

Deeds, Not Forecasts

Why a court should rule on facts and not on the opinion of science

J. Konstapel, Leiden, 3 October 2026

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1. The occasion

On 3 October 2026 the Dutch financial daily *Het Financieele Dagblad* described how climate law "grew up, case by case". The figures come from the London School of Economics. In 2005 a handful of climate cases were started worldwide. In 2020 there were more than 270. In 2024, the record year, more than 500. Last year 250 were added.

The article names the building blocks.

- **Urgenda.** The Dutch courts ordered the state to cut greenhouse gas emissions by 25 percent before the end of 2020.
- **RWE.** A Peruvian farmer claimed about €13,000 from the German energy company. RWE was held responsible for 0.2 percent of world CO₂ emissions. The claim failed: his house was not in direct danger.
- **Shell.** The district court ordered a 45 percent cut by 2030. The court of appeal kept the responsibility and struck the percentage. The case is now in cassation. A second case asks that Shell open no new oil and gas fields.
- **TotalEnergies.** Eight people who lost relatives and homes to extreme weather filed a criminal complaint in France, with three organisations. The chain from emission to flood to death could not be proven.

Three sentences in the article carry the whole development. A researcher says that courts build on each other's rulings. A climate lawyer says that Dutch cases aim at the duty, not at the damage, and that the damage may not even be needed. And the campaign opens with the statement that science has been crystal clear for years.

This essay reads those three sentences against one question: what can a court know?

2. Two kinds of statement

There are two kinds of statement.

The first says: *this is true about the world*. It has no checkable form. No procedure can settle it once and for all. Tarski showed in 1936 that a language rich enough to speak about itself cannot fix its own truth from within. Ordinary language also moves with time, place and speaker.

The second says: *this was recorded here, by this person, on this date, and this is how it arrived*. It has a form. It can be checked completely.

A cabinet that only accepts items with a receipt can promise one thing: nothing leaves it that did not enter it. It cannot promise that everything inside is true. That limit is exact, and it is the useful part.

A court is such a cabinet. It can establish what was done, by whom, to whom, where and when. It cannot establish what is true about the atmosphere. When it rules that "science is clear", it takes a statement of the first kind and files it as the second.

3. What is measured and what is assessed

The climate numbers show the difference.

In 1750 the air held 278 parts per million of CO₂. Now it holds 429. That rise retains 2.33 watt per square metre. A warmer earth radiates more: 3.22 watt per square metre per degree.

- 2.33 divided by 3.22 is 0.72 degree.

That is the direct effect of CO₂. It has been observed in the field, at two sites, over ten years (Feldman, 2015).

The earth was 1.44 degree warmer in 2025 than around 1850. That is twice 0.72. The difference is water, in three forms: vapour, clouds, and ice and snow. The UN climate panel assesses these terms per degree of warming. Of the 3.22 watt that the earth radiates extra, 1.30 returns through water vapour, 0.42 through clouds and 0.35 through ice and snow. The earth loses about 1.16 watt per degree net.

For a doubling of CO₂ this gives:

- CO₂ itself: 3.71 divided by 3.22 is 1.15 degree.
- The whole: 3.71 divided by 1.16 is 3.2 degree.
- Share of CO₂ itself: 1.15 divided by 3.2 is 36 percent.

The other 64 percent is water. For clouds the assessment runs from slightly cooling to strongly warming.

So one part is a measurement with a site and a date. The other part is an assessment across models. Both come from science. Only the first has an address. A percentage such as 45 by 2030 is built on the second.

4. Law is about failures

Law does not begin with a rule. It begins with something that went wrong.

A text of 2007 on the legal system asks one question over and over: *what went wrong?* A commandment is given. It fails. An exception is invented. The invention of exceptions is called jurisprudence. It produces a system so complex that experts are needed. Experts create scarcity. Scarcity makes rich and poor unequal before the judge. The text sums it up: one fatal error is compensated with another. Regulating the regulators never stops.

