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Controlling the Courts: New Public Management and the Dutch Judiciary

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ABSTRACT

Like many public sector organizations, in the past decades the Dutch judiciary has come to adopt New Public Management (NPM) practices and processes. In this article, we analyze this adoption from a management and organizational control perspective. Using data from a large survey among Dutch judges, we see a “mismatch” between the nature of the NPM-inspired management control systems and the work-related experiences of the judges and inquire into the consequences thereof for judicial work and organization.



KEYWORDS

New Public Management; management control; Dutch judiciary; quality; job demands; job resources

Among public sector organizations in Western democracies, the judiciary (trial courts, appellate courts, supreme courts, and specialized courts, law tribunals, and boards) traditionally has occupied a special position. Shielded from direct legislative and executive intervention by their independent position in the “trias politica” constitutional frameworks governing most Western democracies, for a long time the courts have remained insulated from public and political demands for more effectiveness, efficiency, and transparency (De Santis and Emery 2017; Holvast and Doornbos 2015; Schauffler 2007).

This all changed when, in the late 1980s and early 1990s, courts in many Western countries were confronted with increasing caseloads, while a concomitant economic recession necessitated budget cuts, which prompted a renewed interest in court delay and litigation costs. This coincided with the rise of movements such as “Reinventing Government” (Osborne and Gaebler 1992) and “New Public Management” (NPM) (Diefenbach 2009; Hood 1995), according to which public sector organizations should become more “business-like,” efficient, and transparent.

In the United States, these developments led to the creation by the National Center for State Courts and the U.S. Department of Justice of the Trial Court Performance Standards (TCPS), later CourTools (Fox, Yamagata, and Harris 2014; Keilitz 2014; Schauffler 2007), a development applauded on various pages in the influential book by Osborne and Gaebler (1992, 142, 350, 353). A decade later, the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe launched a comparable policy stream, directed at improving judicial accountability, not only for the provision of a fair trial under the rule of law but also for the provision of good-quality judicial services and an efficient and effective administrative organization of trial capacity and services (Ng, Velicogna, and Dallara 2008; Mak 2008; Piana 2017). This led to a new view of judges, no longer “exclusively as an independent decision-maker, but also as an actor

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with a role to play as part of a public organization delivering services to the public” (Contini and Mohr 2007, 27–28; Mohr and Contini 2007).

Among European countries, the Netherlands in particular adopted important aspects of NPM in its judicial system, in which a part of the judiciary played an active supportive role (Sterk and Van Dijk 2016; Stroink 1998; Van den Knaap and Van den Broek 2000). However, after a decade of working under the new system, resistance reared its head. In 2012 and again in 2015, judges issued manifestos and surveys criticizing the new system, which in both years were signed and supported by one third of all judges (Berendsen et al. 2015). In 2016 judges even used the survey results to directly petition Dutch Parliament and in 2018 actively supported a bill to change the budgeting rules for the judiciary (Berendsen et al. 2018). All these constitute major signals and rather unprecedented moves from a normally quiet and detached group of public-sector professionals (Ng, Velicogna, and Dallara 2008; Visser 2016).

In this article, we analyze the development toward NPM ways and means in the Dutch judiciary from a management and organizational control perspective. In particular, we inquire into the question of how judges could become disenchanted with the concrete results of these NPM-inspired developments, in spite of the active role of a number of them in the whole process leading to those results. Corroborating more general stories of disenchantment with data from a large survey among Dutch judges (Fruytier et al. 2013), we see a “mismatch” between the nature of the NPM-inspired management control systems and the work-related experiences of the judges and inquire into the nature of this possible mismatch and into the consequences thereof for judicial work experiences.

Toward these purposes, we first describe the main features of NPM as a form of management and organizational control and how these have been developing in the Dutch judiciary over the past decades. Second, we present and analyze the survey data from Fruytier et al., after which this article is rounded off with conclusions, discussion, limitations, and implications for practice and theory.

NPM and management and organizational control: theory

NPM generally implies that public-sector organizations should become more efficient and effective in their public services delivery, and more transparent and accountable in their administrative processes. Specifically, they should increase their ability to detect and correct societal problems, and thus improve the quality and quantity of public services delivery (Osborne et al. 2015; Van Dooren 2011; Visser and Van der Togt 2016). Further, public-sector organizations should be made publicly accountable for their performance and achievements, and thus increase their responsiveness to social and political demands and deliver “value for money” to the taxpayers (Bovens, Schillemans, and 't Hart 2008; Sabel 2004; Sabel and Simon 2011).

