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Abstract

The conditions prevailing in Belgium at the time a managerial approach was approved and introduced into its judicial system is analyzed in this article along with the limitations and consequences for the legal professions. Belgian judicial culture has long been hostile to cost-analysis and an organizational perspective. As in many other Western countries, however, it is now being challenged by the growing impact of the rationale of efficiency. Accepted by some members of the legal professions (who nonetheless question certain of its aspects), the transformations show that the various sorts of existing regulations – legal, political, managerial – at the same time coexist and compete. There have been several outcomes: magistrates' identities are being overhauled, the legitimacy of the judiciary has become even more difficult to establish, and the balance of power among the different legal professions has shifted. Last but not least, the model of what makes for a "good" judge and "good" justice is in the process of being redefined.

Keywords: Professional identity; Legitimacy; Public policy; Managerial reforms; Efficiency; Judiciary; Legal professions; Magistrates; Belgium

"One day, as I felt free to remark in the presence of a chief judge how much was being written about the productivity of justice, he exclaimed: 'That's typical! We're no longer the judiciary power, we're merely a tool!' But Justice still has a conscience...!" (a high-ranking civil servant at the Ministry of Justice).[1]

This controversy between a presiding judge and a top Belgian civil servant, illustrates the tensions that crop up when, as a consequence of having adopted managerial logics and tools,[2] it would seem the exclusive nature of justice were being contested. Typical of management is the fact that organization is done with an eye to cost, efficiency and the quality of output.[3] Such values, unheard of in the world of justice, have taken on increasing importance – though not without stirring up resistance – bringing about changes at three levels: organizational, professional and institutional.

Through diverse strategies, a managerial type of reasoning has progressively found its way into the justice system, particularly by reinforcing accountability, developing forms of evaluation and controlling magistrates, setting up indicators of productivity and workloads, introducing limited mandates and compulsory mobility, and changing common expectations concerning judges both in matters of deadlines and in the way citizens are received. But assessing, measuring and comparing are precisely what trivializes the missions of Justice, casting doubt on the ways it operates.

There is general agreement about the need to modernize and get the best out of the judicial system, so legal professionals and political actors tend to call attention to managerial logics, all the more as they are already being implemented in a good number of Western countries (Sibony, 2002; Fabri *et al.*, 2005, Vigour, 2005; Cavrois *et al.*, 2002; Breen, 2002). What typifies such logics is the widespread use of a vocabulary and procedures that until recently were quite alien to the judiciary: human resources, quality management, clients… Such notions and tactics are gradually being introduced, mixed in with the logics of action with which the legal professions are familiar.

In order to show the concrete forms this ongoing process has taken – and the opposition it has stirred up – we will be stressing the expectations concerning the legal professions in Belgium and how they have evolved, in particular with regard to the magistracy and chief magistrates.[4] We wish to point out that introducing managerial logics into the judiciary has transformed its classical rationality as well as the ethos of the legal professions. What M. Weber termed "ethos" in *The Protestant Ethic and the Spirit of Capitalism* corresponds to a mind-set that confers a specific orientation to action and shapes social and professional praxis through tangible ways of relating to the world and the particular conceptions of rationalization it institutes. But it is not so much the ideas as the practical effects of those representations that count. Consequently, the transformation of these professionals' ethos and of the way they conceive of law and justice is bound to modify their behavior by producing new norms and motivations, bringing about changes in how they regulate and justify their activity, both to themselves and to others.

Thus, to understand how a particular line of thought (which shall be described more precisely below) – typical of management but long unfamiliar to the Judiciary – gradually crept into the system, one must first isolate the reasons why it appeared incongruous with the professional identity of magistrates and analyze the conditions that allowed it to begin to be considered legitimate. The cases of resistance to those changes must then be examined, as well as the tensions they produce from the point of view of magistrates' professional ethos – how it is being redefined and its legitimacy recomposed, altering the balance of power between the various legal professions. For, given these transformations, new models of what makes for a "good" judge and "good" justice have been forthcoming.

1. A mounting uncertainty as to the exceptional nature of Justice

To minimize the changes, a majority of legal actors evoke the very specific nature of Justice. How then are we to interpret the introduction of a managerial type of rationality into the institution?

1.1. Justice has long disregarded every sort of managerial approach

The professional ethos that gave rise to the notion of the exceptional nature of Justice is composed of four major elements:

The first major component is the autonomy of magistrates – their role as interpreters of the law affords them a good amount of freedom – and their independence, based mainly on their official status and the Constitution, although there are differences between the bench (judges) and the prosecution (General Attorneys and their substitutes).[5] Since the creation of Belgium, in 1830, the Constitution has acknowledged Justice as a separate and distinct power on an equal footing with the Executive and the Legislative. Legal obstacles thus curb the social acceptability of projects that aim to make magistrates accountable.

Secondly, though magistrates of the prosecution differ from those of the bench, due to a more marked hierarchy among them and a closer proximity to the Ministry of Justice, both groups nevertheless make up the "judicial body" and are keenly aware of belonging to the same profession, long controlled by the judicial hierarchy and structured around their role of interpreting the law ("*dire le droit*", Bourdieu, 1986).

Thirdly, magistrates' professional culture, focused on legal principles, is by tradition hostile to notions of cost/benefit calculations. The quality of a decision, *i.e*. the thoroughness with which it is written up and the thoughtful care that goes into its formulation, have always been a top priority and taken precedence over speed. As a Dutch-speaking criminologist put it:

> "When justice goes too fast, it seems inconsistent with good justice and you become suspicious."

Jacques Commaille wrote "in praise of leisureliness" («*éloge de la lenteur*»), a position justified by the defense of an ideal and by transcendental values (Commaille, 2000).

Finally, Justice is perceived as an institution that breeds values and symbols. Its modes of thought and action rest on the opposition between the sacred and the profane, unfettered by time or worldly considerations (Weber), to which architecture and juridical rituals bear witness (Garapon, 2001):

> "[In] their symbolic representation, judges were somewhere in the stratosphere, they were not supposed to descend into the arena." (French-speaking judge at the Court of Appeals, member of the Magistrates' Union, *Association syndicale des magistrats*, ASM)

In our interviews with magistrates and members of parliament (MPs), two expressions repeatedly emphasized that a-temporal image of Justice: interviewees pictured it as an "ivory tower" turned in upon itself. References to its archaic instruments and methods – writing with a "fountain pen", for instance – alluded to the trouble it is supposed to have to adapt to modern techniques, revealing the difficulty people have in seeing Justice as an organization, *i.e*. a structured community whose actions involve a good number of inter-dependent professionals – clerks and secretaries, lawyers and magistrates – who from input produce output. The controversy in the introductory citation to this article is meant to illustrate that very point.

