The quality of justice in Europe: conflicts, dialogue and politics

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Summary

1. Introduction

In the last ten years, practitioners, policy makers, and scholars increasingly debated about the issue of quality of justice, trying to give positive directions to questions like how to measure and how to improve it. Also the question of what quality of justice (QJ) is, or should be has been debated especially from a practical and policy making perspectives[1] or in terms of tension between judicial accountability and independence (Friedland 1995; Le Sueur 2004; Richardson 2005; Schauffler 2007; Voermans 2007). There are multiple reasons explaining this growing interest, such as the diffusion of new public management (Pollitt & Bouckaert 2006; Spigelman 2001b), budget constraints not experienced in advance by courts and ministries of justice (Wittrupp 2008) and greater availability of data thanks to the deployment of ICT based case management systems (Ng et al 2008; Velicogna 2008).

The outcomes of studies and discussions are unclear both in terms of what QJ is, both as far as concern policy making. There are, however, some common trends:

- Growing efforts to measure the quality in "objective" terms through statistics, and "numbers".
- Tensions and conflicts between what can be identified as the managerial (or economical or organisational) perspective of QJ and the traditional legal or judicial perspective;
- Some attempts to include the People and their expectations in the assessment and improvement of quality;
- A weak link between the evaluation mechanisms (collection of statistics, public opinion surveys etc.) and efforts to improve the quality of justice, so that in several cases, the results of the evaluations are not followed by practical consequences.

To put some order in the emerging landscape of quality in courts, first of all we will discuss three emerging ways through which QJ is evaluated and eventually promoted. Therefore we will not consider in the analysis the traditional systems through which courts performance are evaluated from a legal perspective with tools like appeal judgements even if we will return on this in the conclusions. We will try to focus our analysis on the outcomes (and eventually outputs) of the justice systems and not on the quality of internal components

The first and well rooted innovative approach is focused on performance assessment but does not tell much about what to do once the assessment has been made. The second tries to fill this gap, by linking performance assessment with goals and with organisational consequences such as the budget of the court. The third is based on a different rationale and sees quality development as an organisational learning process based on regular, ongoing improvements. Each approach will be first introduced and then illustrated by case studies so to highlight the methods and the quality dimensions promoted. At the end of this journey we ought to have a chance to identify the key dimensions of quality of justice, offer to the readers some reasons why it is so difficult to improve it, and even sketch a constructive proposal to solve some of the issues at stake.

2. Set the goal and measure it: the performance approach to quality of justice

Tools and methods developed to analyse and improve court performances offer a first way to introduce the question of the quality of justice. Performance is usually defined as the difference between a goal (or a standard) and the actual result reached by an individual (judge, clerk, court administrator), an organization (a court) or by the

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[1] In Europe, a key role has been played by the CEPEJ with a number of studies that can be download at http://www.coe.int/T/dghl/cooperation/cepej/default_en.asp. European empirical studies on quality of justice have been promoted in particular by Marco Fabri, Philip Langbroek, Helen Pauliat and Jean Paul Jean. Jean J-P, Pauliat H. 2006. An evaluation of the quality of justice in Europe and its developments in France. *Utrecht Law Review* 2:44-60, Fabri M, Jean J-P, Langbroek P, Pauliat H, eds. 2005. *L'administration de la justice en Europe et l'évaluation de sa qualité*. Paris: Montchrestien, Fabri M, Langbroek PM, eds. 2000. *The challenge of change for judicial systems. Developing a public administration perspective*. Amsterdam: IOS Press. 307 pp, Fabri M, Langbroek PM, Pauliat H, eds. 2003. *The Administration of Justice in Europe: Towards the Development of Quality Standards*. Bologna: Lo Scarabeo. In the USA, the National Center for State Courts developed several tools to measure and improve court performances (see in particular section 2). In the field of technical assistance related with judicial reform it is worth to mention the work on court performance and judicial reform assessment done by the UNDP, the UNODC and by the Worldbank. Their respective websites offers tools, guidance, and reports relevant for those engaged in developing such tools.

justice system as a whole.[2] The quality of justice, therefore, can be understood and improved confronting the performance of a subject court or of a judiciary with benchmarks, standards, or goals set up by some legitimate authority.

A number of studies have developed tools to measure, assess, and improve the QJ from this perspective. These pragmatic works begin with a list of values to be fulfilled by courts (goals). The list is more or less articulated, as well as the set of techniques, methods and indicators for measuring (or taking into account) the various values or goals. In the cases we are considering, the lists of values to be fulfilled as well as the standards or benchmark are suggestions based on empirical studies, or on the know-how of "experts" or institutions. The American Bar association, for instance, has drafted and endorsed a number of standard in different areas of judicial systems such as court organisation, trial court and speedy trial (American Bar Association 1990; 1992; 2004). Such standards are not mandatory, they are just suggestions that judicial governance bodies are invited to implement for measuring and improving the QJ.

