

THE PARTICIPATION OF LAYMEN IN THE DUTCH JUDICIARY 1811-2011

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1. Introduction

The idea that the administration of justice is the state's responsibility has ancient roots. The biblical example of King Solomon (965-925 BC) inspired medieval monarchs to view themselves primarily as judges. The Holy Roman Emperor too deemed himself a judge. During his inauguration, the Emperor had to answer six questions, one of which was whether he wanted to be a fair judge to the rich and the poor, the widows and orphans. Haarlem-born painter Dieric Bouts (1415-1475) depicted Otto III (980-1002), son of Byzantine princess Theopanu, posing this question. He was pictured sentencing his lying and cheating wife to the death penalty.¹ However, the administration of justice was not the responsibility of the state only; in some cases laymen also administered justice during the *ancien régime*. In the Republic of the United Netherlands, for example, merchants presided over courts of justice for commercial matters (including maritime matters).²

This article will describe lay participation in Dutch justice as from 1 March 1811, when the Netherlands became part of the French Empire. French legislation required two different forms of lay participation. The first was trial by jury in criminal cases, and the second was the administration of justice by laymen in the commercial courts. I shall discuss the history of both of these below. The Dutch legal system had a third form of participation by laymen: the mixed administration of justice (such as the Enterprise chamber of the Amsterdam Court of Appeal and the Agricultural Tenancies Division of the County Courts). In this variant, laymen administered justice in cooperation with professional judges. Because of lack of space, I shall not discuss the history of this mixed

1 Justice of Emperor Otto III. The painting is displayed in the Royal Museum of Fine Arts of Belgium.

2 M.W. van Boven, *De rechtbanken van koophandel (1811-1838). Iets over de geschiedenis, organisatie en archieven*, in: *Nederlands Archievenblad* 1993/1, pp. 6-8.

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administration of justice. Finally, because it interests Laurens, I shall devote some words to Special Criminal Jurisdiction after the Second World War.³

2. Participation of laymen in justice during the first decades of the nineteenth century

On 1 March 1811, after the Netherlands became part of the French Empire in two phases, French legislation came into force. A consequence of this was that the Dutch legal system was modelled on the French system. Juries were considered among the most important achievements of the French Revolution: the victory of civilian freedom over the traditional closed nature of judicial bodies. As Bernard Schnapper remarked: 'L'histoire du jury en France est celle d'un long conflit politique: fils de 1789, il est le symbole des libertés individuelles et publiques, un rempart contre la tyrannie, défendu à ce titre par l'opinion avancée ...'.⁴ Trial by jury ensured the public nature of the legal system and was required to restore public trust in the impartiality and independence of the judiciary, which had supposedly been lost during the *ancien régime*. More importantly, there was also the idea that jury trials reduced the possible influence of administrative bodies or political stakeholders. Those who supported the idea of the separation of powers, the *trias politica*, needed to separate the judge's domain from that of the legislator and especially the executive. The judiciary and the executive had not been separated in the old system and administering justice was reserved for the upper classes. Trial by jury could diminish public distrust of the judiciary as representing a social class. The first jury trial in the Netherlands was on 30 March 1811. According to Bossers' dissertation of 1987, there is no reason to believe that trial by jury in the Netherlands did not function properly.⁵

However, after Napoleon's defeat at Waterloo, juries were abolished in the Netherlands by Sovereign Decree (11 Dec. 1813, Bulletin of Acts and Decrees 10). The most important reason, according to Bossers, was the opinion of the authors of the sovereign decree. They were C.F. van Maanen (1769-1849), first president of the French Imperial Court of Appeal in Holland and subsequently first president of the Supreme Court; A.W. Philipse (1766-1845), advocate general at the Imperial Court of Appeal, subsequently attorney-general at the Supreme Court, and from 1838 president of the Supreme Court; and A. van Gennep (1766-1846), president of the Imperial Court of Appeal, later member of the Council of State. The authors described the aversion judges had to juries. Juries were the symbol of public suspicion against the judiciary. However,