To accomplish this, under the influence of NPM public-sector organizations have become “flat” and “accountable” (Hood 1995; Sabel 2004). Flat implies that policy executing agencies at “street level” are administratively separated from the central policy-making and political authorities. Instead of the existing departmental pyramidal structure and hierarchical forms of governance, a flatter structure with contractual forms of governance has been instituted, sometimes reducing the scope of government by contracting out to private parties. Accountable implies that these street-level bureaucratic instances are contractually obliged to achieve the general goals, set by central political and bureaucratic authorities, by having those goals translated into detailed administrative targets, by having their compliance with those targets quantitatively measured by numerous performance indicators, and by being subject to financial incentive and sanction systems, designed in the service of these targets (Bevan and Hood 2006; Bovens, Schillemans, and 't Hart 2008; Visser 2016).

NPM implies an approach to management and organizational control as a cybernetic model, connoting a “process in which a feedback loop is represented by using standards of performance, measuring system performance, comparing that performance with standards, feeding back

information about unwanted variances in the system, and modifying the system” (Green and Welsh 1988, 289). Preconditions for such a system are that objectives of performance activities are relatively unambiguous, that outputs of activities are relatively easily measurable, that effects of management interventions in those activities are relatively well known, and that activities are repetitive (Jansen 2008; Hofstede 1978, 1981; Verbeeten 2008).

As evidenced in NPM practices, cybernetic control in this vein mostly takes on a distinctive form of management “by the numbers,” characterized by a fascination with “objective,” simple quantifiable performance criteria and an overemphasis on highly visible and observable behaviors to the detriment of less visible and observable behaviors (which, however, may be equally or even more important for the organization) (Diefenbach 2009; Kerr 1995). As such, it is only suited for the control of routine industrial production and manufacturing processes. When objectives of performance activities are more ambiguous, outputs of activities are difficult or impossible to measure, effects of management interventions in those activities are relatively unknown and activities are nonrepetitive, the routine-type control should be replaced by more intuitive, judgmental, or political types of control (Hofstede 1981; Noordegraaf and Abma 2003).

Problems arise when there is a mismatch between the nature of the activities to be controlled and the nature of the management and organizational control system. Application of routine-type control to other than industrial manufacturing activities may lead to “gaming,” following which employees “tinker” with the control system by changing performance objectives, changing output measurements, making unintended interventions, by withdrawing from the control system altogether, or by goal displacement, whereby the organization’s objectives are replaced by the measurements (Hofstede 1981; Kerr 1995). Many dysfunctional and perverse effects of gaming have been assessed in the literature, among them additional “red tape,” tunnel vision, risk avoidance, symbolic compliance, short-termism, and a lack of interorganizational responsibility for cross-cutting problems (e.g., Bevan and Hood 2006; Diefenbach 2009; Noordegraaf and Abma 2003; Osborne et al. 2015; Pidd 2005; Sabel 2004; Teelken 2012; Van Dooren 2011; Van Thiel and Leeuw 2002; Verbeeten 2008).

However, managers want to make routine control systems work, and often react to instances of gaming by intensifying this type of control. This, by virtue of its increasing inappropriateness to the situation at hand, may lead to an illusion of control, in which the theories on which control is based increasingly tend to replace the real world. The illusion of control often only can be maintained in a punitive atmosphere, in which accountability tends to take an instrumental form: vertical and hierarchical, centered on individuals who are believed to be driven by self-interest and opportunism, in a context of legitimate mistrust, hard controls, and disciplining (Visser 2016; Vosselman 2016).

NPM and developments in the dutch judiciary

Historically, the Dutch judiciary has been deeply influenced by the so-called French period (1795–1813), during which the Netherlands (like most of northern Europe) indirectly and later directly was ruled by the French. Among others, this period brought a strong French influence on the development of Dutch civil and criminal law, and it inspired a geographical organization into 19 “arrondissementen” (trial courts) and five “ressorten” (appellate courts) that was to last for 175 years (Langbroek 2010).

In terms of legal philosophy, the Dutch judiciary also inherited some typical French characteristics. First, Dutch courts do not have the power of judicial review, and thus cannot make judgments about the constitutionality of actions of the executive and legislative branches of government. This is particularly visible in the role of the Dutch Supreme Court (“*Hoge Raad*”) that functions as a court of cassation in the French mold, rather than an authoritative interpreter of the constitution as “supreme law of the land” like the U.S. Supreme Court (Grossman and

Wells 1988, 96; Langbroek 2010). Second, and related, in their interpretation and application of laws Dutch judges in general consider themselves bound to the goals and intentions of the legislative and executive branches passing those laws, in a manner reminiscent of Montesquieu's famous dictum that "les juges de la nation ne sont, ... que la bouche qui prononce les paroles de la loi; des êtres inanimés, qui n'en peuvent modérer ni la force ni la rigueur" (cited in Mohr and Contini 2007, 287; Merryman 1996). It has led to a generally low political profile of Dutch judges, who only reluctantly decide on cases having strong political implications or impact (Langbroek 2010).