The rationale of this approach is simple: some authoritative source set up a list of quality areas realated with standards or goals, identifies indicators, and suggests methods for data collection. It is taken for granted that the actual results emerging from data collection will be confronted against the goals. Once a gap is identified, those in charge of the administration of justice will implement changes so to fill the gap and improve the quality of the performance in the specific areas.
Several institutions around the world worked to identify quality areas. The UNODC, for instance, in cooperation with the judiciaries of several countries, identified six basic results areas of court operations (UNODC 2006). These include Access to Justice, Timeliness and QJ Delivery, Independence, Fairness and Impartiality of the Courts, Integrity, Accountability and Transparency of the Judiciary, and Coordination and Cooperation across Justice Sector Stakeholders (courts, police, prosecution, legal aid/public defender and prisons). Other examples will be illustrated later on.
Effective quality evaluation must meet several criteria among which clear objectives; reliability and validity of the evaluation methods and of the data (collected and used); independence from personal judgments; employee acceptance of the evaluation system. The indicators should be based on data that is concrete and collectable at reasonable cost. Furthermore, data should be comparable, both between courts and over time for the one court. These measures can be quantitative but also qualitative. In the trade-off between scientific rigor and practice relevance, a decision has to be made taking into account the goals of the court and the fact that the data collection is instrumental to the achievement of those goals[3]. Even if each of these criteria is reasonable, and the rationale is clear, the concrete implementation can be very problematic.

[2] For a general definition see "performance measurement" *A Dictionary of Business and Management*. Ed. Jonathan Law. Oxford University Press, 2006. *Oxford Reference Online*. Oxford University Press. http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t18.e4763

[3] The Judicial Integrity Group (a group of chief justices of developing countrie), with the support of UNODC, DFID and Transparency International identified a number of basic principles and guidelines which should be adopted when developing indicators and respective assessment tools. http://www.unodc.org/pdf/crime/corruption/judicial_group/Third_Judicial_Group_report.pdf

2.1. From Trial Court Performance Standards to Courtools

The Trial Court Performance Standards (TCPS) developed by the National Center for State Courts in the second half of the eighties (NCSC 2001) are a milestone in the development of systems to measure court performances and quality (Ostrom & Hanson 2007). The TCPS identifies five performance areas (Access to justice, expedition and timeliness, equality fairness and Integrity, independence and accountability, public trust and confidence) related with key institutional values[4]. For each performance areas, the TCPS define standards (or goals) and indicators. In total there are 22 standards and 68 indicators. Several methods and techniques have to be used to collect the large amount of data required to implement TCPS. Such burdensome collection has been difficult to sustain even in the pilots (Schauffler 2007) and, after more than one decade, the calls for simplicity and sustainability led to the development of Courtools, a new simpler system based on 10 measures (Ostrom et al 2005). Indeed. Courtools is an answer to the problem of the excessive complexity of the TCPS. The indicators have been selected paying attention to feasibility and sustainability of the measurement; correspondence to the performances they represent, and provide a balanced, comprehensive perspective on the performances they measure[5]. *CourTools* wishes to offer a set of court performance measures related with different areas of quality of court operations.

Table 1 Courtools measures

Measure	Explanation	Key value
Access and Fairness	A survey measures the ratings of court users on the court's accessibility and its treatment of customers in terms of fairness, equality, and respect.	Procedural Satisfaction
Clearance Rates	Number of outgoing cases as a percentage of the number of incoming cases.	Efficiency
Time to Disposition	Percentage of cases disposed or otherwise resolved within established time frames	Efficiency and productivity
Age of Active Pending Caseload	Quantifies the age of the active cases pending before the court.	Efficiency
Trial Date Certainty	Number of times cases disposed by trial (or hearing) are scheduled for trial.	Effectiveness
Reliability and Integrity of Case File	Percentage of files that can be retrieved within established time standards, and that meet established standards for completeness and accuracy of contents.	Efficiency (and integrity)
Collection of Monetary Penalties	Percentage of total monetary penalties ordered in specific cases.	Effectiveness
Effective Use of Jurors	Relevant for the judiciaries making a large use of jury trials as US state courts.	Effectiveness
Cost Per Case	Measures the average cost of processing a single case	Efficiency and productivity
Court Employee Satisfaction	Not a direct measure of key values but an enabler, since motivated employees are supposed to deliver a service of a better quality	Enabler of QJ

Source: (Ostrom et al 2005) The column "Key value" is an elaboration of the authors based on (Clarke et al 2008)

[4] From the perspective of this chapter, each of these areas represents a relevant dimension of the quality of justice.

