Management Responses To Multiple Rationalities In Courts – A Review

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Abstract:

Courts are multirational organizations in that they are characterized by the coexistence of various rationalities, pursuing divergent goals and following different logical patterns, thus posing additional challenges on management. Rationalities define the distinct way actor groups think, speak and act. Multiple rationalities challenge decision makers in courts as they need to respond by developing practices to deal with the complexity they generate.

The objectives of this paper are twofold. First, we intent to critically review and discuss the literature on court management which somehow addresses the phenomenon of multirationality within courts. Second, we draw a nexus between the research fields of court management and New Institutionalism, since the latter is supposed to provide important insights for the former.

It is concluded that, although the concept of multirational court management has implicitly already been indicated by some scholars from the field of court management, it has not yet been explicitly mentioned and discussed in sufficient detail. Two research streams are identified. The first stream of research implicitly focuses on multirationality by analyzing the perceptions, attitudes, and relationships of different court actors. Local legal culture is the second stream, which refers to the presence of competing values within courts. For further research, we suggest four types of practices to structure possible managerial responses in courts.

1. Introduction

Today, courts find themselves more than ever in the midst of an area of tension. On the one hand they are confronted with increasing workloads, increased case complexity and a relative decline in resources. On the other hand they have to assure legitimacy in a context of various and sometimes even contradicting external expectations, stemming in particular from politics (Seron, 1990, pp. 453-454). Although many reform efforts have been made, especially in the USA, but since the 1990s also in Europe (Fabri & Langbroek, 2000, p. 1, 4) to prepare the courts for these challenges, and despite the emergence of court management as a research field, the attempts to render the judiciary more manageable and thus more efficient just partly succeeded (c.f. Wice, 1995, p. 310). In this respect Saari very aptly noted: „It may be no accident that courts are one of the last major powerful institutions to allow management to enter into their midst, perhaps because of the extraordinary complexity of the institution" (1982, p. 42). Therefore it has to be asked: What renders court management that difficult?

As the authors will show, one reason for court management to be a formidable challenge refers to the organizational peculiarities of courts, which changed thoroughly over time. Courts no longer have merely to be seen as complex, labor-intensive, and professional organizations, as generally suggested in the prevalent literature (e.g. Gallas, 1967, p. 268; Saari, 1967, p. 83; Friesen, Gallas & Gallas, 1971, p. 108; Seron, 1990, p. 456 ff.), but also as multirational organizations in which different rationalities coexist due to their complex context (Schedler, 2012; Denis, Langley & Rouleau, 2007, p. 192, 193). Rationality in this regard is defined as a „specific way of thought, speech and action that follows a consistent and logical pattern"(Schedler, 2003, p. 538). Multirational organizations are characterized by the coexistence of various rationalities, pursuing divergent goals and following different logical patterns, which pose additional challenges on court management. Mutual incomprehension leads for example to latent conflicts between these rationalities, whose relations are moreover ambiguous, meaning that it is often not clear whether there exists equality or hierarchy between them. Disturbed communication within the organization represents another aspect which renders the management of multirational organizations that demanding. Hence, in order to prevent decision-making blockades and to promote an organization's efficiency it is essential for the management to be capable of meeting the challenges arising from multirationality.

In the judicial context multirationality is supposed to have been triggered by the various reforms and reorganizations which the courts experienced during the last centuries and concomitant the involvement of new actors. Since the rationalities of these new court actors are supposed to differ quite substantively from the traditionally prevalent rationality of judges (cf. e.g. Cameron, Zimmerman & Dowling, 1987), conflicts within the courts are likely to arise.

Research addressing the coexistence of multiple rationalities within courts can be divided in two main streams. Although the term is usually not used, the first stream implies multirationality by examining the perceptions, attitudes and relationships of different court actors and by identifying potential sources of conflicts. These studies are closely associated with the issue of court administration and court management and were mainly conducted in the USA in the late 1980s (cf. e.g. Saari, 1967; Cameron et al., 1987).

Local legal culture is the second stream of research which somehow points to the phenomenon of multirationality within the judiciary. This stream was developed in the 1970s in connection with studies that dealt with the issue of delay reduction (Ostrom, Ostrom, Hanson & Kleiman, 2007, p. 8). According to this concept there exist competing values within courts, which become apparent across the different work areas (Ostrom et al., 2007, p. 67).

In addition to these two research streams from the field of court management, the presence of multiple rationalities within a single organization has recently also became a research topic of New Institutionalists. March and Olsen state for example: „In courts of law the judge, the prosecutor, the attorney, the witness and the accused legitimately follow different logics of action. The credence of their arguments, data and conclusions are also expected to vary" (2009, p. 19).