In terms of selection and tenure, the Netherlands has a mixed recruitment system, following which prospective judges are recruited not only among recent law graduates, but also among experienced members of the legal profession. Contrary to the U.S., Dutch judges are never elected, and contrary to many European countries, Dutch judges are almost all full-time employed professional judges. They are appointed for life, and although they can be dismissed by the Dutch Supreme Court, this has almost never occurred. Selection, training, and career development are managed internally by the judicial branch (Holvast and Doornbos 2015; Langbroek 2010).

In terms of culture and management, until the mid-1990s Dutch judges generally worked as independent professionals, having much autonomy and leeway in determining their judicial work and not paying much attention to matters of management, organization, money, or production, providing a working culture combining "individual autonomy and administrative passivity ... frequently justified by reference to the constitutional doctrine of the separation of powers" (Bunjevac 2017, 815; Langbroek 2010). Judges in those times tended to form an informally operating "corps" of generally like-minded individuals with often comparable, middle- to upper-class backgrounds, habits, and interests, hierarchically on a different level from the judicial assistants and law clerks (De Groot-Van Leeuwen 1991). Internal court organization, case assignment, and work division were informally arranged on a collegial, consensual basis by all judges working in a particular court ("*gerechtshvergadering*") (Ingelse 1996). Court funding was input-based: courts received yearly budgets from the Department of Justice, based on departmental norms for personnel, housing, and other costs. Court presidents could negotiate directly with the Department about these budgets, and often extra budgets were obtained by the more astute or demanding presidents (Holvast and Doornbos 2015; Langbroek 2010).

Many of these long-term characteristics of the Dutch judiciary have changed in the past two decades under the influence of four important NPM-inspired developments. The first development pertains to judicial organization, control, and governance. In the course of the 1990s a steady increase in caseloads necessitated an increase in the scale and professionalization of court organization, while also increasingly criticism was being leveled at the judiciary for being "archaic, inefficient and fragmented" (Holvast and Doornbos 2015, 54). Many judges felt that these criticisms had some merit; subsequently, a number of them became actively involved in thinking how they could manage and organize themselves more efficiently and effectively. Partly their involvement was motivated by a fear of being managed and organized by the executive branch, and thus running the risk of losing much of their judicial independence (Sterk and Van Dijk 2016). In the late 1990s, for a brief period of time experiments were conducted with dual structures for the management of support administrative functions and the management of the judicial work itself. In 2002, however, a fully integrated management structure was introduced, with each court now having one executive board responsible for all administrative and management functions. From 2002 to 2013, these boards consisted of judges who performed these board duties on a part-time basis, but from 2013 onward boards consist of full-time "managing judges." All court boards in their turn since 2002 are overseen by a national Council for the Judiciary ("*Raad voor de Rechtspraak*," hereafter the Council), which has two main functions. First, in many aspects it operates as a "corporate board" for a "holding" of courts. Courts are accountable

to the Council for achieving the norms and standards the Council sets for the quality of judicial work, for the quantity of cases adjudicated, and for the budgets. Second, the Council intends to safeguard the independence of the judiciary from interventions by the executive and political state powers (“trias politica”). The Council is accountable to the Dutch Department of Justice for the administration and management of the judiciary as a whole, and, consequently, the Dutch Minister of Justice no longer can intervene in the management of single courts (Frissen et al. 2014; Holvast and Doornbos 2015; Langbroek 2010).

Related to this, the second development pertains to a changing division of labor within the courts. The increase in caseloads during the 1990s necessitated some division of labor and delegation of tasks to the supporting staff. Currently, judicial assistants and clerks play an important role in preparing cases and writing draft sentences and judgments, leading to courts being organized “less as professional organizations in which professional and supportive (administrative and managerial) duties are conducted separately, and more as businesses, in which labor is divided based on the principle of efficiency” (Holvast and Doornbos 2015, 58; Bunjevac 2017; Frissen et al. 2014).