[5] http://www.ncsconline.org/D_Research/CourTools/tcmp_courttools.htm

Joined up with each of the ten measures, there are indicators and guidelines to select the appropriate evaluation techniques, such as survey, case flow data analysis, etc.
Courtools have been successfully experimented in a number of US Courts and abroad. Even if, differently from TCPS they do not provide a pre-established set of standards and goals, they proved to be a good support system for judicial reform also because they help "court executive teams to [...] (identify performance objectives [and] set set priorities. Besides, they facilitate the sharing of the results" with stakeholders (p. 803) Ostrom and Hanson (2007) so to facilitate the development of a familiarity with performance assessment of court staff and stakeholders that will ease the evaluation.

More generally, the use of performance assessments tools like Courtools have many positive features, including the increase of the level of accountability of the court. However, limitations and difficulties have to be considered. First of all, several problems may arise with the long list of requirements for an effective performance assessment discussed above. Let's consider here the *definition of the goals*. Many studies pointed out that goals of public organizations and of justice systems and are not only multiple but also contradictory (DiIulio et al 1993; Loveday 2000). In these sectors operational goals such as the increase of the market share for a company are simply nonexistent or misleading. A steep increase in court productivity may result in the reduction of the time a judge can dedicate to legal reasoning and this can affect the legal quality of judicial decision making. Therefore, the definition of the goals of a court and of the quality of its services is always problematic and it is crucial to consider who can establish the goals (the court, the Judicial Council, the Executive, the Parliament), how, and through which means they can be pursued. Unfortunately these tools (as well as other recent and ambitious tools such as the International Framework for excellence[6]) do not offer viable solutions. Rather, they suggest shortcuts already used in the private sectors (such as the balanced score card[7]) that are difficult to implement in institutional context in which the promotion of quality takes place in a very intricate structure of values, interests and stakeholders (we will return on this in section 5).
In addition Courtools – as any other performance based approach to QJ – does not tell much about what to do with the results of the assessment. While the model clearly states that a given organization is above or below the expected result (for instance time to disposition below or above the expected goal), it does not give a positive direction about how to improve the performance or the quality. The question of "how to fill the gap" is dealt in a different time, with at different set of tools and a different know-how. As we will see in the next section, other approaches clearly link the results of a quality assessment with organisational measures such as court budget, while

6 http://www.courtexcellence.com/index.html

7 The balance score card suggests to look at organisations from four perspectives: The Learning and Growth Perspective, The Business Process Perspective, The Customer Perspective The Financial Perspective.
http://www.balancedscorecard.org/BSCResources/AbouttheBalancedScorecard/tabid/55/Default.aspx
But what remains difficult, especially in judicial system, is the translation of the assessment into policies to improve the quality. In a private company this should be done by the vision and strategy of the top management, but this is not easy to transfer into a professional and independent organisation like a court.

others proved to be able to manage in a joint process quality assessment and quality improvement by enabling learning environments (see section 4).
While these are the cons of the performance assessment model, it is important to point out also the pro. First, the use of such models increases enormously the transparency of courts and hence the key value of judicial accountability. Second, the performance assessment tools represent one of the first attempts to introduce sound managerial methods into court operations. If twenty years ago the idea of using managerial tools into court of law was strongly challenged, now it is accepted that courts should be able to include such methods in their operations (CEPEJ). The extents and the methods to be used are however still under debate as we will see in the next section.

3. Link budget with results: the quality management approach to quality of justice

A second approach to QJ is strongly rooted in New Public Management. The underlining idea is that the use of methodologies and techniques broadly adopted in the private sector would have improved the efficiency and effectiveness of the public sector without undermining other values. In this framework many judiciaries developed quality management systems inspired by management by objectives (MBO).
As with the performance assessment, this approach is based on measurement of the result in a given set of performance areas. But differently from performance assessment, here the evaluation is strongly entangled with the management of the court. Goals are established by some authority or with the participation of the members of the organisation. Goal setting should clarify the mission of the institution and, when the goals are shared, facilitate the coordination of activities. Once goals have been set up and results measured (with the techniques discussed above), consequence at some level must follow so to improve performance areas and quality. Consequences can be at different levels and entails different issues. At individual level they may be linked with changes in salary or upgrades, at organisational level they may entail procedural or structural changes, variations in budget, or a consultancy by an advisor. At institutional level consequences may entail changes of the budget of the judiciary or the implementation of a judicial reform program. The work done by the Dutch judiciary following this approach is discussed in the next section.

