Juridical Cohesion and Tactics of Shadow and Fog: Law's Withdrawing Shadow and its "Dark Matter"

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Abstract

The issue central to this article involves tactics used by Dutch agro-industries in close cooperation with successive Dutch Governments and the Ministry of Agriculture to hide the real extent of, and responsibility for, pollution caused by pesticides, herbicides (like glyphosate) and, in particular, an excess of nitrogen emissions. One tactic is to avoid confrontations in court and to operate in what has been called the "shadow of the law". The other one is to hide the reality of things through a discursive or representational "fog". One aim of such tactics is to make the prosecution opt for settlement instead of fully enforcing the law, what is defined here as the "withdrawing shadow of the law". A second but connected aim is to weaken a society's juridical cohesion, imagined metaphorically here as law's "dark matter". Physically, this is the elusive mass that is needed to explain what holds together galaxies; juridically, it is what holds societies together under a rule of law that serves justice.

Keywords: shadow of the law; rule of law; corporate legal tactics; juridical cohesion; dragging.

[A] HOW TO OBSTRUCT TRANSPARENCY

In 2021, legal scholar and philosopher Raymond Wacks published a study entitled *The Rule of Law Under Fire?*[1] The question mark was rhetorical. Wacks traced at least 16 different threats to the rule of law around the world (2021: 86). The title of Wacks' study employed a clear-cut dichotomy between the rule of law and those who would subject it to an ongoing attack. In contrast, this article focuses on something that threatens the rule of law not through forms of "attack" but a continual weakening of juridical cohesion within society, a process to which forms of visibility and invisibility are pivotal. If the strategic goal of the actors

[1] I thank the peer reviewers and, especially, editor and colleague Anthony T Albright, for their contributions to this paper. Conversations with Greta Olson and Stewart Motha helped to clarify my thoughts on the issue.

propelling this process is to evade accountability and responsibility, the tactics used to realize this end combine excessive visibility in the domain of popular culture, on the one hand, and attempts to make matters legally foggy or shadowy, on the other.

The major actors behind the process are multiple, but vast corporations are central. Here, I draw upon two empirical studies by historians Naomi Oreskes and Eric Conway, *Merchants of Doubt* (2012) and *The Big Myth* (2023). Although these studies brilliantly illustrate the strategies and tactics that vast American corporations employ to avoid responsibility and accountability, they do not consider the effects of such tactics on how general audiences affectively relate to the rule of law. I contend that what I call tactics of shadow and fog weaken a society's juridical cohesion. Obviously, this assertion forces me to define "juridical cohesion". Consequently, the article is developed in three steps. First, I will introduce the case that provoked my initial thoughts, one that helps to illustrate the general problem. Then I will address said tactics of shadow and fog in more detail. Finally, I will consider the problem of preserving juridical cohesion, drawing upon studies by the nineteenth-century legal scholar Rudolph von Jhering, the twentieth-century political theorist Antonio Gramsci, and contemporary scholars Scott Veitch, a legal theorist, and Greta Olson, a law and humanities scholar. The argument will lead me to introduce a metaphor that allows us to imagine juridical cohesion as law's "dark matter".

The paradigmatic situation that provoked these reflections is the nitrogen crisis in the Netherlands. Excessive nitrogen emissions, primarily from Dutch agriculture—or better, Dutch agro-industries—have led to an enormous (85%) reduction in biodiversity in the Netherlands (Van den Brink & Ors 2022). Because these emissions place the country in violation of European Union (EU) environmental protection laws, they also inhibit construction permissions nationwide. As with any crisis, people are interested in the data describing it, such as which agro-industry businesses emit what and how much. Official data on this topic does exist, collected by the Dutch Government. Public access to the data was delayed and, in some cases, simply denied, however, by a recent Minister of Agriculture from the *BoerBurgerBeweging* (Farmer–Citizen Movement: BBB), a Dutch political party devised by a marketing agency on behalf of agro-industries in the Netherlands (Wagendorp 2023).[2] At the same time, a junior Cabinet member from the same party sought to sow doubt

[2] The agency behind the construction of the BBB is called ReMarkAble and works in the service of agro-industries (Wagendorp 2023). The former director of the agency became the BBB party leader as of February 2026.

as to the accuracy of the data measurements. Both Cabinet members made no secret of their connection to the industry in whose interest they apparently work. In a sense, then, everything is crystal clear—except for the data.

Two Ministers of Agriculture, from different parties and belonging to consecutive governments, tried to hide the data. It took a three-year joint effort, from 2022 to 2025, by an investigative news website (*Follow the Money*), a national newspaper of record (*NRC*), and a regional broadcaster (*Omroep Gelderland*), to obtain an answer to an information request whose subject matter, politically and legally speaking, should have been public all along.[3] To gain access to the data, the three parties initiated a so-called WOO procedure. WOO stands for *Wet Open Overheid* (Transparent Government Act). The law gives every Dutch citizen the right to request all relevant documents concerning matters falling under state responsibility. Knowing what the procedure would result in, the previous Minister of Agriculture from the *Christen Unie* (Christian Union) party had decided on 4 May 2023 that the emissions data should be disclosed. Then the Cabinet fell in July 2023.[4] Upon taking office, the subsequent Minister of Agriculture, the BBB's Femke Wiersma, reversed the decision to make the data public. She eventually responded to the request by releasing the data, as required by law, although by this time the figures were out of date. So, the three news organizations took their case to the Council of State: an independent council with two departments: one is advisory, the other is aimed at regulatory scrutiny with regard to issues of whether the state has acted according to law.