The third development pertains to a change of emphasis on judicial quality to an emphasis on court quality. From the 1990s onward, quality considerations have come to play an important role in the transformation of the Dutch judicial organization (Ten Berge 1998). At the turn of the century, drawing on the U.S. experience with TCPS, a small project group of judges, support staff, external consultants, and specialists from the Department of Justice developed the first essential indicators for court quality (“*INK*” system). Later on, this has been enlarged into the current, more encompassing, quality system “*RechtspraakQ*.” This system comprises, mostly quantitative, quality norms and standards for the yearly hours of training, reflection, and education for judges and judicial assistants, for the correct motivation of sentences in criminal cases (“*Promis*” project), and for case throughput times (Court of Audit 2016; Langbroek, Van der Velde, and Van der Linden 2015). However, for important quality criteria such as collegial intervention, learning from appeals, and keeping up with recent developments in legislation and case law, no agreed norms and standards have been developed yet. The Council acknowledges that judges themselves should determine the quality standards for their work, but these professional standards are slow to evolve (Albers 2009; Court of Audit 2016; Frissen et al. 2014). A related quality and innovation program with the purpose of digitalizing and streamlining judicial procedures (“*KEI*”) has been put on hold after four years, due to high costs and a lack of concrete results (Van Raalte 2018).

The fourth development pertains to a transition from input to output budgeting. In 2002 a new output-based budget system was established, first based on estimated production and from 2005 onward on realized production. Since then, judicial work is being divided into ten “product groups,” consisting of a total of 53 case categories (e.g., civil, tax, criminal, administrative). For each case category, the “production time” is periodically assessed in units of minutes per full-time equivalent, different for judges and non-judges, on the basis of the “*Lamicie*” system (Sterk and Van Dijk 2016; Van der Knaap and Van der Broek 2000). The basic “minute price” is every three years renegotiated between the Council and the Department of Justice. The “products” involved are sentences, judgments, court orders, hearings, and so on. Every year the Council negotiates with each individual court a budget and an expected production volume, based on the formula: number of cases decided per category \times minutes per case \times minute price. When a court produces less than this agreed volume, it has to pay back 70 percent of the budget that was appropriated for the failed amount of production (be it that a court can never go “bankrupt”). When a court produces more than this agreed volume, it receives 70 percent of the budget that was appropriated for the extra amount of production. The specific sums involved in these fines and compensations for specific courts are part of a special “leveling fund” (“*vereveningsfonds*”) of the Council. Courts are allowed to keep up to five percent of the money, obtained by extra production, as strategic reserves. Most courts also use this national allocation model for internal purposes,

translating the “minute prices” and production volumes into internal production goals for court sections and, ultimately, individual judges (Court of Audit 2016; Frissen et al. 2014; Holvast and Doornbos 2015; Langbroek 2010).

In spite of the active involvement of a number of judges in the process, these four developments appear to have taken the Dutch judiciary in a direction increasingly contested by many judges. This is most pronounced in a Manifesto of seven appellate court judges of December 2012, signed two months later by 700 of around 2,400 Dutch judges:

We are deeply concerned about the organization of the judiciary and the adverse consequences for the internal independence of judges and the quality of the administration of justice. (...) Increasingly, courts are managed like large companies, in which output figures are leading, the Council for the Judiciary acts as a “Board” and court managers as “Divisional Boards.” (...) Over the past few years, output norms and budgets have become dominant. Every year a greater production has to be realized with the same persons and means. (...) As a consequence, the quality of the administration of justice is under pressure, many cases do not receive the attention they deserve, and irresponsible choices have been made to meet outcome criteria. The judiciary is not a place for production workers, but for professionals instead. (Holvast and Doornbos 2015, 49; Frissen et al. 2014)

Methods

Sample and procedure

In response to the discontent visible from the broad support of the Manifesto, in 2013 the Dutch Society for the Judiciary (“*NVvR*”) commissioned a large survey on the nature and development of judicial work among its 2,661 members, which includes almost all Dutch judges and public prosecutors. The survey was completed by 684 members (a response rate of 25.7 percent), of which 615 respondents gave information on their job type or function level. Among these there were 483 judges (364 trial court and 119 appellate court), who constitute the definitive sample for this article, representing around 20 percent of all judges in the Netherlands.

In addition, interviews were held with judges and public prosecutors to gain a better understanding of the survey data. The interviewees were selected from different geographical districts (i.e., North, Central, West, and South Netherlands), organizational levels (trial and appellate courts), and areas of expertise (e.g., civil, tax, or criminal law). Since this article focuses on judges, we only included the interviews with judges. These six semi-structured interviews were held face-to-face by two researchers and were recorded with permission of the judges to improve (inter-rater) reliability.