3.1. Quality Management in the Dutch Judiciary: Lamicie and RechtspraaQ

Quality management is one of the pillars of the reform wave that updated the Dutch Judiciary in the last decade. The major objective of the reforms was to allow the courts to administer themselves independently from the Ministry of Justice. This greater independence was to be coupled with the need for the courts to follow a certain level of efficiency and meet different quality standards. "Quality management" is the tool developed by the Dutch judiciary for pursuing a tight coupling between performance assessment and management of courts, so to grant at the same time independent administration and institutional accountability. (Ng 2007)

Quality management is coupled with the budgeting procedure. Since the establishment of the Council for the Judiciary in 2002[8] the Ministry of Justice negotiates the budget for the Judiciary with the Council, and keeps the responsibility to submit the budget proposal to the Parliament. In its turn, the Council for the Judiciary allocates the budget to each court considering the workload and the performances. Each court has its own court board, chaired by the court president, in charge of managing the court with the budget received (*ibidem* p. 185-6).

In this framework it was necessary to develop a workload-measurement system to set up the budget on the basis of the expected workload of the court, to evaluate the managerial performance (productivity) of each court, as well as to collect indicators for the "judicial quality" of court activity. The solution found is twofold: the Lamicie-model and, the RechtspraaQ. Even if they are formally independent systems, there are connections that must be shortly discussed.

The system developed by the Dutch Council for the Judiciary to measure the activity of each court so to allocate the budget in a fair and effective manner is called Lamicie model. Linking standards (number of minutes required to handle each kind of case) with budget (calculated on the bases of the estimated workload of the court) is in line with MBO approach to quality of justice. The model estimates the time (minutes) that judges and staff members are supposed to spend to finalise a case[9]. Each year the Council for the judiciary establish a target of working hours for each judge (for example 1.137 hours in 2003, 1.151 hours in 2004) indicating the number of hours a judge is supposed to work in a year. In this way, resources are allocated estimating the number of cases (per case category) that will be dealt with by the court.

No doubts the implementation of a system like this, based on MBO, will push courts toward a greater efficiency in dealing courts proceedings. If their efficiency in dealing with cases is below the standard, they will pile up backlog with consequences in the forthcoming year. But if efficiency is definitely a relevant value for judicial quality, it is neither the single one, nor the most important. Therefore, the use of a system like this could lead to the prevailing of a quality dimension (efficiency) over the others, such as the quality of legal reasoning. Several judges expressed concerns about this (Ng 2007). Aware of this risk, the Judicial council developed as a counterweight an integral quality system called RechtspraaQ, based on a more comprehensive view of quality inspired to the EFQM model(European Network of Councils for the Judiciary (ENCJ) Working Group on Quality Management 2008)p. 20[10].

It covers different quality areas such as regulations, instruments (or resources) and judicial functioning using a broad range of methods including peer review, staff satisfaction survey, users' survey, visits of external observers. Standards or goals are set up bottom up or top down depending on the cases. The measurement of judicial functioning includes quality indicators related to the independence and integrity of judges, expertise, uniformity of the application law, comportment, speed and timeliness (European Network of Councils for the Judiciary (ENCJ) Working Group on Quality Management 2008)p. 21 The measurement of quality dimension done with RechtspraaQ would lead to organisational inquiry and hopefully to organisational development. Therefore consequences are not directly linked to budgets or resource allocation (as with Lamicie), but to the re-organisation structures and processes.

[8] The judicial organisation act of 2002 reorganised the system and its governance.

[9] At present there are 48 different types of cases each one with its own time estimate

[10] See: www. efqm.org

Despite some of these indicators are related to legal dimension of quality of justice, independent assessment of the system point to the fact that quality is oriented towards "organisational quality" (Ng 2007), and not pays the required attention to the "legal quality".

Based on a recent study (Langbroek 2010) criticisms now concern the separation between managerial values of efficiency and timeliness and those of quality management. A complaint was related to the financing system, as many of the interviewed showed concern for the fact that the management seemed to be interested predominantly in quantity and timeliness. They felt the Council for the Judiciary ignored the aspect of juridical quality in the courts (ibidem).This is probably a consequence of the two quality systems implemented: Lamicie and RechtspraaQ. While it is possible to link quantity and times with budgeting, it is much more difficult to follow this approach as far as concern softer variables as those considered in RechtspraaQ.

Even if RechtspraaQ has been considered as a counterweight of Lamicie, it seems to be too weak to balance the strong drive to efficiency resulting from Lamicie. Generally speaking, it is difficult to counterbalance a system of MBO that is pushing hard toward efficiency and cost reduction. The risk is that the quality system running to include also other values into courts operation, will become the tool through which organisational actors will explore new ways to improve efficiency (the priority) undermining other institutional values. We do not have the data to state that this is the case of Lamicie and RechtspraaQ, but concerns of "having pushed too much toward productivity" emerge also in the advisors that developed and are currently running the quality system together with the need of fostering the dialogue between professionals (judges) and managers (Fijn 2009). As they noticed, the risk is to lose the support of judges or to enter into open conflicts between managerial and legal quality.