In relation to the disclosure of the data, the agro-industry companies and their advocates had also sought recourse before the same body. Their principal argument was that disclosing the data would endanger individual nitrogen emitters by revealing their names and addresses. In effect, they considered data crucial to public debates about large-scale environmental harms as a private matter. In seeking a ruling by the Council of State, a range of actors appeared to converge on the same objective: the sitting Minister of Agriculture from the BBB was joined by the Organization for Agriculture and Horticulture (LTO)—a politically influential trade group for Dutch farmers—the Dutch Dairy Farmers' Union, and the Farmers Defence

3 *Follow the Money*, is, in its own words "a platform for radically independent investigative journalism. We have a transparent target: truth finding in service of society. Whether it concerns health care, the building market, or politics: we are your watchdog." *NRC* is a national newspaper of record. *Omroep Gelderland* is the regional broadcaster of a province with the biggest Dutch farming industries, especially chickens.

4 The minister concerned, was Piet Adema from the *Christen Unie*, a Christian Democratic party with considerable constituencies in Dutch rural regions.

Force (FDF), an activist organization behind many of the outspoken and sometimes violent farmer protests in recent years.[5] Also, farmers, politicians, or journalists opposing FDF positions had encountered members of the group who took the military connotations of "Defence Force" literally and had paid intimidating visits to their home addresses. The privacy of the one is clearly not the privacy of the other.

On 24 September 2025, the Council of State decided that current emissions data should be made public by the Minister within two weeks after its verdict.[6] In response, the Minister of Agriculture initiated a formal procedure that first asks all parties involved to comment on the matter. This is a costly procedure that will take at least another year and will not change the Council's decision, which tests whether the state acts according to law. Meanwhile, Wiersma's undersecretary for agriculture challenged the scientific models that had been used to measure and assess emission data. He commissioned an expert in probability theory, also known for his idea that governments lean too heavily on science in policymaking, who asked ChatGPT to find weaknesses in the existing models.[7] To nobody's surprise, these were found, since any scientific measurement in such a case works with margins, statistical probabilities, and scientific choices.

I find this case paradigmatic of tactics used globally by corporations, governments, and states alike. Its significance, of course, depends on the severity of one's concern about the poisoned state of Dutch soil and waters. For those unfamiliar with the Dutch landscape, it may be helpful to know that the term Low Countries connotes that half of the Netherlands sits below sea level. The country is interlaced with bodies of water, including the delta of the Scheldt and Meuse rivers, which enter the country from Belgium, and the Rhine, which enters from Germany. The country *is* water (although climate change has also brought the Netherlands repetitive periods of long drought). In January 2026, it became apparent that virtually no Dutch open waters meet the standards for healthy waters defined both by EU and Dutch law. The Dutch water quality is "below acceptable levels, worst in the EU with 1% of all open waters declared to be 'good'" (Van den Brink & Ors 2022).[8] For 83% of Dutch waters, urgent

[5] The arguments of the different parties are reported on by LTO (2025).

[6] ECLI:NL:RVS:2025:4557. Note: case names are not available because criminal cases in the Netherlands are anonymized.

[7] It concerns Professor Ronald Meester, who used the fact that, scientifically speaking, the measurements of emissions and pollution are always subject to margins. This led Meester to hint that the measurements are subject to doubt. This tactic was extensively studied in Oreskes and Conway (2012; 2023).

[8] An updated version of this article appeared online on 1 July 2025.

action is required. Cause? The intense use of pesticides and herbicides, and the excessive discharge of dung on Dutch soil. One may ask what “intense” means, here, or “excessive”. These terms are based on external scientific standards or conventions, no doubt, but need data nevertheless.

In relation to all this, I want to address the way in which powerful actors can create both a legal and societal atmosphere of shadow and fog to hide the reality of things. If these sound like old-school tactics, the current state of affairs is still different. My ultimate hypothesis is that such tactics target and weaken collective juridical cohesion.

[B] THE PRODUCTION OF FOG: ECOLOGICAL INVISIBILITY AND DISCURSIVE VEILS

One can see dung, and one can smell it. The consequences of excess dung for the ecological balance of the soil, of waters adjacent to agricultural land sprayed with dung slurry, and of surrounding environments, are much less visible and much harder to smell. Now, for decades Dutch farmers were allowed to spray more slurry on their lands than their European counterparts, the result of a successful lobbying effort in Brussels by a combination of predominantly Christian democratic politicians, state officials, and agro-industry trade groups. The Dutch exemption from EU policy was known legally as a *derogation*, or an allowance by which certain actors, under certain conditions, may disregard certain laws. In this case, the EU environmental rules allowed a maximum of 170 kilograms of nitrogen to be applied per hectare of certain agricultural land per year. This is yet another highly technical and, in a sense, idiosyncratic way of putting things, for how much dung contains 170 kilograms of nitrogen? Well, this depends on the type of dung. In the case of cattle, for instance, 1 kilogram of nitrogen is contained in 200 litres of dung slurry. In other types of dung, it varies, but on average, the limit of 170 kilograms of nitrogen per hectare of soil translates to a limit of 34,000 litres of slurry discharged annually on that soil. Needless to say, this is a limit, which means that according to scholarly and political consensus the annual discharge of 34,000 litres is only just acceptable.