The survey questionnaire and follow-up interviews centered on the nature of the psychosocial demands and resources in judges’ work as a result of NPM, and their effects on judges’ work experiences. Theoretically and methodologically, the prime source of inspiration of the research was the Job Demands-Resources (JD-R) model. This is a widely used model, originating from industrial and organizational psychology, which focuses on the work-related predictors job demands and job resources in explaining psychological well-being. More specifically, job demands refer in this context to physical, psychological, social, or organizational aspects of the job that require sustained physical and/or psychological (cognitive and emotional) effort or skills and are associated with certain physiological and/or psychological costs (e.g., work pressure, emotional stressors at work). The underlying notion of the JD-R model is that work-related resources—such as job autonomy and social support—have the potential to buffer job demands and, subsequently, can help in maintaining or improving one’s psychological well-being (Bakker and Demerouti 2007, Demerouti et al. 2001; Karasek et al. 1998). It has been estimated that the JD-R model has been applied in thousands of organizations and has scientifically inspired hundreds of empirical articles (Bakker and Demerouti 2017).

Table 1. Description of variables (N = 483).

| Variables | Item(s) | Cronbach's Alpha | (Example) item(s) |
|--|---------|------------------|---|
| Balance between workload and job resources | 1 | – | My workload is currently higher than my resources to cope with these demands. |
| Primary tasks in allocated time | 1 | – | Can you perform your primary tasks (i.e., the essential tasks of your job for the productivity and quality of the job) within the allocated time for these tasks? |
| Perceived workload | 1 | – | On a scale from 1 to 10 (10 being high), can you indicate the level of your current workload? |
| Concessions to quality of work | 1 | – | In order to execute my primary tasks within the allocated time, I have to make concessions to the quality of my work. |
| Actual – desired quality | 2 | NA | (1) On a scale from 1 to 10, 10 being best, how would you grade the current quality of your work? (2) On a scale from 1 to 10, 10 being best, how would you want to grade the quality of your work? |
| Feelings of time pressure | 5 | 0.70 | The number of hours available for preparing assizes is sufficient. |
| Worrying/frustration about the work | 5 | 0.63 | Worries about possible miscarriages of justice keep me occupied. |
| Increased production pressure | 6 | 0.65 | I notice that the number of cases per week I have to deal with have increased over the last couple of years. |
| Satisfaction with work environment | 3 | 0.64 | On a scale from 1 (very dissatisfied) to 10 (very satisfied), how satisfied are you about the ICT support at work? |
| Social support from management | 3 | 0.88 | My supervisor/board helps finding solutions to problems. |
| Social support from colleagues | 2 | 0.61 | If necessary, my colleagues help to finish my work. |
| Autonomy | 4 | 0.70 | I have a lot of freedom in deciding how to do my work. |
| Use of development opportunities | 2 | 0.66 | I use the available development opportunities. |

Measures

Based on the goal of the survey and the underlying JD-R model, the survey questionnaire contained four sets of indicators (for a more detailed description, see Table 1). The first set pertained to symptoms of (increased) workload and contained the indicators *balance between workload and job resources*, *primary tasks in allocated time*, and *perceived workload*. The second set pertained to symptoms of concessions to the quality of adjudication, indicative of possible detrimental outcomes of NPM in the judiciary, and contained the indicators *concessions to quality of work* and *actual-desired quality*. The third set pertained to psychosocial demands and contained the indicators *feelings of time pressure*, *worrying/frustration about the work*, and *increased production pressure*. The fourth set pertained to psychosocial resources and contained the indicators *satisfaction with work environment*, *social support from management*, *social support from colleagues*, *autonomy*, and *use of development opportunities*.

Analyses

In the quantitative analysis, first preliminary analyses were performed in SPSS to check for outliers (frequency analyses and central tendency measures), and to check Cronbach's alpha for the subscales described above. In addition, a factor analysis (PAF) was performed to test the number of dimensions underlying the subscales. Second, descriptive analyses were performed to determine the frequencies, mean scores, and standard deviations of the central variables mentioned in the

Table 2. Descriptive statistics of main variables in the study (N = 483).

| Variables | Mean | SD | Possible range |
|--|-------|------|---|
| Balance between workload and job resources | 2.97 | 0.81 | 1 (job resources match workload) – 4 (workload higher than job resources) |
| Primary tasks in allocated time | 0.72 | 0.45 | 0 (yes) – 1 (no) |
| Perceived workload | 7.79 | 1.47 | 1 (low) – 10 (high) |
| Concessions to quality of work | 2.15 | 0.86 | 1 (often) – 4 (never) |
| Actual – desired quality | -1.13 | 0.94 | -4 (actual quality lower than desired) – 3 (actual quality higher than desired) |
| Feelings of time pressure | 3.59 | 0.68 | 1 (low) – 5 (high) |
| Worrying/frustration about the work | 3.05 | 0.58 | 1 (low) – 5 (high) |
| Increased production pressure | 3.64 | 0.61 | 1 (low) – 5 (high) |
| Satisfaction with work environment | 6.44 | 1.15 | 1 (low) – 10 (high) |
| Social support from management | 3.41 | 0.85 | 1 (low) – 5 (high) |
| Social support from colleagues | 3.93 | 0.63 | 1 (low) – 5 (high) |
| Autonomy | 3.52 | 0.68 | 1 (low) – 5 (high) |
| Use of development opportunities | 3.95 | 0.58 | 1 (low) – 5 (high) |