Formal logic says the same. Anderson defined obligation in 1958 through the sanction: obliged is what brings punishment when it is left undone. Chisholm showed in 1963 that the hard question is what holds *after* the violation. Sixty years of repair work followed.

Schank gave the cognitive version in 1982. People and institutions live by scripts. When the world breaks the expectation, there is a choice: revise the script or defend it. Learning needs the first. Institutions usually choose the second: more of the same policy, with more force.

Law is therefore a register of failures. A failure is a fact: a deed that did not close, between parties that can be named.

The same 2007 text names the trap. Thinking projects trouble into the future and acts now as if it were real. It wants to control what is not yet there.

5. A fact is a sentence with a verb

What does a fact look like?

A community ledger now running in the Netherlands records deeds as sentences: *Hans helped Lea with the roof, Tuesday*. Who did what for whom, where and when. The receiver confirms with one tap. Only then does the deed count. No machine determines whether the promise was kept. The receiver does.

Three things follow.

- **A fact is a deed with context.** Remove the context and a number remains. A number turns a deed back into potential.
- **An obligation is directed.** Hohfeld wrote in 1913 that my claim and your duty are one relation, read from two sides. It is not "this must happen". It is "x owes y this".
- **Fulfilment is established between people.** The builder's handover works this way. So does the witness in court.

The CO2 figure is a noun without context. It is an average over the whole globe. Nobody can touch it on his own land.

6. Reading the climate cases

With this in hand the three sentences from the article can be read.

"Courts build on each other's rulings." This is the growth of exceptions described in 2007. Each ruling becomes the given for the next. What entered as an assessment leaves as a precedent.

"The damage may not even be needed." Here law leaves the failure behind. There is a duty without a deed, without a receiver and without a counterparty who confirms. The second Shell case goes one step further. It asks for a ban on fields that have not been opened. That is the projection of 2007: trouble placed in the future and treated as present.

"Science is crystal clear." This is a statement of the first kind. A court that adopts it steps out of its own cabinet.

The court of appeal already drew this line. It accepted a responsibility and refused a percentage. The German court did the same when it asked whether the farmer's house was in direct danger. Both asked for a fact with an address.

The lawyer in the article states the remaining problem himself: everyone emits and everyone is affected. There is no chain from one company to one storm. The answer so far is to wait for better attribution studies. In Schank's terms, the script is being defended.

7. One state, two readings

The image of the Vacuum.Net theory is a fishing net under tension. Strands wind around each other. Where a winding returns in phase, a mesh closes. A closed mesh holds what circulates in it. An open mesh holds nothing.

Carbon circulates through meshes at different depths. Leaf and air close within a season. Soil closes in decades to centuries. Peat in thousands of years. Coal, oil and gas in hundreds of millions of years.

The CO₂ figure counts the carbon that sits in no closed mesh at this moment. Temperature is a second reading of the same state. In the Antarctic ice the two move together. Neither leads (Parrenin, 2013). There are no two separate things between which an arrow can be drawn. That is why the chain in the courtroom does not close.

A mesh does have an address. Water shows it.

- One millimetre of evaporation per day carries off 28.4 watt per square metre. The whole CO₂ term is 2.33. On the spot that is a factor of twelve.
- Since 1700, 3.4 million square kilometres of wetland have been drained, a fifth of the total.
- A drained peat meadow emits 20 tonnes of CO₂ per hectare per year. The land sinks about 7 millimetres per year. It is one number in two units.
- Every 10 centimetres of higher groundwater saves at least 3 tonnes per hectare per year.

The Dutch target for peat is 1 million tonnes less by 2030. In water level that is 20 centimetres up on 167,000 hectares: 167,000 times 2 times 3 is about 1,000,000 tonnes.

That is a ditch level, a polder, a water board. Who lowered which level, and when, is a deed with context. A court can establish it.

8. The people in the cases

The claimants are real. A farmer under a melting glacier in Peru. Eight people in France who lost family and homes. Islanders in Indonesia. Their loss is a fact with a place and a date.