3 This article is based on a paper for the Francqui seminar on 'Laymen as judges in European Courts' (Ghent, 2013), C.J.H. Jansen, *Het corps doorbroken. Over de deelname van leken aan rechtspraak*, in: M.W. van Boven & P. Brood (eds.), *Tweehonderd jaar rechters*, (Hilversum, 2011), pp. 83 ff. and C.J.H. Jansen, *Over de deelname van leken aan de strafrechtspraak (1945-nu)*, in: *Levend strafrecht. Liber Amicorum Ybo Buruma*, (Deventer, 2011), pp. 293-301.

4 B. Schnapper, *Le jury français aux XIX et XXème siècles*, in: A.P. Schioppa (ed.), *The Trial Jury in England, France and Germany 1700-1900*, (Berlin, 1987), p. 165.

5 G. Bossers, 'Welk eene natie, die de jurij gehad heeft, en ze weder afschaft!' *De jury in de Nederlandse rechtspraktijk, 1811-1813*, (Delft, 1987), pp. 6 ff., 32 ff., 78. See, also, P.J.P. Tak, *Rechters zonder toga. Over lekenrechters en lekenrechtspraak in Europa*, (Nijmegen, 2006), p. 18.

contemporaries believed that the feeling was unwarranted in the Netherlands at that time; Dutch judges had the public's trust, even under the *ancien régime*. Bossers believes that other reasons, such as anti-French sentiments after the departure of the French occupier, also played a part.⁶

Even though juries were abolished in 1813, this was not the end of discussions about jury trials in the Netherlands, because there were outspoken supporters of jury trials, for example Jonas Daniël Meijer (1780-1834), a famous lawyer from Amsterdam. Meijer viewed juries as a guarantee of citizen freedom and a useful means of involving the public in the administration of justice. In criminal law, common sense allowed people to make an independent judgment on the innocence or guilt of the accused; no specialised knowledge was necessary. Anonymous writers appealed to Meijer to denounce the abolition of juries in *De Weegschaal*, a critical journal published from 1818 to 1832. These writers considered juries to be amongst the most important guarantees of individual freedom. Judges and public prosecutors were too much *entre eux* if court sessions were not open to the public. More importantly, juries could be considered as enabling the public to take part in the government, which was an absolute requirement of the constitutional monarchy. There simply was no point in depicting juries as a French institution in order to create an irrational aversion to jury trials.⁷

The discussions of the draft Code of Criminal Procedure sparked a debate in the Dutch House of Representatives about the reintroduction of jury trials in the administration of criminal justice. A majority was against this. The fact that the Dutch Constitution did not refer to jury trials was an important argument in the debate. According to the advocates of jury trials, this omission meant that juries were not prohibited. However, their opponents argued the opposite: if the drafters of the Dutch Constitution had wanted trial by jury, they would have included it in the Constitution. There was indeed a conflict in the Constitution, or at least in the interpretation of the Constitution.⁸ In 1829, C.A. den Tex (1795-1854), professor at the Athenaeum Illustre in Amsterdam, made a list of all arguments in favour of, and against, the introduction of jurors in criminal cases and came to the conclusion that the introduction of juries was not desirable. According to Den Tex, juries failed as a last bastion of public freedom because they did not offer the security people were looking for. Courts with permanent and impartial judges who were appointed for life offered more security.⁹

Another form of lay participation in justice was introduced to the Netherlands through the French institution of commercial courts. Upon the implementation of the French legal system, a great number of commercial courts were established (for example in Amsterdam, Rotterdam, The Hague, Utrecht, Haarlem, Arnhem, Nijmegen, Den Bosch,

6 Bossers, *idem*, pp. 92 ff.

7 Wetgeving, in: *De Weegschaal* 1819, pp. 254, 257-258; *Bedenkingen op het stukje wetgeving*, in: *De Weegschaal* 1819, pp. 364-365, 368-369; *Aanmerkingen op bedenkingen*, in: *De Weegschaal* 1819, pp. 388, 395 ff.