previous paragraph. In the qualitative analysis, first the interview data were anonymized and generally transcribed. Subsequently, the data were analyzed using the following steps in the framework approach (e.g., Pope, Ziebland, and Mays 2000): (1) familiarization with the raw data using the transcripts and audio tapes; (2) identifying a thematic framework by which the data can be examined (in this study NPM and JD-R theories); (3) indexing by applying this theoretical framework to the interview data; (4) charting or rearranging the data (synthesis) resulting in charts reflecting condensed views and experiences of the six respondents with regard to, for example, their workload; and (5) mapping and interpretation of the charts to map the range and nature of the central variables studied and arrive at central underlying themes (e.g., workload, psychosocial demands). These central themes are described in the next section and supported by citations.

Results

Descriptive analyses of the survey data reveal that most judges experienced a high level of workload (Table 2). A full 73.5 percent of the judges answered “sometimes” or “often” to the question whether the workload was higher than the resources to cope with these demands (mean is 2.97 on a scale from 1 to 4). In a follow-up question, 76.4 percent indicated that this workload increased during the previous year. Further, 72 percent replied that they cannot execute their assigned primary tasks within the allocated time. The most important reasons are the high number of cases or tasks (58 percent), the complexity of the cases or tasks (49 percent), and the additional tasks to be executed that deviate from the primary tasks (31 percent). To compensate for this shortage of allocated time, 69.8 percent work overtime. Also, 71.2 percent of the judges indicated that they “often” or “sometimes” make concessions to the quality of the work in order to execute the assigned tasks within the allocated time (mean score 2.15 on a scale from 1 to 4). When asked about the quality the judges deliver currently and what they would like to deliver (on a scale from 1 to 10), the mean difference score is -1.13, meaning that on average the judges feel that they deliver lower quality than desired. Finally, the judges’ mean experienced workload, on a scale from 1 (low) to 10 (high), is 7.79. Based on these indicators of workload, we conclude that the judges experience high levels of workload, that this increased over the last couple of years, and that it has detrimental effects on the quality of their work.

Table 3. Differences between trial and appellate court judges

| Variables | Trial court judges (Mean) | Appellate court judges (Mean) | Significance of difference |
|--|---------------------------|-------------------------------|----------------------------|
| Balance between workload and job resources | 2.93 | 3.08 | # |
| Primary tasks in allocated time | .74 | .66 | # |
| Perceived workload | 7.72 | 8.02 | # |
| Concessions to quality of work | 2.14 | 2.18 | |
| Actual – desired quality | –1.16 | –1.03 | |
| Feelings of time pressure | 3.59 | 3.57 | |
| Worrying/frustration about the work | 3.05 | 3.05 | |
| Increased production pressure | 3.63 | 3.67 | |
| Satisfaction with work environment | 6.37 | 6.66 | * |
| Social support from management | 3.38 | 3.51 | |
| Social support from colleagues | 3.91 | 3.96 | |
| Autonomy | 3.49 | 3.61 | |
| Use of development opportunities | 3.99 | 3.83 | * |
| N | 364 | 119 | |

$p < .1$; * $p < .05$.

Regarding the psychosocial demands in the work, the survey data reveal that the feelings of time pressure and increased production pressure are rather high (respectively, 3.6 and 3.7 on a scale from 1 to 5). The level of frustration about the work is somewhat lower (3) but indicates that quite a few judges do worry about their work.

The psychosocial resources are also quite high (3.4 or higher). Especially social support from colleagues and the use of development opportunities are highly valued resources, with which judges can deal with psychosocial demands. However, the high levels of workload and the extent to which the judges need to make concessions to the quality of their work suggest that these resources are not sufficient to deal with the high demands.

A comparison of the mean scores for trial and appellate court judges (see Table 3) shows only a limited number of significantly different mean scores. Appellate court judges experience a greater imbalance between job demands and job resources, they perceive a higher workload, and they are less capable of using the development opportunities than trial court judges. But the appellate court judges complain less about being able to conduct their primary tasks in the allocated time, and they are more satisfied with their working environment. The data and additional analyses using other control variables (e.g., gender, age, tenure) offer no explanation for these differences.