Since 2006, however, derogation had allowed farmers in the Netherlands to exceed the EU limit. Depending on the type of soil, Dutch farmers were allowed to discharge between 230 and 250 kilograms of nitrogen per hectare of land per year, or approximately 40% more than the EU rules had established as the limit. In 2023, the EU decided that the derogation should stop; hence, a so-called “phase-out period” was agreed on. In 2025, Dutch farmers could discharge 190 or 200 kilograms

per hectare, still roughly 16% more than the limit. A fruitless attempt by the Dutch Government to extend the derogation measures reached its conclusion on 23 December 2025, when the European Commission officially informed the Dutch Parliament that the derogation measures would stop permanently in 2026.[9]

The resulting problem is what to do with the excess of dung produced by the Dutch agro-industry, which raises far more cows, pigs, chickens, goats, and sheep than can be supported by the amount of land on which their dung can be legally discharged. This problem motivated, amongst other things, the 2018 establishment of the *Nederlands Centrum voor Mestverwaarding* (NCM), a self-declared "independent foundation" that brings together state authorities and agro-industry interests in relation to the problem of dung. It does so under the umbrella of a term that is unknown to most Dutch citizens and absent from daily usage: *verwaarding*.[10] Its English translation is much more understandable: "valorization". The "Dutch Centre for Dung Valorization" has a clear mission:

> The point of departure is that dung is an important source of rare minerals and biomass, and that it plays an indispensable role in the transition towards a circular economy. In parts of the Netherlands there is, however, an imbalance between supply and demand of dung (NCM 2025).[11]

Reframing a problem by hiding it under a cloak of euphemisms is a useful rhetorical tactic. Reframed, the excess dung is considered as an opportunity here because of its valuable minerals and biomass, especially in the transition towards a circular economy. As for the latter, the idea that Dutch governments and industries are actively working towards such an economy runs counter to all available data. Then, defining the problem as an issue of "imbalance" is a euphemism. The total livestock dung production in the Netherlands is currently around 75 billion kilograms per year (CLO 2024). Half of the Netherlands—2.1 million hectares—is

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[9] This is information from the Rijksdienst voor Ondernemend Nederland (RVO: Netherlands Enterprise Agency) (RVO 2026).

[10] The independent status of this foundation is an issue of debate. Its current director is Jan Roefs, who is a farmer himself along with being the "founder and participant in a fertilizer producing company, which we started in 2000 and produces a highly innovative liquid fertilizer. Before that I was an export manager for climate control systems for pig houses." See Jan Roefs LinkenIn profile. The supervisory board consists of (former) owners of (global) agro-industry companies, advocates for certain agricultural branches, strategic private advisors, and one senior policy advisor of the Ministry of Agriculture.

[11] In the original: "*Uitgangspunt is dat mest een belangrijke bron is van schaarse mineralen en biomassa, en een onmisbare rol heeft in de overgang naar een circulaire economie. In delen van Nederland is er echter sprake van een onbalans tussen aanbod en behoefte van mest*."

used for agriculture (CBS 2020). This comes down then to an average of roughly 35,500 kilograms per hectare. Slightly above the discharge limit of 34,000, one could say. However, not all agricultural lands require this treatment. So, there are enormous surpluses in some parts of the country, whereas other parts do not need any dung. To define excess and uselessness as an issue of "supply and demand" is also a euphemism.

In practice, this means that the Netherlands is one of the world's largest dung transporters, both domestically and across borders. Such dung transport is subject to strict legal requirements under the acronym rVDM (*realtime Vervoersbewijs dierlijke mest*: "Real-time Transport Certificate for Animal Dung"). Still, one need not be a legal expert to expect that the enormous quantity of dung in the Netherlands, combined with the laws regulating how it can be transported and discharged, almost inevitably creates conditions for corruption, hidden discharges, and other illegal means of getting rid of the shit.

One exemplary case of such criminal conduct concluded on 4 December 2025, in the District Court of East Brabant, in the Dutch province of North Brabant. The case, which involved dung discharges, led the court to find that the defendants had engaged in "structural and extensive fraud with profit as the only purpose".[12] Two aspects of the case are especially telling for my argument. Firstly, the verdict emphasized a breach of trust between the criminals and the responsible regulatory body, the *Nederlandse Voedsel- en Warenautoriteit* (Netherlands Food and Consumer Product Safety Authority, NVWA). The other aspect speaks for itself in the words of the judgment:

> The offences have been committed in a vulnerable chain in which great trust is put in regulatory bodies like the NVWA. This trust has been badly damaged. The damage to the environment is considerable and hard to quantify. The sentencing reflects the seriousness of the offences.[13]

Now, a corpse is a corpse and, since the invention of the camera, it has been possible to make a corpse visually present in ways that general audiences can read with relative ease, even if they lack the legal or medical skills for close analysis. One factor that complicates recognition of ecological destruction is its invisibility to broader public audiences, an invisibility that counts as much for the actors causing the destruction,

[12] ECLI:NL:RBOBR:2025:7907.