8 Bossers, *cit.*, pp. 108 ff.

9 C.A. den Tex, *Is de instelling van gezworenen in strafzaken voor Nederland wenschelijk? Ontkennend beantwoord, vooral uit hetgeen de ondervinding ontrent die instelling heeft opgeleverd*, in: *Bijdragen tot Regtsgeleerdheid en Wetgeving* 1829/2, pp. 291 ff., 296.

Leeuwarden and Groningen). The judges and deputy judges did not need to be lawyers, but had to have some experience in trade. However, from the outset, merchants were not particularly interested in unpaid positions. In Amsterdam, there was such reluctance to participate that the commercial court was closed in 1817, and two special divisions for commercial trials were introduced at the regular court. Section 185 of the Constitution did not prevent the establishment of commercial courts, and the administration of justice in commercial matters and bankruptcies of merchants did feature in the draft version of the Judiciary Organization Act of 1827. However, commercial courts were not mentioned in the Judiciary Organization Act (which finally came into effect on 1 Oct. 1838) and were also no longer included in the draft version of the Commercial Code. The fact that it was difficult to find competent merchants willing to take up unpaid positions in such courts played an important role, as did the complex character of commercial law, and doubts about the objectivity of merchant judges and their limited knowledge of procedural law.¹⁰

Nevertheless, this was not the end of the debate on commercial courts and lay judges. The preliminary reports of the NJV of 1870/1872 sparked another discussion about the advisability of lay administration of justice. The Association had to decide whether it was appropriate for courts dealing with commercial matters to consist partially or wholly of merchants, based on the preliminary reports of T.M.C. Asser (1838-1913), lawyer and professor at the Amsterdam Athenaeum Illustre and professor B.H.D. Tellegen of Groningen (1823-1885). At the meeting, a large majority voted against lay participation. Asser also opposed the reintroduction of commercial courts. He argued that the difficulty of finding suitable candidates was a serious problem, and the fact that commercial law included many specific customs was an insufficient reason to create separate courts. Judges would always be able to obtain advice from experts about commercial customs or the nature of commercial contracts. However, the other preliminary advisor, Tellegen, was in favour of lay participation in the administration of justice, including commercial cases. Laymen could prevent an *esprit de corps* among judges. He also believed that knowledge of commercial customs and business language was necessary during commercial trials. In ideal circumstances, lawyers and merchants would judge together, because commerce required the speedy administration of justice.¹¹

This discussion showed that the inspiration for lay participation no longer came from France but from Germany. D.J. Mom Visch, judge at the District Court of Arnhem (and later Justice at the Court of Appeal of Arnhem) referred explicitly to the introduction of lay participation in Germany.¹² J.A. Levy, the famous lawyer from Amsterdam (1836-1920), also referred to Germany, where the question was not whether there should be commercial courts, but how these courts should be organised. According to Levy, commerce required special forums to meet its requirements every hour of every day. Professional judges were not familiar with commercial customs and the commercial view of justice. More importantly, there was also no proof that merchants would not administer

10 Van Boven, cit., pp. 10-13; R.J.Q. Klomp, *Opkomst en ondergang van het handelsrecht. Over de aard en de positie van het handelsrecht – in het bijzonder in verhouding tot het burgerlijke recht – in Nederland in de negentiende en twintigste eeuw*, (Nijmegen, 1998), pp. 24-28.

11 Klomp, *idem*, pp. 56-64.

12 D.J. Mom Visch, *Interventie*, in: HNJV 1872/II, p. 134.

justice as well as lawyers.¹³ At the meeting of the NJV, Mom Visch and Levy, however eloquent they were, were amongst the few defenders of the separate administration of justice by laymen. After this discussion, commercial courts were virtually forgotten in the Netherlands.