These quantitative results are corroborated by the qualitative data gathered from the interviews with six judges. The following quote from a senior judge specialized in civil law may shed some light on the job demands currently experienced in the judiciary sector.

There is a feeling that our work is becoming increasingly bureaucratic. There is too little influence to exert. There are a lot of obligations such as meetings that one has to attend and study points one has to gain. The internal rules touch the content of judiciary work and when this happens this is detrimental. As a judge, you should not feel pressured by these procedures and rules thereby altering your handling of a case's content.

This sentiment of increasing rules and procedures and decreasing influence and focus on the content of judiciary work was echoed by other experienced judges. Some judges focused on the quantitative workload by, for example, comparing the number of cases that they had to process ten years ago with the current number. Others emphasized more qualitative aspects, such as the increasing complexity of cases due to—among others—new European or Dutch law.

An additional job demand consisted of the quantitative production goals that judges are evaluated by. As expressed by a senior judge of family law:

I also see this bureaucratization, when you are constantly being judged by your numbers [of cases, ed.], you start acting like it.

Regarding job resources, the decrease of autonomy and influence was frequently mentioned by the judges. As one judge of criminal law put it:

Because of this you have less influence on your own schedule, which can be perceived as demanding by people who cherish autonomy.

This closely related to a more focal change in the appreciation of judges' work. As mentioned by several of the interviewed judges, they felt less acknowledged by managers in their professional expertise because this was not, and probably cannot be, taken into account when evaluating their work:

With criminal law, this means that the work almost is not a craft any longer. This should not be the case.

All six judges who were interviewed experienced high levels of work pressure. Most of them also mentioned that they (or their colleagues) often considered lowering their quality standards to deal with their job demands. Most used the metaphor of grades ("from 10 to 8" or from "8 to 6" on a 10-point scale) to express these feelings. In addition, all judges mentioned their profound honor and loyalty to their work and emphasized the effect of this personal factor on their work pressure. "No" simply is not an option for most judges—their work is a vocation to them.

Finally, although the six judges were not specifically queried about their initial support for the NPM-related changes, some of them looked back on the ways things have developed over time. Reflecting on the development of "production targets," the senior judge who specialized in civil law said:

For how long have these production targets been trendy? Even before that there were norms, but they were generally not adhered to. Only since a few years we have this financial thinking at our court. Some sort of cost-benefit analysis is being performed, giving the number of cases you have to produce. This feels strange for all of us. On the one hand it provides a clear financial picture, but on the other hand it should not influence our daily work. We are not a company.

Another judge working in civil and criminal law reflected on the different perceptions of production targets:

The transition from a situation of almost no feedback to a situation of concrete production figures has led to two groups. One group that understands that the judiciary is in fact some sort of company. If you have budgets and costs, then you want to use them for management purposes. The other group sees only one task and that is to adjudicate in the best possible way. They refuse to be influenced by production demands and Lamicie norms.

Conclusion and discussion

In this article we sketched how over the past two decades the Netherlands adopted important aspects of NPM in its traditional judicial system. Specifically, the Dutch judiciary saw important changes in judicial organization, control and governance, changes in the division of labor within the courts, a change of emphasis from judicial quality to court quality, and a transition from input to output budgeting. While a number of judges played an active role in this adoption process, in the end there appeared to be a widespread disenchantment with its outcomes, specifically contesting the strong increase in experienced workload, the concomitant decrease in the perceived quality of adjudication, and the creeping violation of constitutional independence. On the basis of a secondary analysis of data from a large survey among Dutch judges, we found empirical corroboration of these subjective experiences of increasing workload and decreasing quality, which were significantly related to job demands such as time pressure and production pressure and not sufficiently buffered by job resources.

The question of how the judges could become dissatisfied about a management and organizational control system that they themselves partly helped to develop may be discussed along two lines. A first line of discussion points at a possible mismatch between the nature of the NPM-inspired control system and the nature of judicial work, to the extent that that system involves the application of routine-type control to performance activities that to a great extent are not of the routine industrial manufacturing type. In principle, it is possible to measure the output of judges quantitatively, i.e., in terms of their numbers of judgments and verdicts and the amounts of time spent on crafting these, and thus to assess (and possibly increase) their “production” (Ten Berge 1998). However, only a minority of judicial verdicts really is routine and fully standardized; the great majority involves the application of rules and regulations to cases of varying complexity that always contain some non-repetitive, case-specific elements (De Groot-Van Leeuwen 1991, 62–63; Hol 1998; Ingelse 1996; Schneider 2004). These qualitative elements require different, more evaluative or judgmental forms of control of judicial work, less based on quantitative production norms and more on qualitative professional standards.