[13] ECLI:NL:RBOBR:2025:7907; ECLI:NL:RBOBR:2025:7904; ECLI:NL:RBOBR:2025:7906; ECLI:NL:RBOBR:2025:7903. In the original: "*De feiten zijn gepleegd binnen een kwetsbare keten waar een groot vertrouwen bestaat in toezichthoudende instanties zoals de NVWA. Dit vertrouwen is ernstig geschaad. De milieuschade is aanzienlijk en lastig te kwantificeren. De strafmaat weerspiegelt de ernst van de feiten.*"

whether legal or illegal: agro-industries, or criminal actors engaged in fraud. Let me leave aside here the problem that such audiences may suffer from what has been defined as ecological illiteracy. The major point that interests me for now is the invisibility of ecological destruction *per se*, something that is, legally speaking, "hard to quantify", as the judge states. The other point is an apparent loss of trust. Whose trust, one may ask? The NVWA's trust that farmers behave decently? Or the trust of the general public that the NVWA, as a regulatory authority, will ensure decent food production?

If the difficulty of making ecological destruction visible is one aspect of fogginess, another aspect is that the regulatory authority (in this case, the NVWA) may, in daily practice, be incompletely effective in cases involving agro-industry practices. According to sources, the main obstacle to the Authority's effectiveness as a regulator is its in-house lawyers, who assess whether decisions are likely to withstand court scrutiny, especially when parties subject to its enforcement actions are expected to counter-sue (a point to which I will return in the next section).[14] This caution has at times led critics to accuse the Authority of complicity, for instance, in condoning criminal practices. Besides, if its work "in a vulnerable chain" is based on trust, as the judge claims, it is worth asking what authority the NVWA actually has. I, for one, would want to know more about the links in this "chain" and why it is so "vulnerable".

A third aspect of fogginess relates to the difficulty of imagining the masses of dung and slurry involved. In 2026, the surplus will amount to somewhere between 79 and 95 million kilograms of nitrogen (NCM 2024). This represents between 15.8 billion and 19 billion litres of slurry. In order to make such figures imaginable, some political figures have thought to visualize the quantities in terms of bathtubs.[15] The idea was to imagine the annual dung production of the Netherlands as an individual bathtub for every inhabitant of the country (now approximately 18 million) filled to the brim with dung *every week*. In my assessment, this comparison runs up against the limit of imaginability, entering the realm of absurdity or the grotesque.

[14] One source is investigative journalism by the television programme *Argos*, which consulted an independent foundation called Wakker Dier that has been bringing cases to court since 2000 and whistleblowers from within the NVWA (Raay 2025). Another one is a study that considers the intermingling, for decades, of Dutch agro-industries, the state, and the Ministry of Agriculture (Siebelink 2025). The title of this study translates into English as: "The entoxicating apparatus: the state against man, nature and animals."

[15] This rhetorical move was made by the Party for Animals in a question to the Minister in Dutch (Wassenberg 2020).

Yet another aspect of fogginess becomes apparent when we consider how prominent popular media thematize Dutch agriculture while ignoring or hiding the destructive effects of agro-industries. The clearest paradigm of this phenomenon is *Boer zoekt vrouw*, the Dutch version of an internationally successful reality television formula known as *Farmer Wants a Wife*. Almost no programme on Dutch television has aired continuously for more than two decades, and none has matched this one's sustained popularity and success since it began airing in 2004. For now, the question is not how the programme fits in the phantasmagoria of patriarchy, with one man choosing a wife from a pool of purportedly willing women. The question is what, in two decades, audiences have seen of the Dutch agro-industry's dirty everyday practices. The answer will not surprise: *almost nothing*—not one barrel of pesticides, not a truckload of glyphosate, not a tank of dung slurry, and not one scene showing animals forced into wagons that will transport them to their death. Instead, the programme only shows women being lured into what they hope will be a successful marriage, against the background of unproblematic agricultural practices.

Since the programme began, it has been presented by Yvon Jaspers, who from 2015 to 2019 was also employed as the public face of an agro-industry company called ForFarmers, one of the largest producers of cattle feed in the Netherlands. When this became known (Jaspers herself had forgotten to mention it), it became apparent as a conflict of interest. So, the parties "for the time being" stopped their partnership. Five years later, in 2024, Jaspers was knighted by the Dutch king in recognition of her relentless efforts as an "ambassador for the agrarian sector".[16] This is a clear example of what Oreskes and Conway analysed in *Merchants of Doubt* (2012) and *The Big Myth* (2023) as the importance of popular culture in the affective manipulation of public audiences by organized corporate actors.