3. Lay participation in justice in the first decades of the twentieth century

At the end of the nineteenth century, the industrial revolution in the Netherlands reached its peak with unparalleled progress in manufacturing and agriculture. The law, however, was unable to keep up with technical, socio-economic and social developments. Judges were severely criticised for their formalism and for not keeping the law up to date. The administration of justice by laymen was back on the agenda as a means of bridging the gap between the legal system and the public. Since this was a pressing matter, it was unsurprising that a year later the NJV tried to answer the following question: ‘Should it be recommended that laymen participate in the administration of justice (criminal, civil and administrative proceedings)?’ J.A. van Hamel (1880-1964) and the aforementioned Levy were the preliminary advisors.

Van Hamel launched an attack on the judiciary that provoked fierce criticism from the senior NJV-members. Van Hamel viewed the administration of justice of his time as too official, too formal and too scholarly, and argued that lay participation was an obvious cure for this disease. Lawyers’ law supposedly did not surpass the law of the people. In criminal proceedings, the participation of laymen took the form of the introduction of a jury. According to Van Hamel, the presence of juries meant that the administration of justice would be more impartial, just and less routine, because laymen understood better than professional judges the true meaning of criminal law. However, Van Hamel was rather pessimistic because he suspected that the public would resist the administration of justice by laymen and would not be interested in serving on a jury. He also believed that jurors were intellectually incapable of performing their duty. How were they to form a judgement about the determination of the guilt and penalty if they had no standards or any criterion of comparison?¹⁴

Levy’s view was almost diametrically opposed to that of Van Hamel, but the conclusions he reached were almost the same. Levy had no faith in jury trials at all. His motto in the introduction to his preliminary advice spoke volumes: ‘Pour savoir une chose, il faut l’avoir apprise.’ After a *grand tour* of the classics (the Greeks and Romans) and modern history (England, France and Germany) he concluded that laymen had not studied the law and were therefore unable to administer justice. Levy dismissed the participation of laymen in the administration of justice, and especially in juries:

13 J.A. Levy, *Interventie*, in: HNJV 1872/II, pp. 138-143. See, also, J. Jacobson, *Beschouwingen aangaande de wenschelijkheid der invoering van Regtbanken van Koophandel in Nederland*, (Rotterdam, 1873).

14 J.A. van Hamel, *Verdient het aanbeveling, het leekenelement aan de rechtspraak ... te doen deelnemen?*, in: HNJV 1908/I (part 1), pp. 38 ff.

There is no fundamental principle that justifies it [juries]. Granted, they would a) not simplify but complicate the proceedings; b) vulgarise the law that actually strives for the enduring nature of principles; c) make decisions not based on responsibility; d) threaten both legal certainty and unity of law; e) disrupt the rule of law ...¹⁵

Those present at the meeting of the NJV opposed lay participation in civil cases, including commercial matters. The introduction of lay participation in criminal cases was also rejected completely, as was lay participation in administrative law.

Deliberations about state legislative interference in social issues gained momentum during the last decades of the nineteenth century. Originally, the idea was that employers and employees should find solutions to conflicts without interference from the state (the principle of self-regulation). This notion was the basis for the Act on Mediation between Employers and Employees (*Wet op de Kamers van Arbeid*) of 1897. However, this form of third party intervention was not a great success,¹⁶ so in terms of the first social insurance law, the Accidents Act (*Ongevalwet*) of 1901, justice administered by judges took the place of self-regulation. The social element of the administration of justice was acknowledged by the introduction of laymen as judges.¹⁷ Lay judges were able to control the way judges performed their duties to a certain extent, which promoted public trust in the administration of justice. The expertise of the laymen was also relevant, especially the experience that employers and employees had in the business sector and their familiarity with working conditions, so that they approached the facts from a different angle. The literature in the past already mentioned the disadvantages of appointing laymen as judges: their lack of legal knowledge, their commitment to particular interests and their emphasis on emotions.¹⁸