Due to the strength of the prevailing professional culture, the new model has thus had difficulty being accepted. For the legal actors, conforming to the principles and values of their profession is the driving force – a phenomenon that might be labeled "professional isomorphism" (Powell & Di Maggio, 1991).

1.2. Adopting reforms midway between responsibility and control

Management-inspired reforms were clearly perceptible in the Belgian Judiciary as of the mid-1990s. There were several contributing factors, both temporary and structural, whether at first specific to the judicial system or connected to State reforms.

It took a long time for Belgian justice to surface on Parliamentary and Governmental agendas. The importance of the institutional reforms launched in the 1970s (when the Federal State was in the making) partly explains this. During the 1980s, the Judiciary roused a certain amount of interest – though not as much as the Police – due to Parliamentary inquiries into affairs of terrorism and organized crime, and as a result of the development of security policies but also due to stiffer legal controls over political activities. In 1983, as the courts were called upon to deal with affairs in which political personalities were compromised, the Belgian Supreme Court (*Cour d'arbitrage*) was created to monitor the constitutionality of laws. At the same time, legal actors criticized the lack of human, material and financial resources, a fact put down to the courts' escalating arrears,[6] a criticism that was repeated in the Judiciary Investigation Committees of Parliament. During the 1980s and 1990s, in a context of general cut-backs,[7] the Justice Ministry's budget increased very gradually;[8] little by little, the various jurisdictions were equipped with software, and court decisions and files – replacing hand-written declarations in police ledgers – could be computerized.[9]

But it was unmistakably the political and judicial crisis kindled by the Dutroux Affair that provided a window opportunity for judicial reform entrepreneurs to press for change (Vigour, 2004). With the discredit that fell upon the judiciary – blamed for being both illegitimate and inefficacious – reforms sought mainly to increase accountability and reinforce controls, as one Dutch-speaking prosecutor, a former cabinet director at the Ministry of Justice declared:

> "We have a certain input, as we thought, but we've also got to be able to control, manage, and improve our output, make the judges more accountable […] As the commission put it, 'competence can't exist without responsibility, there's no responsibility without justification, and no justification without control',[10] whether by Parliament or the Ministry… Power and control, we must achieve a balance between the two."

The star reform of the moment was the creation by the Law of December 22nd 1998 of the High Council of Justice (CSJ, *Conseil supérieur de la justice*), an independent public body that belongs to none of the three powers, neither the Executive, nor the Legislative, nor the Judiciary (Kuty, 1999). Despite a reinforced system of controls both internal (by their peers and the hierarchy) and external (by CSJ audits with 50% of the committees being composed of non-magistrates), the independence of judges was guaranteed by the fact that appointments and promotions were proposed by the CSJ and thus more impartial. Ensuing tensions can be explained by the concessions needed to allow reforms to be put into practice between 1996 and 1998: on one hand, a majority of magistrates[11] – backed by certain politicians (Liberals, and particularly Flemish Socialists and Flemish regional parties) – demanded independence from politics (hard to refuse in a context where "influential people" were often strongly suspected of covering up for pedophile networks); on the other, MPs (especially French- and Dutch-speaking Socialists) wanted to compel judges to account for their acts, "not so much how they interpret the law, but rather the way they function" (French-speaking Socialist deputy, member of the Chamber). At the same time, the Law of December 22nd 1998 introduced quality management into the Prosecution Department headed by a College composed of the five General Attorneys who intended to set up permanent audits. Other innovations of the same ilk were put into service: surveys to measure judges' workloads, individual assessments, limited mandates for positions of responsibility (those of president(s) of sections of the Final Court of Appeals, presidents of the tribunal, vice-presidents of the Court, etc.).

The success of managerial concepts in the reforms affecting the Judiciary can thus be attributed above all to the need to restore citizens' confidence in their country's judicial system after the Dutroux Affair: the independence and greater accountability of magistrates seemed a means to that end. The changes were also backed by magistrates who, active in diverse associations,[12] wanted

to restore the legitimacy of the Judiciary and assure a more efficient public service while consolidating their independence with respect to politics.

These positions were refined during the following term. In the wake of the Federal Administration's *Plan Copernic* (inaugurated in 1999) – which seeks to give managers more clout while reinforcing the accounting system – the Justice Minister Ms. L. Onkelinx came forward with the principles for a "Reform of the organization of Justice". A government announcement in July 2003 and two official notes, one in June 2005 and one in March 2006,[13] presented *Plan Thémis* to decentralize the management of certain resources (the budget, personnel, legal disbursements, buildings and materials) and create structures to cope with (among others) magistrates and administrative personnel at the level of the Courts of Appeal and judicial districts. It was the same balancing act once again: enhancing the acting capacity of the chief magistrates on one hand, tightening controls on the other. These projects were explicitly inspired by the experiments carried out in neighboring countries, especially the Netherlands[14] and France. There were managerial implications in other principles of justice too, such as the right to be judged "within reasonable time" endorsed by the European Court of Human Rights, which all point in the same direction.

As soon as the laws were voted, late in 1998, it was clear that several factors were converging. On one hand, one might wonder if, as in the French example (Vauchez & Willemez, 2007), the firm acts of Justice Ministers – compounded by the doggedness of the media since the Dutroux Affair and the fact that major politicians are henceforth put in charge of this important ministry – are not compensating for their loss of political control over official appointments. On the other hand, those projects are also part of ongoing State reforms which concentrate on the way Administration and Government accomplish their missions (Bézès, 2002). Typical of such reforms is how essential management techniques turn out to be: measuring performance (thanks to new indicators), evaluating acts (through *ex post* controls), mastering public spending (implying cost/benefit calculations), dealing with the public, handling personnel, striving for efficiency (Hood, 1991). The reforms depend on rhetoric, knowledge and know-how assumed to be universal and therefore applicable in any and every country or area of public intervention (Bézès, 2002), including non-commercial services such as Justice.