One specific case that Oreskes and Conway study is future president Ronald Reagan's role as the public face of General Electric in the 1950s, when he hosted a popular radio programme and, later, an equally popular television show through which he promoted the interests of the company (Oreskes & Conway 2023: 232). In particular, he delivered the implicit message that a private entity was much better equipped than the state to supply the American public with electricity. As Oreskes and Conway show, this was the culmination of a concerted, decades-long campaign by several corporations to persuade the American people that

[16] The qualification is from the farmers who nominated her (Hüsken 2024).

said corporations could provide services more effectively than the state. Yet in the 1920s and 1930s, the state had generally been a reliable supplier of affordable electricity. Over the following decades, this fact was progressively obscured in a manufactured fog by private actors through a mix of intensive lobbying, buying scientists, distributing free or inexpensive teaching materials to schools of all levels, advertising across the mass media, and, crucially, funding popular radio and television shows, often interspersed with advertisements (Oreskes & Conway 2023: 9).

In a fog, only what is directly in front of you is visible; everything behind it disappears in the mist. In the case of the Dutch series *Boer zoekt vrouw*, what remains up front is popular culture: amusement, perhaps temporarily disturbed by a hiccup concerning conflicts of interest, that ultimately ends with farmers and their wives romantically joined, and the programme's host blessed with a royal ribbon. What disappears in the mist is the cruel reality of systematically poisoned Dutch soils and waters.

[C] THE WITHDRAWING SHADOW OF LAW: FEAR OF DRAGGING

Elsewhere I have proposed that "the shadow of the law" might sometimes be better known as "the ominous shadow of the law". In the former case, parties seek to settle disputes outside of court based on mutual agreement, in the latter they do so out of straightforward fear (Korsten 2026). The phrase was initially proposed by legal scholars Robert H Mnookin and Lewis Kornhauser (1979), who studied reasons why divorcees do or do not take their case to court. Fearing what might happen in court, divorcees sometimes sought to avoid litigation and resolve their differences through mediation or bargaining.[17] Mnookin and Kornhauser identified five reasons why divorcees might want to avoid court:

> (1) the preferences of the divorcing parents; (2) the bargaining endowments created by legal rules that indicate the particular allocation a court will impose if the parties fail to reach agreement; (3) the degree of uncertainty concerning the legal outcome if the parties go to court, which is linked to the parties' attitudes towards risk; (4) transaction costs and the parties' respective abilities to bear them; and (5) strategic behavior (Mnookin &Kornhauser 1979: 966).

With regard to all these factors, it is relevant that both parties in a divorce case must *agree* to resolve their dispute out of court. When the shadow of

[17] The article was reconsidered by one of the authors (Mnookin 2021).

the law becomes an ominous one, this implies that one party in a dispute might also wish to avoid court for fear of facing a much more powerful legal opponent. In the latter case, bargaining is not even necessary; one party simply accepts its loss beforehand, in order to avoid worse.

The shadow of the law proper and its ominous counterpart may be accompanied by a third form of shadow. The Dutch *Openbaar Ministerie* (OM, Public Prosecution Service) keeps track of the number of cases that are resolved through *transactie* (plea bargain) (OM 2025). In such cases, the prosecutor proposes that the defendant should deal with the case outside of court, by accepting the offer of the prosecution. The agreement needs to be checked, however, by a judge. There is also a second form, called *strafbeschikking* (penalty order) in which case the prosecution more or less takes the position of the judge and imposes punishment (which can be done up to a limit of six years' imprisonment). Defendants have to agree here, in the sense that if they do not accept this, they will have to bring their case to court. While presenting data about these two possibilities, the report does not give any information about *schikking* or settlement: an extra-juridical agreement in the sense that parties come to an agreement before taking their case to court, whereas this agreement is legally binding. Such settlements do not require an official test by a judge and are examples of the original phrase of "the shadow of the law".

The OM focuses its enforcement resources on the priority areas that it defines as "cybercrime, digitalized criminality, serious sexual offences, domestic violence, jihadism and terrorism, child pornography, human trafficking and smuggling, whitewashing" (OM 2025: 39). Environmental crime is clearly not a priority. In fact, it is hardly mentioned. The prosecution of environmental crimes has grown from 77 cases in 2020 to 101 in 2024, so the report states, but in relation to the whole, their number remains "small scale" (OM 2025: 26). Could it be that environmental criminality might also be a judicial or, more broadly, a societal blind spot, something that is made to be hidden in mist? Or is it that the adjudication of environmental crimes may suffer here from a third form of law's shadow, this one with its source on the side of the prosecution.

The imagery of the shadow of the law finds its motivation in the fact that a shadow is a "figure" for imagining and making sense of courtroom proceedings. In this context, the shadow of the law is not a metaphor, since there is no comparison at stake, just as Lady Justice is not a metaphor but a symbol. The shadow of the law is not a symbol, however, rather a personification. It is as if the law is a person projecting, or having, a shadow. The phrase suggests a hidden figure projecting the shadow, a

source that looms out of sight. In this context, the phrase "shadow of the law" finds a prominent source of inspiration in cinema. The two terms discussed in this article—shadow and fog—reference the 1991 Woody Allen film *Shadows and Fog*. Cinematographically, this movie in turn references German modernist films such as Fritz Lang's *M: Ein Stadt sucht ein Mörder* (1931) and the American tradition of *film noir* from the 1940s and 1950s.[18] Shadows, in such movies, can be with or without a real source. The major point is that shadows in themselves produce fear or horror because the source of the shadow is not visible or real while the shadow, as a powerful indexical figure, implies the menacing force of a real figure. The affective impact of the shadow in such films is often to generate a sense of stretched time. Shadows are rarely fast. They loom or they approach slowly, which contributes to their menacing force. They may also withdraw, which does not mean the entity behind their projection is gone.