Despite the fact that courts demonstrably share some important similarities with other multirational organizations, i.e. hospitals that have already been studied quite extensively by proponents of New Institutionalism (cf. e.g. Heimer, 1999; Scott, Ruef, Mendel & Caronna, 2000; Reay & Hinings, 2009), they have not yet attracted much attention from this theory. Additionally scholars from the field of court management have not yet made substantial use of New Institutionalism, either. This paper which is structured as follows intends to close this gap[1]. The first part begins with an analysis on how changes on the macro level affect courts. In this regard it is assumed that certain developments led to the incorporation of new court actors with different rationalities, thus rendering the management of courts a formidable challenge. Characterizing the main rationalities which can be found within courts marks the second part of the paper. Finally some responses and practices courts use to counter multirationality are illustrated.

2. Literature Selection

The current literature review is based on a careful selection of articles and books in the field of court management which somehow indicate the presence of multiple rationalities within the judiciary. Therefore, we first looked for articles which were published between 1971[2] and 2012 and which contained one of the terms *court management, court administration* and *local legal culture*[3] in the title (cf. figure 1). As data base sources we used both EBSCO host and Web of Knowledge[4]. Since the Justice System Journal and the Judicature proved to be particularly fertile journals for this review we scanned them in more detail for the same time period. Additional literature was then also gained on the basis of the previously collected literature (snowball principle).

As the diagram below shows, most studies which cited articles containing one of the terms „court management" or „court administration" in the title were published between the late 1970s and the early 1990s. This observation also coincides with the findings of Lawson and Howard's study which revealed that court management became a real „growth industry" during the late 1970s (1991, p. 591). The majority of articles which refers to multirationality by examining the perception, attitudes and relationships of different court actors are thus expected to have been published more or less in the same time period.

Figure 1: Citation Index
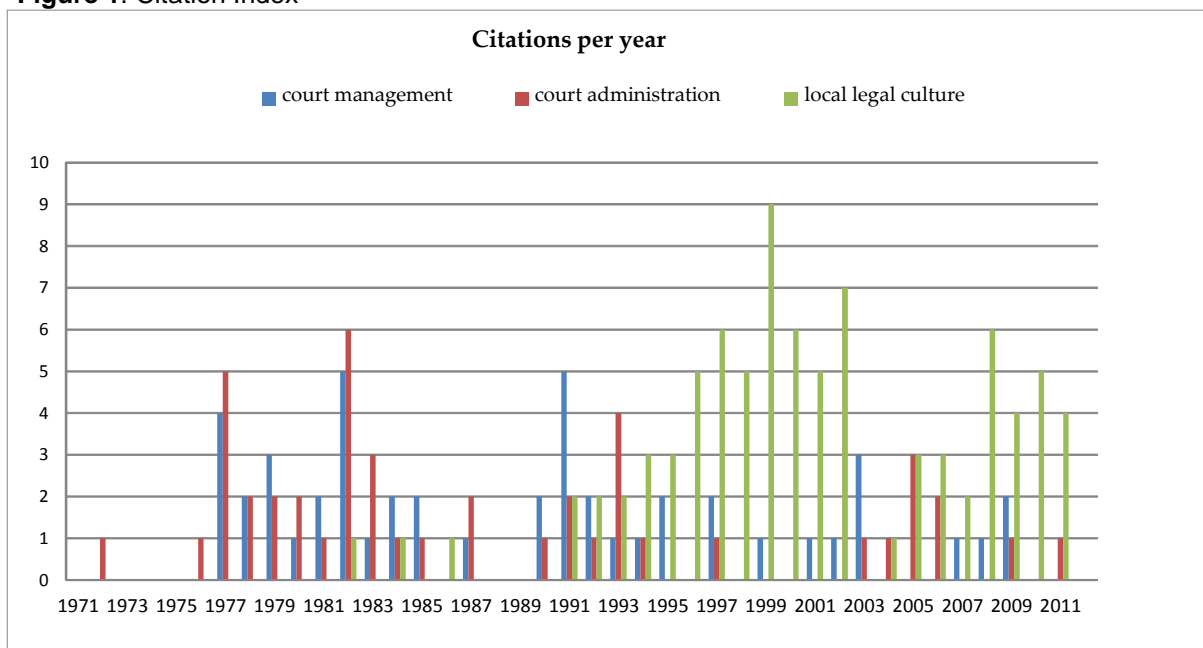
Citations per year

■ court management   ■ court administration   ■ local legal culture

(Source: Web of Knowledge)

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[2] This date was chosen, because it was in this year when the first book on court management was published by Friesen et al. (Lawson & Howard, 1991, p. 591).
[3] The meaning of the term local legal culture will be discussed in more detail on page 13 ff.
[4] The Web of Knowledge is a search platform that has been created by Thomson and Reuters and enables access to the most relevant citation databases (cf. http://wokinfo.com).