Management reforms in Administration and the Judiciary thus share similar concerns: how to get hold of the most advantageous allocation of funds, how to reduce the time needed to treat a case, control expenditure, make managers more accountable. It is in precisely such a context that the question of the efficacy and efficiency of Justice arises.

1.3. The increasingly significant logic of efficiency

The "quality of public management" (*i.e*. how successful the acts performed by the public authorities have been) has gained in magnitude. In this context, the criteria of efficacy, and above all efficiency, are crucial for evaluating performance. Efficacy is the capacity of an institution or individual to perform the tasks with which they have been entrusted, while efficiency means putting the available resources to their best possible use (the relation of input to output). Efficiency means juggling with cost, quality and time. We will show how, generally speaking and according to similar processes observed in other non-commercial institutions in the West offering public services, a shift from efficacy to efficiency has taken place in a large number of systems that combine the three parameters – cost, quality, and time – in original ways.

1.3.1. From efficacy to efficiency

Since public action derives its legitimacy from the efficacy with which the State carries out its missions (Duran, 1999), that legitimacy also depends on its ability to ensure justice. Efficacy is thus imperative. But since the judicial system is invested with many assignments, it is difficult to describe the efficacy of justice with precision. Priorities fluctuate in keeping with the government's political focus: the accent will be placed accordingly on prevention or repression, social control or peace-keeping. The friction between these two models of justice, discernible between different

systems as well as inside one and the same political project, makes deciding as to the efficacy of justice delicate. Since the decision is the result of comparing predefined objectives to results examined *ex post*, the uncertainty surrounding the objectives explains the difficulty in apprehending the "results" and developing concrete indicators. Given the difficulty of measuring the efficacy of justice, the criterion that tends to be highlighted is efficiency.[15] However, to measure efficiency in matters of justice, one must either look for peripheral indicators in each jurisdiction and Court of Appeals – *e.g*. the time needed to produce or apply a court decision, the number of cases sorted out according to the quantity of personnel available, etc. – (Serverin, 2003) or systematize the means of production of court decisions (as done in the Netherlands, *cf.* Sibony, 2002).

1.3.2. Multidimensional management techniques

Three dimensions of "managerialism" – administrative, organizational and judicial – have been identified (Kaminski, 2002; Raine & Wilson, 1997).

Efficiency means rationalizing organization and resources, and looking to cut costs while sustaining quality at least equal to what existed before. Evaluation implies that results are measurable, verifying that "things have been well done". The idea of appointing a single judge, and the use of statistics and organizational analysis – though the latter is only applied to a limited extent – to put human resources to better use, are a step in that direction. In Belgium, for example, statistical indicators have been developed to measure each court's output, and therefore dispose of a more objective basis for appointing judges, and systems have been set up to control management. Within each jurisdiction the perception of those in positions of responsibility is changing: being a manager is now held in greater esteem, and chief magistrates are in the process of becoming vectors for the Administration's managerial commands.

Emphasizing productivity translates the desire to optimize the flows of files and people and improve output. Making a deal in a criminal case, finding alternatives to pressing charges, minimum sentences and decriminalization have been introduced. Computerization and other new technologies have made headway. Modern or more thorough administrative tools have been thought up to measure and increase productivity: in Belgium, indicators of workloads,[16] group and individual assessments – recurrent in the jurisdictions – have been put in place so as to more accurately evaluate a judge's activity.

Consumerism seems to have left its mark on the "definition of the [judiciary] system as a service industry seeking to satisfy its clientele rather than as a constitutional instrument of public regulation" (Kaminski, 2002, p. 96). Evaluations and audits point in that direction. In response to demands that justice be more willing to listen to victims,[17] and less difficult to comprehend, the dimension of «proximity» (Serverin, 1997), *i.e.* making the judiciary more accessible – including from a financial point of view – is also appreciated. Paralegal services (*Maisons de justice*) opened in Belgium in 1997 and translate that policy, as does the nomination of a judge in charge of communications in certain districts (mainly since the Dutroux Affair).

Thus, better management of the available resources thanks to the new tools – measuring performance, controlling costs – has progressively become an unavoidable requirement of Justice. In that sense, one can justifiably speak of the progressive introduction of a management-type rationality, characterized by the pursuit of productivity and efficiency, and by a consumerist orientation.

2. The change is accepted but not always its applications

The need to modernize and administer Justice better was only gradually acknowledged. Disputed by part of the legal professions (for its applications more than for its principles) modernization encounters organizational problems implying that management techniques have to be adjusted. But, though there is quite general consensus on the need to modernize, it is hardly devoid of ambiguity.

2.1. The limits when transposing Management to Justice

The organizational and institutional specifics of the Judiciary prevent managerial logics from simply being applied; they must first be adapted.

2.1.1. The need to adapt management techniques

Clearly, management and private business have inspired several of the reforms. Nevertheless, the legal professions – especially in the Walloon Region (French-speaking Belgium) – are reticent to apply a form of corporate management that does not take the specifics of the judicial system into account. Even those who look favorably on assessing magistrates' workloads point out the fact that the institution does not produce ordinary or standardized goods, and reject the idea it could be viewed following a logic that is above all mercantile and based on output. Those magistrates feel that what is particularly significant about Justice are its symbolic functions.

> "I don't want to pass judgment on productivity. But it can go too far: the output of justice is not an industrial product! […] The managerial utopia has to be adapted. Walloons are rather prone to think of justice as producing mainly symbolic goods." (French-speaking judge of the bench, having sat on the Supreme Court – *Cour d'arbitrage*)

The fear of exaggerating the notion of productivity translates the worry that Justice could as a result be reduced to an ordinary, profane institution – which would also be a slur on their professional identity.

Many limitations come to the surface when transferring managerial logics from the private sector to the Judiciary, especially since there are several basic parameters that chief magistrates do not control.

2.1.2. Three major organizational limitations

Three structural limits considerably get in the way of persons who occupy positions of responsibility, even though recent reforms aim precisely at giving them more freedom to act.

In the first place, independence and tenure – which typify a judge's status – grant them considerable autonomy. A chief magistrate thus has little say in the allocation and supervision of tasks. Since magistrates are appointed for life and cannot be transferred against their will, being in charge of human resources in a jurisdiction often consists in "making do" with the individuals at hand. Today, however, a distinction tends to be made between independent judgment and autonomous execution, the latter being a likely target for reorganization. The new wording of articles 151[18] and 153 of the Constitution – which introduced time-limited mandates in 2000 – explicitly took this into account.