The menacing force in a third form of the shadow of the law is indeed very much related to time. It may have been at work in the East Brabant case considered above. The verdict in this case was not the outcome of a trial. The judge simply affirmed the adequacy of an agreement between the defendants' lawyers and the prosecutor. The case is an example, that is, of so-called *procesafspraken*, or plea bargains considered as formal agreements between prosecutors and defence lawyers. The case itself, consequently, presented little to be *seen*, unlike the more conventional trial process whereby defendants are brought to court, their alleged crimes are examined in detail, and they can even be interrogated by judges or questioned with regard to their motivations (if they do not make use of their right to remain silent). One can even play with the idea that there could have been victims involved, like people who got cancer due to environmental factors, or who died because they drank poisoned water, as a consequence of which relatives would have had the right to speak. None of this was possible here.

Procesafspraken do not render the reality and true impact of the case fully invisible for general audiences but they do prevent the legal process from reaching full disclosure. In the dung discharge case, for instance, one individual agreed to get two years of imprisonment and had to pay a fine of €250,000.[19] One other agreed to be sentenced to a conditional time in prison for one year, and community service of 140 hours.[20] Then there

[18] *Film noir* got its French title not because of French cinematographic prefigurations of the Hollywood genre but due to a contemporary authoritative French critic, Nino Frank.

[19] ECLI:NL:RBOBR:2025:7904.

[20] ECLI:NL:RBOBR:2025:7903.

was a *verdachte rechtspersoon*—a suspect legal person—that agreed to pay a fine of €100,000, of which €35,000 was conditional.[21] Now how is a general audience to assess this? First of all, the criminal is, or the criminals are, pseudonymized—as legally required. The fines are clear, but again, what was the damage done to the environment? The judge concluded it was “considerable and hard to quantify”. The tension at stake, then, is one between forms of quantification and forms of visibility in environmental law and legal discourses. Quantifying something does not necessarily make it more visible, while on the other hand declaring something to be not quantifiable does not necessarily unquantify it.[22]

The increasing prevalence of plea bargaining from the side of the prosecution was explicitly addressed in a verdict by the Dutch Supreme Court in 2022. This verdict may help us to grasp the third sense of the shadow of the law. It is not fear of a much mightier opponent with vast financial resources, but a fear of *dragging on*. The court motivated its judgment in one particular case by stating:

> the court can and will not close its eyes to the developments in the juridical chain of criminal justice. Cases and dossiers become more and more complex and comprehensive with longer and longer procedures as a consequence. This, in turn, causes friction with, amongst other issues, the right of the defendant to have their case heard within a reasonable time, as has been codified in article 6 of the European Convention on Human Rights (ECHR). Moreover, in a diversity of cases further research (for example, the hearing of witnesses many years after the alleged facts would have occurred) is becoming more complicated and often of lesser value when too many years have gone by. For injured parties, a process is a burden that drags on for years while they have no means to influence the course of this process (my translation).[23]

All this may, pragmatically speaking, be understandable. No doubt, court cases that drag on for years burden injured parties and may also injure the defendant. But a court case that out of fear of dragging is not heard fully in court might also burden—or, more fundamentally, degrade—both individual and collective senses of justice. Last but not least, parties may

[21] ECLI:NL:RBOBR:2025:7907.

[22] I thank Anthony T Allbright for his contribution to the argument here.

[23] ECLI:NL:HR:2022:1252. In the original: “*De rechtbank kan en wil desalniettemin niet haar ogen sluiten voor de ontwikkelingen in de strafrechtketen. Zaken en dossiers worden steeds omvangrijker en complexer met als gevolg steeds langer durende strafprocessen. Die ontwikkeling kan dan weer op gespannen voet komen te staan met onder andere het recht van de verdachte op een behandeling binnen een redelijke termijn, ook neergelegd in artikel 6 EVRM. Bovendien wordt het doen van nader onderzoek (bijvoorbeeld het horen van getuigen vele jaren nadat de verweten feiten zich zouden hebben voorgedaan) na het verstrijken van jaren in diverse gevallen steeds moeilijker en (soms) van minder waarde. Voor benadeelde partijen betekent een zich jarenlang voortslepend proces, waarbij zij op het verloop van dat proces niet of nauwelijks invloed kunnen uitoefenen, ook een belasting.*”

threaten to engage in procedures that they will try to keep dragging on for years, while knowing that from fear of such dragging the state, or other entities involved, will opt for forms of mediation or bargaining.

