacity, is not a realistic option due to financial cutbacks, selection of suitable candidates and their training. See for instance the contribution '*Ruimte voor rechter en rechtspraak*' [Space for judge and judiciary] by the chairman of the Council for the Judiciary Frits Bakker, (Bakker, 2016b). Even if this were an option some scholars argue that additional judges and capacity might not help to speed up the pace and might even lengthen the trial queue rather than shorten it. See Torre (2003).
29. The Council for the Judiciary was founded in 2002 to form an administrative body for the judiciary and to serve as an independent buffer between the judiciary and the government. Description provided by the Judiciary, which can be found here and here. Note that there has been a lot of discussion on the position and task of the Council for the Judiciary from the judiciary itself as well as from the other branches of the *Rechtsstaat*. See for instance the debates in Parliament in 2012 (file numbers 32891 and 33451) and the questions asked by Members of parliament in the end of 2015 about the way the Council for the Judiciary presents itself and behaves in a way that is not neutral and even more so not according to their place within the system of checks and balances (*Kamerstukken I* 2015/16, 34300, VI, N, for instance pp. 8–9).
30. Illustrative for the former: the Dutch Euthanasia Act (2002) as a result of a long legislative process as described by for instance Kennedy (2002). Illustrative for the latter: Vandekerckhove (1985) and of course Durkheim's *Le Suicide* (2007, first published in 1897).
31. Cfr Nelken (2008).
32. See, for example, van Rhee (1997).
33. Agenda voor de Rechtspraak 2011–2014, pp. 11 and 14. Other goals for the judiciary are, for example, contributing to reinforcement of the *Rechtsstaat*; reinforcement of the judicial-core-values; to professionalize its organization and management.
34. The whole Agenda of the Judiciary 2015–2018 (in Dutch) can be found here: https://www.rechtspraak.nl/SiteCollectionDocuments/Agenda-van-de-Rechtspraak-2015-2018.pdf.
35. In Dutch: '*Snelle, toegankelijke en deskundige rechtspraak voor een veranderende samenleving*'. These Key Points are presented in this order. From that fact alone one cannot deduct a prioritization, but is remarkable that substantive goals and administrative goals seem to be at least equally important. Frits Bakker, chairman of the Council for the Judiciary, even stated in his New Year's speech on 7 January 2016 (Bakker, 2016a) that indeed the judiciary has stretched the pursuit of professionalization. The emphasis seems therefore to be on the first two Key Points instead of the third one.

36. The Agenda of the Judiciary 2015–2018, p. 7 (see fn. 34 and 35).
37. The Agenda of the Judiciary 2015–2018, pp. 10–13 (see fn. 34). The need to speed-up is addressed time and again throughout the Agenda. There is also an (incomplete) reference to European research that shows that both citizens seeking justice and professionals such as lawyers consider the period between the start of the procedure and the decision by the judge is far too long. See the Agenda of the Judiciary 2015–2018, p. 6.
38. See 'Meerjarenplan van de Rechtspraak 2015–2020' [Long-term Plan of the Judiciary 2015–2020] and 'Agenda voor de Appelrechtspraak 2020' [Agenda for the Courts of Appeal 2020].
39. See 'Factsheet ZSM' provided by The Public Prosecution Service (OM) (2016).
40. See 'VIA-Reglement' provided by the Judiciary (Rechtspraak, 2012).
41. See 'Programma Kwaliteit en Innovatie rechtspraak (KEI)' provided by the Dutch government (Rijksoverheid, 2016).
42. It is not without irony that the most substantial project aiming at acceleration, that is: KEI (Quality and Innovation), seems to be the cause of a fundamental slowdown. While the Key-Figure-reports stay (mildly) positive, the project already has a two year delay and the budgeted costs of 58 million euro is already exceeded by 140 million.
43. Informative in this matter: Holvast (2014).
44. See fn. 2, concerning this option at the level of the Supreme Court.
45. Of course, one could oppose that these solutions put a heavy strain on finances and are for that reason no option. However, all suggested acceleration-projects cost a fortune as well.
46. The Manifest was published in 2012.
47. See fn. 2 and the results of the '*Enquête Tegenlicht. De rechterlijke organisatie tegen het licht*' [Backlight Survey. The judiciary against the light], a survey among judges launched after the aforementioned Manifest (Rechtspraak, 2016b).
48. See '*Ondergrens goede rechtspleging bereikt*' [Lower limit of good justice is reached], a petition from concerned judges presented to the Dutch government on 28 June 2016. The concerns about the lack of time were already confirmed by an independent commission after an official visitation of the judiciary. See Rechtspraak, 2014c '*Rapport visitatie gerechten 2014*' [Report on visitation of the courts 2014], for instance pp. 74, 86 and 106.
49. See fn. 47, more specific appendix 2 pp. 18–23.
50. Bakker (2016a). More reactions and opinions concerning this balancing act and the difficulties with granting the judiciary more time can be found in, for instance, Kop (2015) Dijkstra (2016) and van der Veen (2016).
51. Wistrich (2012), p. 750 and p.773.
52. Wistrich (2012), p. 746.
53. See, for instance, the report '*Visie op de rechtspraak*' [Vision of the judiciary].

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