Also, since personnel, budget, and their geographic distribution are external realities, the absence of financial and managerial autonomy in the jurisdictions further restricts the pertinence of a managerial approach:

> "A firm has capital, human resources, and control over its spending … whereas in the justice system, that is not at all the case… [Jurisdictions] control neither their capital, nor their human resources, nor their objectives… In affairs of justice, everything depends on third parties, the government or the parliament; it's not the judges or the prosecutors who decide." (French-speaking King's Counsel – *procureur du roi* – subsequently judge at the Last Court of Appeals)

Therefore, at present there is little flexibility in managing resources.

Finally, the a-cephalous or multi-cephalous composition of the Judiciary – depending on whether one considers the small amount of actual power a court president or Attorney General wields over the main professional actors of a trial (magistrates, clerks and lawyers), or the number of people contending for authority in a single jurisdiction (head clerk, President of the tribunal or King's Counsel) – is made more complex still by the lack of a single, clearly identifiable decision-

maker who could coordinate its activities. For example, the President of a tribunal has absolutely no way of controlling a clerk:

> "You have no authority whatever over the clerk in Counsel's secretariat. The administration that does the work is completely self-sufficient. It's as if, in a firm, the director had nothing to say about how the secretary does things!" (French-speaking magistrate of the bench, member of the CSJ)

To be the main person in charge is a stake for which many compete and triggers professional conflicts. An organization of this sort is incompatible with the very strong sequential interdependency that exists among the judges of the bench, prosecution and clerks – since the output of one becomes the input of the other. But, in order to thoroughly transform the judicial system and make it more efficient, it is also mandatory that all the actors in a case become sensitive to the issue and accept to reconsider some of their practices in consequence. For everyone to do their own thing in their own time without taking others' work into consideration is quite the opposite of a managerial approach, which is "basically a hierarchical way of doing things" (Mattijs, 2006).[19]

Since the Ministry of Justice is divided into several vertical, specialized departments, and since the CSJ has other prerogatives, nobody is responsible for the horizontal harmonization required for justice to be rendered "within reasonable time". That is why the legal file remains one of the principal instruments of harmonization (even though, locally speaking, it may be in the actors' interest to consult each other, since coordination is one of the conditions for efficiency). Placing the judiciary in a managerial perspective means counteracting the tendency to fragmentation, coordinating actions and spelling out each person's responsibilities. Ongoing reforms are looking to slacken existing limitations by promoting mobility for magistrates wishing to access certain functions, and by spelling out responsibilities in *e.g.* the financial management of jurisdictions.

2.2. A general yet ambiguous consensus

Many magistrates today feel that demands to make them accountable and improve efficiency are not unjustified – especially since those injunctions prevail in every other sphere of activity today – so long as the principles of management are made to adapt to their institution:

> "Accountability and evaluation are normal, since they are everywhere today… It's a way of making magistrates responsible and it's useful." (French-speaking magistrate of the Federal Prosecution)

> "You need some sort of control… That's what the CSJ is there for, to intervene when there's a problem… It's an independent body that can break into the ivory tower and not use independence as an excuse to reject every form of change." (French-speaking magistrate from the Prosecutor's office, member of several Social-Democrat cabinets of justice)

Though quite general, the consensus nevertheless remains somewhat ambiguous. On one hand, managerial rhetoric, rather than being what caused the transformations in the first place, provides political and juridical actors with additional arguments in favor of change. The chronological gap between the first calls for innovation and the influence of management on Belgian justice shows this to be true: as of the late 1970s, the Magistrates' Union (ASM, *Association syndicale des magistrats*) pushed for new measures, among which limited mandates and evaluating magistrates,[20] while references to management only first appeared in the rhetoric of the De Clerck Ministry of Justice, as late as 1996-1998. It is thus unreasonable to pin the principle of accountability solely on the fact that managerial discourse penetrated the Judiciary. New arguments were even borrowed from that sort of language to justify the changes. But magistrates also borrow from its rhetoric to create misgivings about the pertinence of certain measures – *e.g.* the penalties that are part of the evaluation system effective as of August 2nd 2000[21] – which goes to show the extent to which the legal professions have made the language of management their own.

On the other hand, certain reforms – launched by them in ways the legislator had not anticipated – contribute to spreading the logics of efficiency, as was the case with the reform that gave rise to the CSJ, which endeavors to depoliticize the appointment of judges and make them more accountable (Kuty, 1999). Deputies thought they could achieve the latter by appointing external members, thus making for a more objective control. But most of the magistrates who are members of the CSJ and elected by their peers also belong to professional associations and are in favor of introducing changes on two main scores: becoming more open to the outside world and improving the way the institution is run.

What is more, some members of the legal professions prefer to "make the first move" and propose changes themselves, rather than having them imposed from above without being consulted:

> "We have to find our own recipes or risk having them foisted on us from the outside." (French-speaking judge in a labor court, ASM)

Their resolve to preserve a large portion of their professional autonomy thus leads certain magistrates to internalize the logics of management.

Finally, there are several ways of resisting the rising tide of management, whether passively or actively – from a sluggish lack of enthusiasm in employing new work methods (Schoenaers, 2003) to discarding an innovation once its main supporter has left the tribunal (Ackermann & Bastard, 1993). Therefore, although management nowadays is more and more ubiquitous, its impact must not be over-estimated.

3. Subsequent effects and tensions

The growing influence of the managerial approach contributes to both redefining magistrates' professional identities and making their legitimacy all the more difficult to establish. It is a source of potential conflicts for all concerned for though the collective organization of work is variously affected, such transformations of the professional ethos nonetheless have the effect of sketching a new portrait of the "good" judge.

3.1. A redefinition of professional identity

The criteria for a "job well done" used to be defined exclusively by the profession itself; today they tend to be partly dictated by external factors. Professional identity and legitimacy have shifted and become integral principles of actions previously unknown in the judicial culture (Paradeise, 2008).