With this third shadow of the law, mutual agreement is not the pivotal issue, nor is the fear of engaging in a real court case with mightier opponents that are much better equipped to deal with juridical intricacies than others (the ominous shadow).[24] The third shadow exists in the fear of the judiciary itself for cases that keep dragging on. Let me call this the *withdrawing* shadow of the law. The element of withdrawing is evidenced on the website of a national network of agricultural mediators called Agrimediation. It tells its members and clients:

> The state is legally obliged to follow (appeal) procedures. More and more often, the state will seek a solution with parties along the lines of deliberation and negotiation. In such cases, results can be achieved without hurting procedures or creating legal precedents (my translation).[25]

The argumentative transition from the first to the second sentence is a brilliant example of a *bon entendre*. Without saying it, the website tells us that the judiciary, as a collection of state officials, will have to work slowly and that this can be used. If the state prosecution fears slowness, it will be easy for other parties to make the state favour “deliberation and negotiation”.

The widespread prevalence of such mediation and bargaining is common knowledge, if we only consider the fact that the vast majority of cases in the United States are resolved in this way. In the Netherlands, likewise, the Dutch Council of State has published a special brochure inviting potential litigants to first try to reach a mutual agreement through mediation. That this institutional preference for mediation can be abused becomes clear when the website of Agrimediation mentions that the Council of State, as a regulatory body checking the appropriate handling of law by the state itself, “will not consider a case if mediation has not been tried first”.[26] This is not true. Mentioning it can be an effective tool, though, to educate people how to manipulate the judiciary. Or it discloses what these agrimediators are actually aiming for.

[24] To describe such cases as a contest between “David and Goliath” (Van Domselaar & de Bock 2023) is in many cases wishful thinking.

[25] Agromediation (2026). In the original: “*De overheid is wettelijk verplicht om een (bezwaar)procedure te volgen. Steeds vaker zoekt ook de overheid met partijen naar een oplossing langs de weg van overleg en onderhandelen. En dan kan ook zonder de procedures te schenden of precedenten te scheppen resultaat worden bereikt*.”

[26] Ibid.

Now, of course arbitration or mediation can be subject to extensive judicial regulation. The social consequences of its prevalence are broader.

[D] JURIDICAL COHESION: "DARK MATTER" AND HOW IT CAN BE WEAKENED

In a recent study, Greta Olson (2022) not only describes the development of one interdisciplinary scholarly field into another but also introduces a new definition of legality. Olson's study is much inspired by the work of the nineteenth-century legal scholar Rudolph von Jhering, who coined the concept of *Rechtsgefühle*: people's feelings for law. Jhering's work was neglected by those twentieth-century thinkers who would criticize law's role in preserving the existing social order—that is, in defending the *status quo*. In various Marxist analyses, in poststructuralist approaches, and in the field of critical legal studies, the major aim was to show how law makes things go wrong: how jurisdiction can be biased, or how it works as an instrument of oppression. In general, these approaches do not consider the question of how people feel bound by law insofar as they feel positively *attached* to law.

The latter issue was Jhering's nineteenth-century concern, just as it was the twentieth-century concern of Antonio Gramsci, and most recently Scott Veitch in a study entitled *Obligations* (2022). Jhering developed his theory in a society industrializing so rapidly from feudalism that many matters were not regulated by law. This lack motivated a struggle (a *Kampf*) by upright citizens to establish a law proper that served not just their private interests but society (Jhering 1997). The second thinker, Gramsci, was thrown into prison by Mussolini and knew well the consequences when a proper rule of law is destroyed and replaced by a perverse one. This may have been an important reason why Gramsci wondered whether we ought to consider how law can be a pedagogical and civilizing—rather than simply oppressive—force. The third, Veitch, asks whether the recent dominance of "rights" in legal theory and practice—also in an ecological context—deflects from the more fundamental juridical issue of obligations. Veitch's major point is that obligations have force only when they are underpinned by a culture that defines accepted, promoted, less accepted, and unacceptable modes of behaviour and turns these into a mode of living (2022).

Influenced particularly by Jhering, Olson (2022) studies how people's affective bonds with law take shape within the twenty-first-century media landscape. Olson argues that people's feelings for law are produced not only by law itself but also by a diverse constellation of cultural forms.

These genres and media, belonging to both high and low culture, underpin, shape, and reshape people's feelings for law and jurisdiction. A very straightforward example is the enormous influence of cinema and television on popular knowledge of what happens in court (Goodrich & Delage 2012; Becci & Ors 2025). As Olson shows, this might also be an imagined knowledge; legality can but need not directly express the reality of jurisdiction.

Olson's (2022) argument implies that many of the feelings people have about law's execution are imaginary, though this does not make them less real. Still, mindful that Olson is not explicit on the issue, I read her work as grappling with something that remains elusive. If her primary question is how people develop feelings about law and jurisdiction, she is right to show how such feelings are shaped not primarily by the legal system or the disciplinary forces residing in institutions such as education. Rather, she highlights that such feelings are cultivated outside of the fields of law and education, as in the arena of cultural production, with the consequence of diversity, and perhaps even disparity, in people's feelings for law. What nevertheless remains elusive, then, is what keeps a society together under a law to which people apparently feel attached, even if *differently*. Indeed, what affective matter within a given society gives rise to its juridical *cohesion*?