Contrary to that, studies referring to the concept of local legal culture which embodies the second research stream emerged about ten years later. The key contributors and key findings of these two research streams are listed in table 1 on page 6. What is striking is the overall rather limited amount of studies that examined the interactions and constellations of court actors. Although there exist a few studies and articles in the field of court management which implicitly point to the phenomenon of multirationality within courts, research on this subject has been rather scarce and uncoordinated compared to other sub-topics of court management which have been extensively analyzed like for example caseload management (cf. e.g. Lienhard & Kettiger, 2011). Further research is thus warranted.

After having outlined the basic points of the literature selection, the next part of the paper will illustrate how changes on the macro level affected courts and finally led to the incorporation of new court actors, exhibiting different rationalities.

3. Struggle for Legitimacy in a Fast Changing Environment

New Institutionalism emerged during the 1970s (Scott, 2008, p. 19), and is nowadays one of the leading streams within organizational theories (Walgenbach, 2006, p. 389). One of its basic assumptions starts from the premise that „organizations are affected by their environments" (Scott & Meyer, 1991, p. 108), whereby it has to be differentiated between a technical and an institutional environment. The purest form of the technical environment is the competitive market; products and services are exchanged and efficient processes are rewarded (Scott & Meyer, 1991, p. 123). Institutional environments, on the contrary, comprise elaborated rules and requirements, stemming from the state, professional organizations or belief systems (Scott & Meyer, 1991, p. 123). In their famous essay Meyer and Rowan argue that these institutionalized requirements are reflected in the elements, i.e. policies, programs, procedures of an organization's formal structure and are ceremonially adapted (1977, p. 340, 344). They operate as myths which must be taken for granted as legitimate to maintain legitimacy and to ensure an organization's survival (Meyer & Rowan, 1977, p. 344, 349). As indicated by Scott and Meyer (1991) the sources of legitimacy differ, according to the characteristics and expectations of an organization's relevant environment. A means-end rationality emphasizing output efficiency is the primary premise of technical environments. Institutional environments are based on the understanding and acceptance of actions in the past (Scott & Meyer, 1991, p. 124). Private organizations thus adhere primarily to an economic rationality, since they must assert themselves on the market.

By contrast, public organizations originally attained their legitimacy from politics (DiMaggio & Powell, 1983) and from law (Kettiger, 2000). Courts' institutional logic in particular is to create justice, whereby the term „justice" does not mean the same to everyone (Cohen, 2002, p. 180). Contrary to the logic of courts the legislative processes are supposed to be driven both by a political and a professional rationality (Kettiger, 2003, p. 216; Schulze-Fielitz, 1988, p. 454 ff.).

However, as a consequence of certain developments during the 1990s, like the general budget shortages and concomitant the rise of New Public Management, the economic rationality also became increasingly relevant for public organizations in assuring legitimacy (Schedler, 2012, p. 4).

Applied to the judicial context this explains why different changes like budget constraints, new case disposition forms, increased complexity of external demands, and the involvement of new court actors, forced courts to adjust their formal structure and to professionalize their administration (Heydebrand and Seron, 1990, p. 1). Heydebrand and Seron speak in this regard of „a rationalization of justice, which led to a systematization, simplification, standardization, and routinization in a quest for efficiency, productivity, and cost effectiveness (…)" (1990, p. 6). This observation also coincides with Miller and Friesen who note that the sophistication of an organization's structure increases, as the complexity of a situation increases (1984, p. 1164). The sensationalist attention the media increasingly pays in some countries to how courts handle certain types of cases puts them under additional pressure and even endangers the public trust they enjoy (e.g. Surette, 2010, p. 126; Langbroek, 2010, p. 24; Johnston & Bartels, 2010, p. 276). Although, the survival of courts as such will probably never be threatened, disregarding the institutionalized demands from the environment and particularly from politics could cause other problems since politics decides on courts' finances and structure (Friesen et al., 1971, p. 83). These instruments in turn could decrease courts' scope of action.

Assuring and maintaining legitimacy is therefore also of crucial importance for courts.