Reasons for lay participation soon disappeared as the scope of the Board of Appeal's work expanded. An increasing number of social security laws fell under its jurisdiction, regulating matters of which lay members had no knowledge or experience. It is unsurprising, therefore, that laymen ceased to play a role in this form of administrative justice when the Administrative Law Division of the District Court took over the duties of the Boards of Appeal in 1992.¹⁹ Roos' empirical research of 1982 undoubtedly played an important role in this turn of events. He concluded that laymen's views were largely dependent on the chairman's attitude and that lay judges hardly had any influence on the administration of justice.²⁰

15 J.A. Levy, Verdient het aanbeveling, het leekenelement aan de rechtspraak ... te doen deelnemen?, in: HNJV 1908/I (part 2), pp. 518-519.

16 C.J. Loonstra, Derden-interventie bij CAO conflicten. Grenzen en mogelijkheden van wettelijke regulering, (Groningen, 1987), pp. 101 ff.

17 T. van Peijpe, Rechtspraak sociale verzekering historisch bezien, in: A.Ph.C.M. Jaspers e.a. (ed.), 'De gemeenschap is aansprakelijk ...' Honderd jaar sociale verzekering 1901-2001, (Lelystad, 2001), pp. 285-287.

18 N.H.M. Roos, Lekenrechters. Een empirisch onderzoek naar het functioneren van de lekenrechters bij de Raden van Beroep voor de sociale verzekeringen, (Deventer, 1982), p. 37.

19 W. Faber, 90 jaren in beroep. Geschiedenis van de raden van beroep en de ambtenarengerechten, (Zwolle, 1992), pp. 62 ff.

20 Roos, cit., pp. 189, 191.

4. The administration of justice by tribunals after the Second World War

Special Criminal Jurisdiction after the Second World War had a legal basis in the Special Courts of Appeal Wartime Occupation Decree (*Besluit bijzondere gerechtshoven*), the Administration of Justice Wartime Occupation Decree (*Besluit buitengewone rechtspleging*) and the Tribunals Decree (*Tribunaalbesluit*).²¹ In his book, *Snel, streng en rechtvaardig*, Romijn discussed in detail the difficult process of sentencing collaborators and the purging of governmental administrations between 1945 and 1955. The Schermerhorn government (24 Jun. 1945 - 3 Jul. 1946), known as the government of recovery and renewal, chose a pragmatic approach, for example in differentiating between minor and major cases.²² I shall limit myself to a discussion of the administration of justice by tribunals.

Section 9 of the Tribunal Decree required the government to establish a tribunal in every judicial district. Every tribunal consisted of a president, a deputy president, members, a secretary and deputy secretaries. The president(s) and secretary/secretaries, but not the other members, had to be lawyers. In the appointment of the 'other' members the government aimed to create a tribunal that 'consisted of persons from different occupations and different industries and social circles of the population of the cities in the districts, so that the tribunal would be able to deal with cases with deep and profound understanding of the factual circumstances and relationships'.

In terms of Section 2 of the Tribunal Decree, the tribunal was charged with judging Dutch citizens who had 'deliberately' acted contrary to the interests of the Dutch population or had compromised resistance against the enemy and its allies during the occupation, either by offering help in any way to the enemy or its allies or as members of the National Socialist Movement of the Netherlands (*Nationaal-socialistische beweging der Nederlanden, NSB*) or affiliated institutions or organisations; or by disobeying orders from the exiled Dutch government; or by acting or failing to act.

The composition of the tribunals of which a lawyer was the president and two laymen acted as judges, soon proved to be an obstacle. Some people feared that the laymen would give in to feelings of envy, hate, revenge, competition, fanaticism and so forth, but others thought these fears were unjustified. The government had ensured that enough precautions were taken, in the shape of recommendations by the County judge, advice from the Queen's Commissioner, and appointment by the Queen on the recommendation of the minister. However, many felt that one of the disadvantages was that the administration of justice by laymen was in conflict with the Constitution, although they felt it was necessary to deviate from the normal situation 'in these abnormal, extraordinary circumstances'.²³ Not everybody was convinced that the participation of laymen in the administration of justice was unconstitutional.