3.1.1. Redefining expectations regarding magistrates

Redefining expectations regarding magistrates – in particular those with responsibilities – is a major change. On one hand, expectations have become more diverse. For example, the profiles defining the skills required for each position, devised by the CSJ,[22], show they are quite different compared to the past: magistrates must no longer only be good jurists, they must also possess organizational and managerial capabilities. To recruit a chief magistrate, aside from the general guidelines specifying the required qualities, detailed index cards exist for each position (first president of the Court of Appeals, King's Counsel, etc.) accompanied by a list of "main tasks" and "expected results" – over twenty skills and a hundred indicators in all. Explicitly conceived as "managers" capable of rallying a team around a project, candidates are required to draw up "management plans", and define their goals and strategies. Despite their very abstract nature, and the paucity of the actual resources available to chief magistrates, such plans clearly reveal the new demands they are supposed to satisfy. As the following conversation between a judge and lawyer illustrates, they are expected to take initiatives to oil the judicial machine:

"*Judge*: the chief magistrate in that town was a good manager, a real organizer.

Lawyer: before, when appointing a chief magistrate, they tended to choose a good jurist or someone considered fairly diplomatic, nowadays that's no longer good enough, they must also be… locomotives…

Judge: …who can stimulate people, motivate them to join a team, make do with the people they've got and get the machine rolling… Good managers put their human resources to good use." (interview with two members of the legal professions, both CSJ presidents)

The certificate proving one took the basic management training course initiated between 1994 and 1999 has become compulsory for certain directorial positions.[23] A quarter of the judges appointed chief magistrates have already been trained, which also means that new communities grow up around the same body of values.

On the other hand, the profiles show that demands have been adapted to the specifics of each function according to the skills each requires; defining a "good" magistrate thus varies with the specific function and jurisdictional level considered – justice of the peace or judge at the Court of Appeals, for instance:

"You don't have to be a legal genius to be a judge, you need someone with a lot of good sense… with his feet on the ground, who knows how to communicate… who's really able to analyze a problem." (Dutch-speaking judge on the bench of the Appellate Court, member of the CNM and the CSJ)

Consequently, a cut-and-dried definition of the "good" judge no longer exists; the necessary skills and ways of conceiving their role are relevant only in context. To a certain point, having integrated the criterion of efficiency means that defining a good professional is no longer the exclusive privilege of the legal professions when non-juridical factors are involved in decision-making, though a unifying process is continuing within the CSJ by redefining quality norms particularly at the international level.

3.1.2. The ideal-type of the modern magistrate

Due to all these transformations, the portrait of the "modern magistrate" – according to the words of one – has been overhauled, endowed with several new, characteristic traits: they must pay attention not only to the quality of a verdict, but to the overall functioning of the judicial institution, be sensitive to the public's expectations.

Magistrates' perception of their role is also changing. While in former times what mattered most was the juridical quality of their acts, today that technical parameter must be adjusted to fit the role of Justice which is not only to pass judgment, but to do so within reasonable time. The means of production of a decision become important – *i.e*. the time it takes to be produced – and taking the citizen's expectations into consideration. A new awareness of the fact that Justice is a "system" in which magistrates are only one of several actors on the production line of legal decisions has dawned, along with the realization that they must act in full cognizance of the interdependency between themselves and the other actors, and of the demands society makes on them:

"What typifies the modern judge is that on top of … being interested in his own decisions, he's also interested in … how the body of which he's a part works […] Before, magistrates used to think …: 'Well, so, a case has come up; I'm going to have to make a decision; we'll see when it's ready; I'll do it well; and when I'm finished, I'll start on another one!…' Today, he realizes there are fifty cases to take care of, with deadlines, so he just does it […] We must accept that we're part of a system." (Dutch-speaking judge of the bench, member of M&M and the CSJ)

Deadlines have become an explicit concern, inseparable from the notion of public service:

"I can't say whether deadlines for decisions are longer or shorter than they used to be, but we know time is of the essence and try to make them even shorter! […] we're a public service, and justice is there to serve the public… The purpose of King's Counsel's is not to

do his job just by closing a case, the purpose is to obtain a positive solution for social problems for which he is accountable." (Dutch-speaking judge, member of M&M and the CSJ)

Cases are followed up to make sure they are advancing.[24] Reference to management is thus a concrete part of the jurisdictions' actual practice, thanks in particular to having assimilated the time element and appointing a new sort of chief magistrate whose abilities in matters of administration and management are regularly assessed.

Once the mandates were instated, positions of responsibility – which used to be attributed on the basis of seniority – could no longer be considered one's due or acquired prerogative ("honorary mandates"); they became "manager's work".[25] The younger generations, more attuned to the organizational approach and the need for modernization, find it easier to access such positions. Since chief magistrates are appointed for life, and reputed to have started their office in 2000, even though the Law of December 18th 2006 introduced five-year, renewable mandates depending on a positive assessment of their managerial skills (instead of single, seven-year stints), a very significant renewal of supervisory staff has taken place:

"*Judge A*: their abilities as administrators and managers have been assessed… And frankly, you realize there's really been a change. The atmosphere in court five years ago and now is very different … Computers and all: our former president wrote his interim orders by hand!

Judge B: We fell from the 19th century right into the lap of the 21st simply by getting a new president." (Dutch-speaking judges, one is member of the CSJ, the other a former ministry advisor)

Mandates confirm how much what was expected of a chief magistrate has changed. Through accountability and the inevitable dynamics of change that ensue, they are major levers in the transformations of the magistracy.

3.2. An increasingly complex legitimacy to construct

Redefining expectations in matters of justice[26] has made explaining the diverse factors that go into creating the legitimacy of the legal professions more difficult. Since the 1970s, and especially since the mid-1990s, the urgent need to justify the judiciary has emerged all the more clearly that – as several discourses on the "justice crisis" indicate – reservations have been expressed as to its validity.

Traditionally, there are two sides to a magistrate's legitimacy, one juridical, one political. Based first and foremost on the respect of procedures and the law, it is rooted in juridical know-how: applying and interpreting the law. That professional foundation is reinforced politically, both because the power to judge is defined by the Constitution and because exercising justice in the name of the people is one of the State's main undisputed prerogatives.