The law offers them a chain that cannot be closed and a duty that is owed to no one in particular. Most never get that far. The distance between feeling wronged and filing a claim is large. The legal system sees the tip of an iceberg (Felstiner, Abel and Sarat, 1980).

There are also people on the open mesh. A farmer near Zegveld whose land sinks 7 millimetres a year and whose stable floor cracks. A village on the Hungarian sand ridge where the groundwater fell from 6.5 to 8 metres in one year. Volunteers there close drainage channels and flood meadows. What lives on such ground is tangible: cows, meadow birds, the well, the harvest, the foundation of the house.

9. What follows for the court

Three things follow.

The court rules on deeds. Who did what, to whom, where and when, confirmed by those who received it. Measurements with a site and a date belong here. Assessments across models do not.

Values belong earlier. A legal code is also a store of shared values. That conversation has its place before escalation, where people can say what they experience as unjust and find the principle behind it. It is reflective and invitational. It is not a verdict.

One rule suffices at the base. A proposal of March 2026 reduces the constitution to a single subject: the way agreements are made and kept. Agreements are deeds between parties. They can be recorded, confirmed and remembered.

The state in this reading is an arena. It guards the rules of the game and does not win the game. A court that adopts one world view as fact has become a party. The article names the reason it happens: a country cannot act against a company that works in many countries, so the judge is asked to fill the gap. A jurisdiction ends at the border. The flows do not. Each ruling adds a layer to a system that is already dense.

The functions are meanwhile moving to the scale where daily life is organised: the city, the water board, the bioregion. That is the scale of the ditch level.

10. Closing

Law keeps a register of what went wrong between people. Its material is the deed: a sentence with a verb, a place, a date and a receiver who confirms.

The climate cases ask the court for something else: a ruling on a state of the whole earth, read from one figure, with a duty owed to all and to none. The court of appeal has shown where the line runs. A responsibility can be named. A percentage cannot be established.

A balance is restored where the people who live on it can read it themselves.

Annotated references

Groot, J. and Selderbeek, E. (2026). "Hoe het klimaatrecht zaak voor zaak 'volwassen' werd." *Het Financieele Dagblad*, 3 October 2026. Why read? The occasion for this essay. It gives the case numbers, the building blocks and the three sentences that are read here.

Setzer, J. and Higham, C. *Global Trends in Climate Change Litigation* (annual). Grantham Research Institute, London School of Economics. Why read? The source of the case counts. *Reading advice:* look at the split between cases against states and cases against companies.

Supreme Court of the Netherlands (2019). *State of the Netherlands v. Urgenda*, 20 December 2019. Why read? The ruling that later cases build on. It rests the duty of the state on human rights and on the scientific consensus of the time.

Court of Appeal The Hague (2024). *Shell v. Milieudefensie*, 12 November 2024. Why read? The court accepts a responsibility and refuses a specific percentage. This is the line between a deed and an assessment, drawn by a court itself.

Konstapel, J. (2007). "About the Legal System." *constable.blog*, 4 August 2007. Why read? Law as a stack of compensated failures, and projection as its engine. *Reading advice:* follow the repeated question "What went wrong?".

Konstapel, J. (2007). "Why Civilians are Not Computers." constable.blog, 3 November 2007. *Why read?* Laws are words and not logic; citizens are organisms. Short, and the root of the later work.

Konstapel, J. (2025). "Towards a Resonant Legal System: The Synthesis of Semantics and Coherence." constable.blog, 27 November 2025. *Why read?* Legal codes as layered values, and conflict as a loss of coherence. Introduces the Power Gradient: coherence imposed by the stronger party.

Konstapel, J. (2025). "A Framework for Multi-Scale Conflict Resolution." constable.blog, 27 November 2025. *Why read?* The same pattern from the personal to the geopolitical scale, with forced coherence as the failure form.

Konstapel, J. (2026). "Experience Based Law (EBL)." constable.blog, 1 March 2026. *Why read?* The pre-escalation zone: felt injustice that never reaches a court. *Reading advice:* the three components, and the annotated reading list on legal consciousness.