The Dutch experience is not isolated. Several European judiciaries have embarked on this managerial method. In France with the *Loi organique relative aux lois de finances* allocating the budgeting to judiciary considering the results achieved or the expected performance (Jean & Pauliat 2006), in Italy with a system of management by objective for court administrators (Contini & Signifredi 2006), in Finland with a simple MBO used for negotiating the budget between courts and the Ministry of justice (Aarnio et al 2005). A similar system is used also in Sweden (Contini 2010). In a previous study (Contini & Mohr 2008) we observed that problems with the use of quality management and MBO in courts emerge in several areas:

1) Who establish the goals: the parliament (as in France), the executive (as in Italy for court administrators), or the judiciary (as in The Netherlands). Judicial critiques are harsher when goals are set up by parliament or executive.
2) Reliability of the measurement systems: even sophisticated statistical systems as Lamicie, produce an aggregate view of courts operation, much less analytical that those used by judges when handling single cases. Organisational or individual consequences based on such aggregate data can be difficult to accept for judges.
3) Which kind of goals can be established and pursued: with the use of these systems goals tend to be managerial (time, quantity, costs), with the risk of overcoming other values. As seen in the Dutch case quality management is effective in measuring and promoting managerial values (efficiency) while it is less effective in assessing and promoting other values.

4) The identification of the consequences that have to follow at financial, organisational, and individual level. A rigid or automatic link between results as measured by the quality management system and consequence can give rise to concerns, resistances and zero sum games[11].

In the same study we found a way out in the use of the results of quality measurement as bases for budget negotiation (as in Finland) rather as absolute measures followed by automatic consequences. The next section will discuss how the dialogue, negotiation and organizational learning can support the development the quality of justice.

4. Reflect on actions: the organisational learning approach to quality of justice

A third way to quality in justice is based on a different approach, inspired by organisational development strategies, and organisational learning. Rather than working to reach a set of goals or standards (as the systems discussed until now – including RechtspraaQ), these methods point to regular improvements of different quality areas. Similarly to the Kaizen model or TQM, they are based on quality cycles aimed at quality improvements (Aikman 1994). Such improvements are based on inquiries on the features (quality) of the services delivered by the court, and on the exploitation of the resource available to get better services. The consequences of this approach entail organisational changes such as the redesign of procedures, structures, and relationships with users and stakeholders. In this section we will illustrate this approach discussing the checklist recently developed by CEPEJ that can be used to trigger such improvements, and then the method built and exploited by several Swedish courts.

4.1. The CEPEJ Checklist for quality of justice

The *Checklist for promoting the quality of justice and the courts* (CEPEJ 2009) is a tool that policy makers and judicial practitioners can use to reflect on and improve different areas or the quality of justice. It is not intended for objective measurements of performance areas (as with performance assessment) nor for linking evaluation of quality with budget allocation (as with the MBO approach). Rather the Checklist is "questionnaire of introspection" that should drive a self-assessment of the QJ delivered by a given subject: a judge, a court, or the entire judiciary. For this reason it is appropriate to consider the Checklist as a reflective tool (Schon 1983). The Checklist is organized in five areas: "four areas are related to the supply side (judicial infrastructure, ministry of justice, council of the judiciary) and one is connected with the demand side (the user of the courts)". (CEPEJ 2009) p. 4. For each area sub-topics are identified and a list of questions given. Self evaluation takes place essentially outcome of the answers to the different questions.

[11] In Spain the attempt to link judges productivity with their salary miserably failed in a clash between the judges association and Judicial council (that developed the system), ended with several rulings of the Audiencia National supporting judges arguments and declaring the system contravened the provisions of the Ley Orgánica del Poder Judicial and since then modulos are no longer applied Contini F, Mohr R. 2008. *Judicial Evaluation. Traditions, innovations and proposals for measuring the quality of court performance*. Saarbrücken: VDM. 120 pp. p. 40-1

The list is very articulated and covers issues at micro and macro level such as the institutional framework, mission strategy and objectives of courts and judiciary, allocation of cases, strategy evaluation, legislation, court proceedings, legal certainty, management of cases, hearing and timeframes, execution of decisions, relationships with partners, access to justice, etc. The strength of this tool is the richness of the checklist articulated in 5 areas, 31 sub areas, and 270 questions. They covers not just managerial quality and values, but also the legal values and keep in focus also the role of stakeholders and the service delivered to court users. The 270 questions clarify how many issues can be related to the judicial quality. At the same time they show how it can be difficult to translate the results of the self assessment by one subject (i.e. the answers given to the 270 questions) into a shared picture of the quality delivered by a court or by the justice system. Besides, as with the performance assessment approach, it remains very hard to transform the quality assessment into innovation, organisational change, or policies. The Swedish example offers a possible solution to these problems.