21 Bulletin of Acts and Decrees D 62 and D 63; E. 101.

22 P. Romijn, *Snel, streng en rechtvaardig. Politiek beleid inzake de bestraffing en reclassering van 'foute' Nederlanders 1945-1955*, (Amsterdam, 1989), p. 369.

23 J. Volksrechtbanken, in: *Het Baken. Onafhankelijk Orgaan voor principieele Voorlichting*, No. 3, Mar. 1945, pp. 42 ff.

According to Jonkers, the Constitution did not exclude laymen from the administration of justice, because it did not stipulate that a judge had to be a lawyer. In disciplinary proceedings, non-lawyers were just normal people.²⁴ Van Oven wrote in 1947 that administration of justice by tribunals was still not very popular but he believed that the administration of justice by laymen was a success, and that the rule of law benefited from this improvised administration of justice.²⁵ A few weeks later, an anonymous writer criticised his stance and argued that the special administration of justice should be reduced in the interest of legal certainty in public life and the objectivity of the legal system. The writer denounced the incompetence of some judges, who were inclined to give rein to uncontrolled emotions; and asserted that lay judges based their arguments on emotions.²⁶ There was a huge reaction to this vicious piece of writing. Almost all the responses were positive: the majority of people involved in the administration of justice by tribunals found that involving the lay judges had been a success, and that their knowledge of local relationships and circumstances contributed to the proper administration of justice. According to the president, one of the best assessors was a metalworker. However, critics argued that laymen often used the proceedings to express their negative views or to reprimand an offender, instead of asking questions. Van Oven summarised succinctly: ‘The positive result is good news.’²⁷ Nevertheless, this positive result quickly disappeared from the memory of lawyers.

5. Participation of laymen in the administration of justice in the first decade of the twenty-first century

In the new millennium, jury trials received renewed attention. Bovend’Eert wrote a challenging piece about juries and laymen participation in 2001, based on an examination of the American and German systems. His conclusion is very interesting:

The constitutional history of administration of justice by laymen and the experience with jury trials in other countries justify the conclusion that administration of justice by laymen deserves a more serious consideration than it has received in the Netherlands in recent years.²⁸

His contribution formed a prelude to the continuing debate about lay participation in the administration of justice (including criminal justice). I shall discuss a few of the important arguments both in favour of and against lay administration of justice.²⁹

24 J.E. Jonkers, *De Bijzondere rechtspraak en de Grondwet*, in: *NJB* 1948, p. 44; see also G.E. Mulder & Th. W. Van Veen, *Zuivering*, in: *Tijdschrift voor Strafrecht* 1946, p. 44.

25 J.C. van Oven, *De Tribunaalrechtspraak*, in: *NJB* 1947, pp. 149 ff.

26 Anoniem, *De Bijzondere rechtspleging in den strijd om het Recht*, in: *NJB* 1947, pp. 216 ff.

27 J.C. van Oven, *De Tribunaalrechtspraak*, in: *NJB* 1947, pp. 220 ff., 269 ff., 332 ff. (conclusion on p. 335).

28 P.P.T. Bovend’Eert, *Jury- en lekenrechtspraak in een vergelijkend perspectief*, in: P.P.T. Bovend’Eert e.a. (eds.), *Grensverleggend strafrecht. Opstellen aangeboden aan prof. mr. C.A.J.M. Kortmann*, (Deventer, 2001), p. 22.

29 It is impossible, and unnecessary, to discuss all the articles about the administration of justice by laymen dating from the first decade of the twenty-first century. Searching Google for ‘administration of justice by laymen’ yields an endless list of publications.