In the *Prison Notebooks*, Gramsci's positive answer to this question is to conceive of the state as an educator and civilizing force, one that in turn needs to educated and civilized by the subjects living under its rule, all of whom are potential legislators. The relation between state and subjects is, on the one hand, enforced from above, but, on the other, never fully accepted from below (Gramsci 2007: 74). In relation to the former aspect of the dynamic, Gramsci is still Marxian, but in relation to the second he is more on the side of Jhering. Precisely because the people within a given society are diverse—socially, culturally, ethnically, professionally—there must be a continuing struggle not about but *for* law. Obviously, a struggle can be analysed in terms of winners and losers. But the German term *Kampf* addresses more than a competitive dynamic with an unequal outcome. Jhering rather contends that through a laborious, continuous effort (another meaning of the term *Kampf*) people show they care for law, and that they feel attached to it.

This returns us to juridical cohesion's elusiveness as a force. For why would people *care* for the proper administration of law? Why should they not choose, for whatever reason, to avoid such a laborious process and instead be satisfied with a state or an authority that takes care of things

for them, even if this means simple subjection? In his analysis of civil resistance, Howard Caygill (2013) introduces a Gramscian typology of civil protests that are all bound ethically by an "organic continuity". We find again a metaphor, here, this time of "the organic". I find the notion of the organic infelicitous, considering that the struggle for law can never reach a final conclusion and that this struggle involves a people's diverse yet more or less collective care for law. I therefore propose an alternative: to take the universe's dark matter as a metaphor for the elusive, not immediately visible *affective mass* embodied in a people's collective attachment to law—the law's dark matter.[27] This mass is everywhere, without us being able to have a look at it, or to "get it".

The metaphor is useful to help indicate something that is not visible and therefore needs imagination, a bit like Benedict Anderson's (1991) famous "imagined communities" of nation-state cohesion. In contrast with the latter, however, where the existence of a nation depends on its production through media, the rule of law and its execution depends on something else that already exists, as Veitch argued. It consists in a more or less collectively shared culture that defines people's attitude towards law and justice. With respect to this, the metaphor of dark matter allows us to imagine the affective mass that prevents the elements of a society from spiralling out of control.

Now, affects can be felt but are invisible. So, the affective mass that upholds the rule of law, allowing people to participate in it and feel attached to the law, is felt but unseen. The metaphor acknowledges that people's feelings for law are first of all an issue of attraction. Surely such feelings are connected to visible, traceable, perhaps quantifiable factors, even as these cannot fully explain juridical cohesion insofar as it is based on a diverse but nevertheless shared culture that facilitates a care for the rule of law? Such cohesion can only be explained, the metaphor suggests, by an imaginable *affective* mass that produces it and that through this metaphor becomes visible. In a sense, law's affective mass is the condensation of a society's collective hypotheses as to its nature. This hypothetic dynamic also makes it vulnerable. The fact that we cannot

[27] The idea of law's dark matter came to me through "The Great Debate", a satirical song by American composer and singer Randy Newman (2017). In the song, a mediator convenes a debate between scientists and "true believers". The first scientist to enter into the debate is asked to explain dark matter and the mediator wonders whether he could have a look at it. When a voice laughs in response "Of course not", the mediator concludes: "Let me get this straight: you don't know what it is, you don't know where it is, and we can't get any? Put that to the one side. Let's put the Lord, faith, eternity, and whatever on the other side. Show of hands?" At this point, the choir of true believers begins to sing that they'll choose Jesus every time. The resulting score in this mock battle is 1-0 for true believers. After a scientific expert on evolution is subsequently questioned, the score rises to 2-0 for true believers.

really define or locate juridical cohesion represents an opportunity for those who do not care for such positive cohesion: actors who would sow doubt about its very existence, or seek to replace voluntary collective care with an enforced collective belief in a divine or secular supreme being.

One way to analyse what is happening in the United States under its 47th President is to consider how the collective care for law is being weakened by the tearing apart of juridical cohesion, in an attempt to replace its affective materiality with belief in an imaginary supreme being whose private interests are partly visible yet still remain foggy. As my Dutch case illustrates, Donald Trump is surely not the only one interested in subverting a collectively underpinned, bottom-up care for law. Big corporations have similar interests. The attitude of both toward the rule of law is ambiguous if not schizophrenic. On the one hand, they invoke the rule of law, at times excessively, when it serves their interests. On the other hand, they attack jurisdiction's role in disclosing truth, seeking to prevent it from bringing to light their behaviours. To do so, they use tactics of shadow and fog.

As a result, in the Dutch case, the cause of the country's massive and surely palpable pollution is *known* and yet remains murky or foggy. As for the prosecution of the crime of pollution, it is a bad sign when state prosecutors fear cases dragging on. The expected and all too real result is that environmental crime is only a marginal issue in the courts. More broadly, if things remain hidden in the mist, if the shadow of the law prevents the full disclosure they deserve, how are public audiences expected to *care*? As I have been suggesting, the slightly elusive, incalculable affective dark matter of legality that makes juridical cohesion within a society possible also allows certain actors to sow doubt about its very existence. If its existence, as a result, is no longer collectively felt, the collective resistance to injustice may lose its force and society becomes the playing field of the mighty.

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central in Imagining Urban Complexity: A Humanities Approach in Tropes, Media, and Genres *(Routledge, 2024; together with Anthony T Albright). The way in which powerful actors play with jurisdiction is the focal point in* Law, Spectacle, and the Play of Jurisdiction *(Routledge, 2026).*

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