4.2. Quality work in Swedish courts

The method for quality work developed by the Goteborg court of appeal and by other Swedish courts demonstrated to overcome many of the limits of the other approaches discussed in this chapter.
The focus is on dialogue, organisational learning, and continuous improvements[12]. Rather than confronting the result of a judge, a court or a judiciary against some good standard, or a goal established by an authority, the "quality work" engages judges, court staff and stakeholder in a joint assessment of court's operation and services.

The Swedish judiciary, in manual "Working with quality in courts", (Domstolsväsendets kvalitetsgrupp 2005; Smolej 2005) defined "quality courts" considering the following points:

1. Correct decisions and well-written presentation of reasons.
2. Decisions and summons written in understandable language.
3. Treating parties involved in a respectable manner when approaching the court.
4. Pleasant work environment and atmosphere.

Apart from the dimension of quality relevant for the Swedish judiciary, the case is interesting as far as concern the methods developed to evaluate and improve quality. The idea of dialogue inspires all the quality work. The methods for conducting and empowering the dialogue are different, since different are the organisational and institutional setting of Swedish courts, ranging from large urban courts to very small courts located in isolated rural areas. Therefore we will provide here a simplified description of the method highlighting the common issues of methods exploited by the different courts (Contini 2010).
Dialogue takes place at internal level, between court staff and judges, and at external level, with stakeholders and court users. At internal level specifically trained members

[12] In the mid of the nineties the National Center for State Courts published a booklet on TQM in courts but as far as we know very few courts made serious attempt in that direction and the Swedish courts is one of the few successful attempts in this field. Aikman, A. B. (1994). Total Quality Management in the Courts. Denver, CO: National Center for States Courts.

of the staff interview colleagues, asking about quality strengths and pitfalls and collecting improvement proposals. Then problems and proposals are discussed first in small and then in larger groups. The goal is to have a joint analysis of the quality of the services provided and develop a shared view and consensus about the actions to be taken to improve specific quality areas. The outcomes are the identification of a high number of concrete measures and proposals for the improvement of the QJ delivered by the court. The measures have been implemented, and the results self-evaluated with the same method of dialogue (Hagsgård 2008).

Up to this point the quality work is self referential since it involve just court people, but in Goteborg and other Swedish courts there has been room also for the so called "external dialogue". Staff representatives interviewed lawyers, prosecutors and court users with open ended questions to understand "what is working well and what needs improvement". As for the internal dialogue, evaluations and proposals coming from interested parties were presented to the staff and discussed to identify priorities to be implemented. A further cycle of dialogue (internal and external) allowed the evaluation of the results achieved and to identification of new measures to be implemented. This method for quality work is going on since 2003 at the Goteborg court of appeal (ibidem), and afterwards also in several others courts that implemented such methods with some little variations.

The rationale of this approach is that the improvement of QJ can be boosted in a very simple way: a joint reflection about the services provided by a given courts in which all the relevant players (internal and external) have a legitimate voice. Rather than working to reach a set of goals, this method points to regular improvements of different service areas considering local peculiarities and needs in terms of resources, organisation and users expectation. The quality cycle and the emphasis on improvements make the Swedish approach similar to the Kaizen model or TQM approaches. The method outlines also a new kind of court. A court that becomes a learning organisation in the classical terms pointed out by (Argyris & Schön 1978; 1996). Following their organisational learning approach, such new kind of court succeeded in changing working practices, and the principles informing and guiding organisational and institutional action. The QJ is not just understood and promoted as the correct application of the law, or of sound managerial practices. The QJ is also the result of the joint inquiry on the services delivered and on the capacity of exploiting and recombining in new ways the resources available.

The implementation of the method is just apparently easy. It entails the availability of court people and court users to exchange constructive views about individual and organisational weaknesses, to play positive sum games, to admit the legitimacy of different points of view about the quality of justice. It requires also the belief that is through the dialectic between the different positions that new understandings can emerge and new measures identified. All this require physical and institutional spaces in which dialogue can take place, a consensus reached, and constructive measure identified. This space is also an arena in which the relevant players can work and discuss to balancing the different and competitive values to be fulfilled by judicial systems, an institutional space in which the politics of the QJ can take place.