The supporters of lay participation advance two main arguments. One concerns lay participation in the administration of justice as one of the principles of democracy or even as a democratic right, because lay participation increases public influence on government actions. It furthers public participation in the government's decision-making process.³⁰ The other argument is concerned with public trust in the administration of justice. Lay participation builds public trust in professional judges; trust that is eroded by distant and formal judges, incomprehensible sentences and mistakes made by the police and the judiciary. It can help overcome the first two objections.³¹

Groenhuijsen, De Roos and Tak (and many others) see no reason to advocate the introduction of lay judges to Dutch administration of criminal justice. The lack of public trust in the administration of justice does not warrant lay participation. There has always been, and will always be, a rift between the public and the administration of justice.³²

6. Conclusion

Arguments against the administration of justice by laymen, and especially juries, have not changed in the past two hundred years. They are that the average citizen lacks knowledge and experience, and is inclined to make irrational decisions based on emotion, pity or feelings of revenge. Consequently, laymen's pronouncements are too mild in some cases and too harsh in others. Their lack of knowledge and experience means that all forms of voluntary self-regulation in conflicts are doomed to fail. In every form of conflict settlement, a professional judge has to be involved, who almost unfailingly plays a dominant role in the settlement of the conflict.

Laymen have always been expected to contribute to the administration of justice if they have expert knowledge in a certain field (for example in agricultural tenancy law or business law). This is one of the reasons why several lawyers advocated specialisation within the judiciary at an early stage, and envisioned a special role for citizens with expert knowledge. This form of lay participation became constitutionally possible in 1922.

The two most important arguments in favour of the lay administration of justice and especially of jury trials have also not changed in two centuries. The participation of laymen is in accord with the democratic principle that citizens should be able to control the government's actions. This principle is connected to public trust in the independence and impartiality of the judiciary. Seeing that almost every European country has a form of lay administration of justice, Dutch politicians and researchers should consider this option. There is always a renewed interest in the lay administration of justice when

30 Bovend'Eert, cit., pp. 16-18; Th. de Roos, *Lekenrechtspraak: een hot issue inmiddels al weer afgekoeld?*, in: *Rechtstreeks* 2007/1, p. 35 and Th. de Roos, *Is de invoering van lekenrechtspraak in de Nederlandse strafrechtspleging gewenst?*, (Tilburg, 2006); Tak, cit., p. 36.

31 Tak, *ibid.*, p. 36; Y. Buruma, *Vertrouwen in rechtspraak*, in: *NJB* 2006, p. 2225.

32 De Roos, *Lekenrechtspraak: een hot issue inmiddels al weer afgekoeld?*, cit., pp. 41-42; M. Groenhuijsen, *Pleidooi voor professionele strafrechtspraak door beroepsrechters*, in: *Rechtstreeks* 2007/1, pp. 18-19; Y. Buruma, *Recht spreken in de dramademocratie. Kanttekeningen bij lekenrechtspraak en motiveringsvereisten*, in: *D&D* 2006, pp. 1077-1088.

the trust in professional judges has diminished. People no longer trust the authority's knowledge. The reaction of most lawyers to the call for more lay participation is very stereotypical; it is not the participation of laymen that would benefit citizens, but an improvement in the quality of the law of procedure and the administration of justice, for example by increased public access, specialisation of the judiciary or more easily understood court judgments.

No one knows what the future will bring for the Netherlands in this sphere. Nothing in the Constitution (Section 116, subsection 3 of the Dutch Constitution) prevents the lay administration of justice, but the trend towards lay participation seems to have been reversed, at least politically.

Abstract

This article describes the participation of laymen in Dutch justice from 1 March 1811 until 2011. History shows that discussion about the participation of laymen in the administration of justice has always related to the level of public trust in the judiciary and state-appointed judges at a certain time. Based on this, three peaks can be discerned in the focus on the administration of justice by laymen: the first decades of the nineteenth century, the first decades of the twentieth century and the first decade of the twenty-first century.