Three complementary forms of legitimacy inspire the application of reforms and internal changes: efficacy, efficiency and the relation to the user, client, or yet again victim. The point was made by a Liberal French-speaking MP, member of the Parliamentary Investigating Committee on the Dutroux Affair, who also noted the number of different qualities people expect from justice: punctuality, a sympathetic ear, access …:

"One must answer the citizen's main preoccupation […]: efficacy: 'my case is not getting anywhere!' [Then], what justice has to face up to today, is that defendants complain about how their case is going and also how they are being treated as individuals, and especially… as victims […] We still have to make justice more accessible, more efficacious, respect the rights of victims, speed up procedures, and so on."

Efficacy and efficiency are important conveyors of legitimacy, so that the weak points of Justice – its lethargy – are part of what makes people lose faith. The complex web of forms of legitimacy in the magistracy is made more intricate still when converting to the logics of output. To

serve Justice correctly no longer boils down to simply producing a technically satisfying decision, but also doing it within "reasonable time". Extending citizens' personal rights boosts the proficiency of the system, but also people's hopes:

> "When individuals possess more and more rights … and the Judiciary is more and more competent… citizens have a right to a system that works … As member of the State Council (*Conseil d'Etat*), I was able to observe a complete reversal of outlook!" (French-speaking judge of the bench, State Councilor, *conseiller d'Etat*)

In that sense, efficiency has become one of the principles that determine magistrates' legitimacy on a par with technical accuracy and the ability to judge equitably. We can note here how various modes of regulation both coexist and compete: the juridical, the political, and the managerial. That is the reason why Justice and the legal professions are subjected to partly contradictory injunctions, among which a balance – presently in the process of being redefined – must be found.

Defining legitimacy is a stake fought over within the magistracy itself. J. Commaille (2000) draws attention to two diverging models of justice: one immersed in social issues and one representing the "meta-authority" ("*métagarant*") for social justice. In the first model, legitimacy comes of being close to the citizen; in the second, it depends on juridical competence and detachment. Given the assorted ways the legitimacy of Justice is constructed – through judicial meticulousness, satisfying a State prerogative, proximity, efficiency, efficacy – several different principles clash. There is tension between a justice of proximity (whose legitimacy depends on citizens' involvement in its administration) and justice as the strong arm of the State (assuring citizens' security), but also between how promptly justice can act and procedural guarantees. Aspiring to transparency and proximity also runs counter to the model of justice based on aloofness, traditionally conceived as ensuring its independence and impartiality. During the Dutroux Affair, Foulek Ringelheim – then judge and future member of the CSJ – denounced the risk that a "justice of proximity" might inadvertently become a "justice of promiscuity". Many Belgian magistrates insist on maintaining the "right distance": neither too much empathy nor too cool, interpreted as being insensitive. Arbitrating between several criteria of quality and legitimacy is called for.

3.3. The balance of power among legal professionals is changing

Lastly, seeking to enhance efficiency by introducing new logics for action, different sorts of knowledge, and occupations other than those strictly connected to the law, modifies the competitive relationship between members of the legal professions and politicians.

Relations between the Ministry of Justice and the Budget are strained, particularly fraught during financial negotiations (Siné, 2006). Budget authorities – but also certain MPs[27] – would in fact prefer to rationalize expenses and apply an orthodox form of accounting, while the Ministry of Justice, which does not control the level of expenses incurred by actors in the field, suggests that anticipating part of their operating costs would be impossible. Wanting to be more efficient also means modifying the relations between the Ministry of Justice and the jurisdictions, for in that case the Ministry defends economic rationality. Though insisting on efficiency may mean that the legal professions must forego a degree of power *viz* the administration, conversely, a system that decentralizes part of its resources could mean more latitude for chief magistrates on condition their allocated budgets are not too puny. Tensions also crop up between the judiciary and politicians on the subject of the independence of Justice; efficiency then becomes a pretext to reinforce controls.

On the jurisdictional level, as soon as rendering justice within "reasonable time" becomes a priority, inter-professional cooperation becomes a stake given that the final product is the result of a collective venture. Introducing managerial logics may thus cause friction – between the president of the tribunal and the Attorney general, who have different relations with the Ministry of Justice, or between the president of the tribunal and the clerks – because of their different statuses and mutual autonomy. It is even more difficult to control the activity of lawyers, who represent a liberal

profession (Karpik, 1995). Presidents of the tribunals have a crucial interface role to play as far as the other protagonists in a trial are concerned.

Two examples among others can illustrate how the balance of power at the heart of the Belgian magistracy has been modified. Since the Advice and Investigation Committee of the CSJ was charged with checking how chief magistrates apply the legal mechanisms of internal control (hierarchical controls, discipline, rejections, etc.), prosecutors regularly apply the procedure that allows them to ask the Final Court of Appeals to withdraw a case from a judge who hasn't delivered his/her decision within three months:

> "It used to be very rarely used, or only in extreme cases [when a judge was ill]… But since the CSJ has been doing the monitoring, the Final Court of Appeals has been asked to take hundreds of cases away from careless judges … All of a sudden, prosecutors are applying that sort of pressure." (Dutch-speaking judge of the bench, member of the CSJ)

The CSJ and the Final Court of Appeals are the new resort (in the preceding example to the benefit of the parties and the prosecutors) to make sure that cases are processed with greater alacrity.

Setting up mandates for positions of responsibility – together with incitements to obtain a transfer to another jurisdiction – is also not devoid of both political and professional consequences, as is apparent in the different ways magistrates and deputies perceive the situation:

> "Politicians wanted to show they had the power, so the chiefs had to be cut down to size… There was something basically healthy about the idea that a position should not belong to any particular person." (French-speaking magistrate, first with Prosecution, then on the bench)

> "For magistrates, it's a revolution. They form a pyramid and normally they advance like civil servants; once they're in a position, they can't be ousted, except if they apply for a higher post." (French-speaking Social-Christian deputy, member of the Justice Committee)

It is also possible that such in-house modifications – undermining the hierarchical structure of the magistracy, encouraging internal mobility, introducing dynamics of change, etc. – could have repercussions on their relations with the chief clerks, who are unconcerned by the mandates (whereas a president or King's Counsel, needing time to get acquainted with their new jurisdiction, may be at a disadvantage)**.**

The obligation to cooperate is reinforced by the fact that actors are more diverse in so-called "proximity" systems. Paralegal services (*Maisons de justice*), for example, try to bring together all the actors in charge of auxiliary judiciary activities – *e.g.* applying alternative measures, supervising and controlling probations, receiving victims – to strengthen their collaboration with the judges, lawyers, local authorities, associations, etc. (Cartuyvels & Mary, 2001). Thinking in terms of output also leads to redefining relations between the judiciary and the police (Cartuyvels, 2004), since the results of the acts of both institutions are correlated – prosecuting a person or letting them off, type of sentencing – and because part of the judiciary's activity depends on what the police – who supplies some of the input – does.