5. Whatever works, but institutional dialogue is needed

The analysis done in the previous section focused on innovative ways to assess and promote the QJ The first two approaches (quality assessment and quality management) have strong *managerial* connotations both in terms of values promoted

(efficiency, productivity) both in terms of methods (measure and goals). Nevertheless, as we have seen, these managerial approaches offer some space to the *public* (court users, stakeholders) so to collect their evaluations and inputs through surveys so to improve the QJ also in the eyes of the public. Our analysis neglected a third aspect of quality of justice: the traditional approaches to *legal evaluation* (and promotion) of QJ based on legal instruments such as the appeal process. Finally, the last approach is based on dialogue, organizational learning and reflection in action, and it is designed so to offer an inclusive view in terms of values: it can be used to promote managerial, public and legal values.

Legal methods and legal conception of quality of justice - Before assessing the approaches used to develop the QJ introduced in the previous sections, a recall of the traditional forms of quality control ingrained in court operation is required. Indeed, the legal processes of quality control are generally so well established that they are almost invisible from the point of view of quality assessment. Courts have a long history and experience of internal evaluative mechanisms based on law and the appellate process, giving reasons for decisions and the public trial. The same institutional context in which justice is administered includes a number of systems and tools to assess or certify the legal quality of the operations such as the case file and court registry where matters are filed, and where the key procedural events are recorded and organised. These tools provide the means to check that proper procedure and law have been applied in every case. These mechanisms have almost exclusively consequences at the level of single proceedings and not at organizational or individual ones as for the cases discussed in the previous sections. (Contini & Mohr 2008)pp. 27 – 8. Just in occurrence of serious pitfalls of legal quality there are mechanisms to check individual responsibility such as disciplinary proceedings[13]. These legal evaluation mechanisms reflect the importance the judiciary places on protecting and reinforcing the fundamental principles and authority of the rule of law. However, as we have seen in the previous sections, the QJ can be evaluated and improved also from other perspectives. An inclusive conception of QJ should entail also the managerial and the Public components. Even if sometimes these two components are intertwined, especially when justice is appreciated in terms of public service, we will deal separately with each one of the two.

Public methods and public conception of quality of justice –Justice is administered in the name of the People in many democratic regimes, and the People acknowledge the legitimacy of the administration of justice. Court users are the first beneficiaries of the administration of justice. No doubts that People and court users should have a place in the evaluation and promotion of the quality of justice. Traditionally this is granted by the openness of court hearings, the involvement of citizens in decision making as jurors or lay judges, and by the analysis and critiques of jurists and commentators (Contini & Mohr 2008)(pp. 69-71). Also public critiques, protests or rampages (criticizing or endorsing) judges are means to assess the quality of justice. While there has been room for transparency as accountability for the people, since a long time, courts remained closed to the inputs of the People. This has been the solution to 'the paradox of publicity, without which there is no justice' but which at the same time introduces anger and irrationality to the courtroom"(Garapon 1995. p. 289-305).

13 Other legal tools can be the ombudsman, or filing cases for civil or criminal liability against court members.

The new approaches discussed above offers another possible solution to the paradox.
In both quality assessment and quality management there is a place for the eyes and for the voice of the Public. Courtools, for instance, encompass a survey for court users to evaluate access and fairness of proceedings. Their experience confirms that court users are sensitive to *how* decisions are reached and evaluate their court experience through the lens of procedural fairness and not just in terms of winning or losing the dispute (Ostrom & Hanson 2007, p. 801).
The RecthspraaQ makes use of survey as well as of visits of external observers, to assess different areas of court operations (European Network of Councils for the Judiciary (ENCJ) Working Group on Quality Management 2008; Langbroek 2010). Also the CEPEJ checklist, and more generally the policies for QJ endorsed by the CEPEJ (CEPEJ 2005; 2009) endorse the involvement of court users in the assessment and promotion of the quality. Finally, the involvement of users and stakeholders is deeply rooted in the method of dialogue and in the inclusive conception of quality it promotes (Hagsgård 2008). What is important to stress here, is the acknowledgement of the role of the Public in quality development in particular of users and stakeholders[14]. Rather than considering the public as a source of irrationality and emotions to be filtered and controlled, they place the public in conditions not only to look at court and at the administration of justice, but also to express views, comments and give suggestions to improve the services.