A second (and related) line of discussion points at the violation of two important expectations judges held when becoming involved in these developments. First, judges should determine in principle the amount of time necessary for a qualitatively good and effective adjudication of cases, based on an objective workload measurement system. Second, budgeting of the judiciary should in principle be open-ended and thus not infringe on the first expectation and on the much-valued independence of the judiciary in the “trias politica” system (Sterk and Van Dijk 2016). The judges felt that both expectations had been violated by the Department of Justice, which included the budget for the judiciary in its overall budget and started to cut back spending when economic times went dire after 2010. Less money became available for the judiciary, which had to do more cases in less time. Since the workload measurement system measured only the actual amount of time spent on cases and not the desirable amount of time, for the judges both developments *de facto* have led to a strong increase in experienced workload, a concomitant decrease in the perceived quality of adjudication, and a creeping violation of their constitutional independence (Berendsen et al. 2015; Court of Audit 2016).

Dutch judges, probably accustomed to work with case facts and laws that are as objective as possible, may have overestimated the “objective” nature of the workload measurement system they partly helped to form, and underestimated the political nature of such systems, once they are put into action and become subjected to organizational and political pressures toward more efficiency. Their reaction to the new control system, however, did show a high degree of professional integrity. For a decade they did their best to work with and under the new system. Only after discovering its negative sides and experiencing increasing job demands and pressures did they openly and politely contest the system, instead of covertly “gaming” the system and subverting its purposes, as the literature would predict (Visser 2016).

Further, although our empirical results and conclusions present a representative picture regarding work-related experiences following the introduction of NPM principles in the Dutch judiciary, the underlying survey suffers from some limitations (Fruytier et al. 2013). First, the data, although interpreted here in a historical context, are cross-sectional in nature, hence limiting the possibilities for inferring causality. A more longitudinal approach, stretching to the present, would have enabled stronger conclusions on cause (NPM) and effect (workload). Also, the survey did not provide sufficient data that could account for the score differences between trial and appellate court judges that emerged from the analysis. This could be an interesting subject for future research.

Second, it was difficult to maintain a truly scientific position when designing the survey. The constructs were derived from relevant scientific literature, and the items were based on existing and validated instruments. However, the Dutch Society for the Judiciary (“NvVR”) that

commissioned the study also influenced the exact composition of the survey. This may have induced a focus on negative aspects of introducing NPM. Nevertheless, the final scales in the study show satisfying reliability scores. Future research including operationalizations more closely connected to the academic constructs (e.g., on job demands, job resources, and NPM) may enable comparisons and generalization of the conclusions to the judiciary in other countries and more in general to other public sector organizations inside and outside the Netherlands.

Finally, in spite of these limitations, our results do seem to correspond to a more commonly accepted and presented picture of increasing workload and discontent among the Dutch judiciary in the period after this survey was conducted. When the Manifesto of 2012 did not have the desired effects from the judges' point of view, in November 2015 nine other trial and appellate court judges wrote a critical article in a well-read Dutch law journal, denouncing the financial cut-backs, never-ceasing organizational change projects, and increasing economization (Berendsen et al. 2015). Subsequently, they sent this article out as a kind of survey to all judges; in January 2016, a full third of them had responded, with a large majority supporting the concerns of the nine judges. When the Department of Justice proved to be unresponsive, the nine used the survey results to directly petition Dutch Parliament in June 2016. This resulted in the introduction of a bill by Member of Parliament Van Nispen to separate the budget for the judiciary from the budget for the Department of Justice as a whole, in an effort to support constitutional independence by a form of budgetary independence. Although the initiative was applauded by the same nine judges in an opinion piece in a Dutch national newspaper (Berendsen et al. 2018) and supported by the Council of the Judiciary, in March 2018 the bill was rejected by a majority of Dutch Parliament, mainly on grounds of budgetary efficiency and with an eye on the Department's overall responsibility for the whole system of Dutch law enforcement.

Long ago, U.S. Supreme Court Justice Oliver Wendell Holmes deplored the proclivity of his brethren on the bench to steer clear of anything smacking of societal or political issues:

judges are apt to be naif, simple-minded men, and they need something of Mephistopheles. We too need education in the obvious—to learn to transcend our own convictions and to leave room for much that we hold dear to be done away with ... (Holmes 1920, 295)

Almost a century later, it appears that at least his Dutch brethren and sisters on the bench have taken his message to heart and shed their naivety in social and political matters.

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