Since the logics of action and professional standards of the magistracy are being altered partly by external factors, and partly by the new culture mixing with the old, its modes of legitimacy and values are in the process of being identified afresh, which may result in even more important changes in the organization of labor. If autonomous control is how the legal professions define the quality of the services they render, and heteronomous control how they define the criterion of efficacy – in this case determined by the central administration – it means we are moving towards more heteronomous control, following a trend not reserved to the institution of Justice (Paradeise, 2008). Although magistrates remain to a large extent autonomous in practice, it would seem that existing or planned justice reforms theoretically lead to greater *heteronomy*, both

of action (by introducing logics foreign to the system and transforming the space where professional norms are elaborated) and of control (by reinforcing *ex-post* systems of evaluation).

3.4. Variable effects on the collective organization of labor

Though indisputably part of the professional ethos of magistrates has indeed changed, affecting individual ways of doing things, at the same time the actual organization of work has been very diversely affected depending on the jurisdiction. Comparing eight labor courts* in Belgium and France, Frédéric Schoenaers demonstrated that an embryo of managerial-type rationale can be detected in all the courts he studied, but that in half the way work was organized had changed only marginally. As to the other half, new, more cooperative ways of doing things based on specialization were implemented, thanks to a chief judge's energy, in a spirit of collaboration with the magistrates and other actors of the legal system. Different ways of working can also be observed in the same jurisdiction. Whatever the case, magistrates find they must justify their actions and choices of organizational methods in front of the authorities (Schoenaers, 2003).

4. Conclusion

Following the Dutroux Affair a whole array of reforms was put into practice, both reinforcing magistrates' power and simultaneously the controls to which they were obliged to submit. Reforms were completed by implementing those of the Belgian administration, including the Judiciary. Whereas during the 1970s and 1980s, modernizing the judicial institution was promoted only by a minority of magistrates and was not a major issue for MPs, in the years 2000 it became a ministerial priority. Studying the transformations of the Belgian judiciary under the pressure of managerial logics has permitted us to show that it was a major phenomenon, modifying the ethos of the legal professions and the source of their legitimacy as well as the sense they made of their activity. The professional identity of magistrates has been durably affected, for accountability and making an effort to render justice within "reasonable time" have become an integral part of it. This has brought about changes in individual praxis, and to a lesser extent today, in collective organization too.

The same movement can be found in many Western countries (Vigour, 2005), typified by a rising interest in efficiency, managing human and material resources, organizing, and by the will to measure and count what heretofore was deemed uncountable. Even though precise chronologies and certain factors weigh in differently – procedures take much longer in France and especially Italy, for which the European Court of Human Rights regularly condemns both countries, and legal investigations into politico-financial scandals make a considerable political impact – it is clear that entrepreneurs of justice reform are always present (placed in various juridical and political arenas) and that to all intents and purposes they agree with the other actors implicated in overall State reforms – top civil servants, but also consulting firms. The movement nevertheless raises questions, due to the political stakes involved in the administration of justice. By seeking to make the Judiciary more efficient, certain forces may cause the relations between Justice and Politics to be redefined.

In conclusion, one might say that the increasingly strong hold the managerial approach has on Justice and members of the legal professions shows that, like other State institutions and professions, they have come under the same pressures to become transparent and client-oriented, to seek greater efficiency and productivity, to master costs, be accountable, and accept tougher controls. These similarities stand out clearly in the arguments justifying State reforms (all sections combined[28]), in the directions they take, and in the introduction of new frames of reference and logics of action. More generally, it is doubtless a metamorphosis of the bureaucratic model and of the ethos of the professions involved in administration that we are witnessing today.

Translation: Gabrielle Varro

Footnotes

1 Concentrating on the Belgian case, this article sums up part of my doctoral dissertation on the comparative analysis of reforms in the judicial systems in Belgium, France and Italy. Two main questions guided my thesis: how can one analyze the process of reform sociologically? How are reforms put into action in the justice system? Originally centered on reforms affecting relations between the magistracy and politicians, the analysis was then extended to include the transformations taking place more globally within the entire institution. In fact, reforms are only *one* of several indicators. Focusing on the point where the political sociology of law (Commaille, 2000) connects with the sociology of public action (Duran, 1999) and the sociology of professions, my research included general and specialized press coverage between 1990 and 2003, parliamentary debates analyzed in particular with relation to the creation of the High Council of Justice (CSJ, *conseil supérieur de la justice*), and thirty-odd interviews carried out in 2002-2003 with the main French- or Dutch-speaking protagonists of Belgian reforms. I spoke with magistrates of the bench and the prosecution who belonged to various associations and a range of jurisdictions, lawyers, counsels for the Ministries of Justice or the Interior, members of the CSJ, deputies of every political leaning; not forgetting that – because of the frequent phenomena of multi-positioning – our interlocutors often combine several of these statuses, either at any given time (multi-membership) or due to their professional itineraries (multi-functionalism: Vigour, 2005). I requested interviews first with persons most obviously concerned by the reforms – whose names regularly cropped up in parliamentary debates and the press – and they in turn recommended other people to interview – "allies" or, even more often, "opponents", or yet again high officials at the Ministry of Justice and cabinet members – yielding a wealth of material (the interviews were often nearly three hours long).

2 According to the *Dictionnaire des sciences humaines* (directed by J.-F. Dortier, PUF, 2004), the work includes management (accounting, computer work, premises), organizing (allocating tasks, defining responsibilities), human resources (in-house communications, motivation, remuneration, recruiting and training), marketing (including public relations), and strategy.

3 According to Frédéric Schoenaers' definition of managerial rationality (Schoenaers, 2003: 252).

4 The term "chief magistrate" (*chef de corps*) designates both Attorney Generals and District Presidents, while "chief judge" (*chef de jurisdiction*) refers only to judges of the bench, *i.e.* presidents of a tribunal, First Presidents of the Court of Appeals, President of the Last Court of Appeals.