Managerial methods and managerial conception of quality of justice - Quality assessment and quality management deals with quality from a managerial perspective. To sum up an authority set up some kind of standard or identifies some goals; the courts, their organisational units (chambers, departments etc.) and each single member of the staff is engaged in their implementation; there is an assessment followed by some consequences in order to acknowledge the positive results or "sanctions" the lack of results. Courts can have an active role in setting up the standards (or the goals) or just work to implement the standards set up by something else (such as parliament, government, judicial council etc.). The quality is understood and appreciated mainly considering the capacity of courts to reach expected standards and goals.
Even if in each of the examples we can appreciate quality indicators not only related to managerial values[15], it remains difficult (or even counterproductive) to operationalise legal values such as judicial independence or uniformity of the law or to state clear and reasonable goals related with such values. As nicely pointed out by the chief justice of the New South Wales (Australia):

> *"[...] not everything that counts can be counted. Some results or outcomes are incapable of measurement. They can only being judges in a qualitative manner. Justice, in the sense of fair outcomes arrived at by fair procedures, is, in its essential nature, incapable of measurement"*(Spigelman 2001a).

[14] All these actors have a direct view on the functioning of a specific court and therefore evaluate and promote the quality of something they directly know. European experiences shows that it is more problematic the involvement of those who have a knowledge of courts influenced by the media. Contini F, Mohr R. 2008. *Judicial Evaluation. Traditions, innovations and proposals for measuring the quality of court performance*. Saarbrücken: VDM. 120 pp. p. 71-3

[15] As we have noticed, TCPS, Courtools and RechtspraaQ include legal values such as judicial independence and uniformity of the law.

Indeed, it is the requirement of measurability permeating the managerial methods that makes difficult to embed into these models the key values related with the fair trial and the rule of law. The attempt of balancing the drive toward productivity of Lamicie, with a more comprehensive approach to quality (RechtspraaQ) has not been very successful and as result the overall system is pushing toward managerial values and indicators such as timeliness, cost per case or workload. So, while legal methods for quality development lead to the promotion of legal values, managerial methods are supporting predominantly managerial values.
The deployment of these new managerial approaches faced criticisms and resistances. In many countries, individual judges and judges' association and commentators criticised these methods because of they create tensions with legal values (mainly judicial independence) (Douglas & Hartley 2003), or because their measurements are not capable of considering the complexity of judicial tasks (Contini & Signifredi 2006). In some European countries this led to zero sum games between irreconcilable interests with governance bodies pushing toward "managerialism", and judges resisting in the name of legal values. We state therefore, that both legal and managerial methods are designed to promote two different and well establish set values. The question of how to balance the different values to be infused in the QJ remains unsolved.

Inclusive methods and inclusive conceptions of quality of justice – One of the consequences of these developments is that the administration of court is not just a question of impartial application of the law. There are values competing for shaping the QJ in a given context, that consequently become a political issue in the narrow sense of politics defined by Easton as "authoritative allocation of values". Therefore QJ is a matter of values (we identified three main areas of legal, managerial and public), authority (who is entitled to define the values to be fulfilled) and of allocation (through which process, with which means and with which balance).
At this point of our analysis it is clear as the different methods for promoting the QJ works and can be very effective in promoting a given set of values, but they suffer of unilateral and narrow views, and foremost they do not provide adequate means to balance the different areas of values.
The approach developed by the Swedish courts based on dialogue and organisational learning offers a method through which the different perspectives on QJ can be assessed and improved by all the actors involved in the delivery of the services. For this reason the quality conception can be inclusive of the different values and perspective and not polarised as the others. It is through dialogue and dialectics between different parties (judges, mangers, stakeholder) supporting different interests, through the recognition of the legitimacy of the different perspectives, through the exploitation of the resources available in each single court that QJ is improved. The Swedish case is not isolated, since also in Finland, and in the courts of the district of Rovaniemi, a similar method has been successfully implemented (AAVV 2005; Savela 2006) and other Finnish courts are following the same road.

The promotion of quality of justice is new strategic task of judiciaries. As seen, the different approaches work well in promoting specific important areas of quality of justice, but several problems and obstacles can hamper their implementation. Given such difficulties, "whatever works" should be therefore the leading principle for quality development, no matter if the approach chosen is performance assessment,

quality management, or organisational learning. However, since many approaches suffer for narrow view of quality, the dialogue is desperately looking forward when it is time to keep balanced and integrated the system. For this reason, the approach of dialogue and organisational learning is a possible solution to this problem. As seen this method offer different forums in which court staff, judges, and to a different extent court users can meet and discuss. If the *authority* for deciding which changes to be implemented remains in the hand of the apexes of the courts, the involvement of all relevant player and the dialectic method promote a shared view of the areas that can be improved, of the identification of the measures, and so of the allocation of values. All the relevant players are involved, and all the values can be promoted. These forums are therefore the space and the method through which assess and improve the quality. This approach proved to work well at court level, improving quality by taking advantage of local resources and peculiarities more than with discussions on general principles. This avoid unproductive discussions by keeping the focus on what can be do, at present, in a given context. Finally, if the question of QJ is also (and foremost) a political issue, this approach identifies a place in which healthy political dynamics can begin to take place.

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