Konstapel, J. (2026). "Hoe het Volk de Macht weer krijgt." constable.blog, 26 March 2026. *Why read?* The proposal to keep one basic law, about the way agreements are made and kept.

Konstapel, J. (2026). "De Langzame Ontbinding van de Natiestaat." constable.blog, 26 February 2026. *Why read?* Why jurisdiction ends at the border while the flows do not, and where the functions of the state move to.

Konstapel, J. (2026). "De Neutrale Staat en haar Grenzen." constable.blog, 14 May 2026. *Why read?* The state as arena, and expectation failure as the reason institutions repeat themselves. The nitrogen policy is the worked example.

Konstapel, J. (2026). "Van Plato tot de Bon." constable.blog, 8 September 2026. *Why read?* Why a record should be a sentence with a verb and not a number. The design rules follow from the history.

Konstapel, J. (2026). "De MAZE-Bank: Een Nieuwe Kijk op Afspraken." constable.blog, 11 September 2026. *Why read?* Directed obligation, confirmation by the receiver, and a register in which violation is not a state.

Konstapel, J. (2026). "Betrouwbare, Bewijsbare AI." constable.blog, 19 September 2026. *Why read?* The two kinds of statement and the cabinet with receipts. *Reading advice:* the table that separates proven from specified.

Konstapel, J. (2026). "Klimaatbeleid zonder bodem en water werkt niet." constable.blog, 2 October 2026. *Why read?* The CO2 figure as a reading, the open meshes, and the peat calculation step by step.

Konstapel, J. (2026). "Klimaatopwarming: waarom water zwaarder weegt dan CO2." constable.blog, 2 October 2026. *Why read?* The 36 against 64 percent, with every step of the sum.

Tarski, A. (1936). "The Concept of Truth in Formalized Languages." Why read? The theorem behind the limit in section 2. *Reading advice:* a modern summary is enough.

Anderson, A. R. (1958). "A Reduction of Deontic Logic to Alethic Modal Logic." Mind 67. *Why read?* Three pages that define obligation through the sanction.

Chisholm, R. (1963). "Contrary-to-Duty Imperatives and Deontic Logic." *Analysis* 24. *Why read?* What holds after the violation. The source of sixty years of repair work.

Hohfeld, W. N. (1913). "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning." *Yale Law Journal* 23. *Why read?* Claim and duty as one relation. *Reading advice:* the first twenty pages.

Schank, R. C. (1982). *Dynamic Memory*. Cambridge University Press. *Why read?* Scripts and expectation failure: learning happens only where an expectation breaks and the script is revised.

Felstiner, W., Abel, R. and Sarat, A. (1980–81). "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming." *Law & Society Review* 15. *Why read?* How an experience of injustice becomes a dispute, or does not.

Frissen, P. (2026). *De Neutrale Staat. Boom*. *Why read?* The state that protects disagreement and does not settle it.

Feldman, D. R. et al. (2015). "Observational determination of surface radiative forcing by CO₂ from 2000 to 2010." *Nature* 519. *Why read?* The direct effect of CO₂, observed and not computed.

IPCC (2021). AR6 Working Group I, chapter 7: The Earth's Energy Budget, Climate Feedbacks and Climate Sensitivity. *Why read?* The assessed feedback terms per degree. *Reading advice:* table 7.10, then the section on clouds.

Parrenin, F. et al. (2013). "Synchronous change of atmospheric CO₂ and Antarctic temperature during the last deglacial warming." *Science* 339. *Why read?* The timing in the ice. CO₂ and temperature move together.

Fluet-Chouinard, E. et al. (2023). "Extensive global wetland loss over the past three centuries." *Nature* 614. *Why read?* The 3.4 million square kilometres, from more than 3,000 archive sources.

Evans, C. D. et al. (2021). "Overriding water table control on managed peatland greenhouse gas emissions." *Nature* 593. *Why read?* The main rule of peat: the water level comes before every other factor.