5 According to Article 151 of the Constitution, modified by the Law of November 20th 1998, "judges are independent insofar as their jurisdictional competences are concerned. The Public Prosecutor is independent in carrying out investigations and individual hearings, which however does not precludie the right of the competent minister to order prosecution or determine restraining measures within the framework of criminal policy, including investigations and prosecutions". Following the saying: "the pen is fettered but the word is free", prosecuting judges are autonomous during hearings. However, up to the year 2000, judges were appointed and promoted by a committee of delegates from the major political parties, so that belonging to a party was practically indispensable in their case. It would seem, however, that when carrying out their duties, an "obligation of ingratitude" shielded them from the undue influence of politicians.

6 Between 1970 and 1988, the number of new cases was multiplied by four, the number of ongoing trials more than tripled, while the number of magistrates went up from 1.600 to 1.900 between 1970 and 1993 (the number of administrative personnel in the Courts rising from 2.300 to 6.000). Judges' posts remaining vacant represent 15% a year and the number of lawyers has augmented threefold. The relative backlog of the Judiciary (*i.e.* the number of years that would

be needed to dispatch all the current affairs supposing a steady pace) increased between 1970 and the early 1990s then slightly subsided before rising once again during the mid-1990s in the civil courts (especially in Appeals, where it totaled eight years in 1991 and four to five years in 1997). The situation was less serious in the criminal courts, where the number of pending cases has augmented less dramatically (in the appeal courts, it could have been absorbed within a single year in 1997). *Cf. A qui de droit ! Vers une relation de qualité entre le citoyen, le droit et la société, Rapport de la Commission Citoyen, Droit et Société à la Fondation Roi Baudouin*, 2001: 51–56.

7 The budget of the Federal Public Service of Justice was 743 million Euros in 1993, more than twice that in 2006 (1.545 millions), all levels of jurisdiction, personnel and penitentiaries included. *Cf. SPF justice, Justice en chiffres*, 2007: http://www.just.fgov.be/img_justice/publications/pdf/180.pdf. The share of Justice in the overall federal budget (including paying off the public debt) was 1.9% in 2005 (final budget), and 2.1% in 2006 (mid-term budget) and 2007 (initial budget).

8 "To fit in with the Maastricht criteria […] if only beyond the budget deficit, we had to reduce the debt, but budgets were not at all elastic, so then we got to wondering whether it was being well managed. Everybody complained there weren't enough magistrates; but where was management? All of that got us thinking about how justice is organized" (French-speaking Liberal deputy, member of the Dutroux commission).

9 Mainly since the early 1990s. To finish computerizing the judicial system once and for all, the Phoenix project (launched in 2001) has taken over.

10 *Cf. Rapport de MM. Dewael et Giet, Documents parlementaires, Chambre des représentants, session* 1997–1998, n° 1675/4: 5.

11 Though the law is manifestly opposed by some leaders of the National Commission of Magistrates, and by a majority of the First presidents of the tribunals and of the Final Court of Appeals, for fear the new system of appointment might challenge the hierarchy within the magistracy and because they are against some of the methods thought up to make them accountable.

12 In two left-wing associations: the Magistrates' Union (*Association syndicale des magistrats*, ASM) created in the late 1970s in Wallonia (French-speaking Belgium), and *Magistratuur & Maatschappij* (Magistracy and Society), founded in 1992, also joined by some of the members in charge of the National Commission of the Magistracy (*Commission nationale de la magistrature*, CNM). Created in 1969, the CNM tries to federate all Belgian associations and trade unions of all categories and regardless of Flemish/Walloon differences, as well as, more recently, some magistrates who created the Professional Union of Magistrates (*Union professionnelle des magistrats*) in May 2001, after the election of magistrates to the CSJ.

13 The government adopted the principles of the reform during the 2003-2007 session; it was to be implemented during the next legislature (after a period of experimentation in a jurisdiction). The first version of the note was submitted to the CSJ for an opinion and alternative proposition, and much debated (even though some of the legal actors found it barely sufficient). *Cf.* http://www.just.fgov.be/themis/PLAN_THEMIS.pdf. A "management plan" passes in review the organization, functioning and strategic targets of the Ministry of Justice and its various departments, *cf.* http://just.fgov.be.

14 The notion of "integral management" is the core of the reform bearing on the organization of the Dutch judicial institution: "the main idea is that, by unifying the responsibilities of presidents and managers in the jurisdictions and in the sections, presidents will be persuaded to adopt more managerial-like attitudes" (Sibony, 2002: 107).

15 Guy B. Peters points out that this is a common dilemma in all the public sector: "Without clear norms (*e.g.* profit in the market), the accent placed on performance called for developing

objective and subjective indicators as well as making greater efforts to evaluate the output of actions in the public sector" (Peters, 2004: 308).

16 Such as the Munas (*Moyennes unitaires nationales d'activités sectorielles* – National unit averages of sectorial activities): Castin, 2005.

17 Pro-reform deputies and legal actors consider that citizens' demands support their arguments.

18 Since 1998, Article 151 stipulates: "In carrying out its missions, the High Council of Justice respects the independence mentioned in § 1".

19 Nonetheless, the author points out that within the justice system, such fragmentation usefully counterbalances the power of the magistrates because *de facto* it limits their autonomy.

20 In the wake of demands for self-government for judges – as in the example of the Italian Higher Council of Magistrates – or other claims inspired by the movement of 1968, such as reducing the number of rungs on the hierarchical ladder or being more amenable to social issues…

21 "[Disciplinary punishment linked to evaluation] is a very archaic way of depicting management … Even in private companies, they no longer do it that way!" (French-speaking judge of the Last Court of Appeals, member of the Union of Magistrates, ASM).

22 *Moniteur belge*, September 16th 2000: 31525–31564.

23 Although some regret the lack of management courses.

24 The president of a tribunal can decide that judges who have trouble respecting deadlines should be assisted.

25 *Compte rendu analytique*, Sénat, November 19th 1998: 3883.

26 Such expectations are obvious in the reform projects, the debates they stir up in Parliament, the general and specialized press, and in the *Baromètre de la justice belge* (a periodic survey since 2002).

27 Thus, many deputies feel it necessary to evaluate magistrates' workloads before augmenting the number of posts.

28 For studies on the sectors of health and the medical professions in Europe, *cf*. Johnson *et al*., 1995; Allsop & Saks, 2002.