Two problems arise out of these constraints: the first relates to the possible incompatibility between an organization's formal structure and its technical and efficiency demands. Even though this efficiency dilemma might not arise for courts, since they are public organizations and thus are not exposed to the competitive market, other negative consequences could be caused. Structure adaptions, which might well improve the efficiency of certain working processes within the judiciary, could for example negatively affect the quality of jurisdiction and thus undermine courts' main mission of providing justice (e.g. Heydebrand & Seron, 1990, p. 194; Langbroek, 2010, pp. 29-30). Heterogeneity of the environment and the associated possibility of conflicting rationalities constitute the second problem (Meyer & Rowan, 1977, p. 355). The goal of politics to cut costs within the judiciary might stay in sharp contrast with the main concern of society to ensure a high quality of jurisdiction.

Table 1: Multirationality within Courts: Two Streams of Research

Research Stream	Measuring Perceptions, Attitudes and Relationships of Court Actors	Local Legal Culture
Empirical Focus	• Analysis of the different perceptions and attitudes court actors have of each other • Analysis of the relationship among different court actors	• Analysis of the impact local legal culture has on court performance
Key Contributors	Berkson & Hays, 1976; Butler, 1977; Mays & Taggart, 1986; Cameron et al., 1987; Flanders, 1991; Wasby, 2005; Swanson & Wasby, 2008	Nimmer, 1978; Church, Carlson, Lee & Tan, 1978; Eisenstein, Fleming & Nardully, 1988; Nardulli, Eisenstein & Fleming, 1988; Ostrom & Hanson, 1999; Ostrom, Ostrom, Hanson & Kleiman, 2007; Coolsen, 2009
Main Findings	• Different court actors possess different perspectives, pursue different objectives and exhibit different priorities • There exist different attitudes towards management • Different work styles, divergent perspectives, and structural characteristics of the justice system are identified as the main sources of conflict among different court actors	• Culture has an influence on the functioning of courts[5] • Shared beliefs, expectations, and attitudes are the primary factors which affect court performance • Courts exhibit a heterogeneous culture, which consists of the four archetypes communal, autonomous, networked, and hierarchical • Competing values exist within one court and across different work areas • There are no „good" and „bad" court cultures
Contribution to Multirationality	• Multirationality is reflected in the different values, goals and attitudes of court actors	• Implies multirationality through the existence of culture incongruences within a single organization (court)

4. Courts as Parts of an Organizational Field

Like Meyer and Rowan, DiMaggio and Powell also examined the impact of the institutionalized environment on organizations (Walgenbach, 2006, p. 389). Based on the assumption that there can be observed a homogenization among certain types of organizations they introduced the concept of the organizational field, by which they mean: „those organizations that, in the aggregate, constitute a recognized area of institutional life: key suppliers, resource and product consumers, regulatory agencies, and other organizations that produce similar services or products" (DiMaggio & Powell, 1983, p. 148). The main advantage of the field concept lays in its usefulness for identifying the „totality of relevant actors" (DiMaggio & Powell, 1983, p. 148). Fields do not exist per se but are the result of a structuration process, which comprises the following aspects: rise in interaction among field participants, establishment of interorganizational domination and coalition patterns, risen information load, and mutual awareness of belonging to a common enterprise. After a new field emerges, the organizations within this field are becoming increasingly more alike (DiMaggio & Powell, 1983, p. 148). This process of homogenization is called isomorphism. DiMaggio and Powell identify three different types of isomorphism: coercive isomorphism, which is caused through political influence and legitimacy problems; mimetic isomorphism stemming from uncertainty, and normative isomorphism relating to professionalization (DiMaggio & Powell, 1983, p. 150). For courts especially the first and the third isomorphic processes are relevant, since courts are professional organizations and at least in regard to their budget and structure dependent on politics. In their study Heydebrand and Seron also observed a certain degree of isomorphism, mainly resulting from political pressure. They note that courts are

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[5] These findings are based on the six propositions of Ostrom et al. (2007, p. 130 ff.).

gradually incorporated into a justice system, where different agencies act interdependently and system viability is the main concern (1990, p. 14). Well-established fields are supposed to be more stable, because they often exhibit a prevalent logic (Greenwood, Raynard, Kodeih, Micelotta & Lounsbury, 2011, p. 335). Contrary to emerging fields, possible conflicts between the distinct logics have already been solved at the field level (Greenwood et al., 2011, p. 335). In emerging fields institutional demands are also expected to be less predictable than in well-established fields (Greenwood et al., 2011, p. 335; Lawrence & Phillips, 2004, p. 707). It is moreover easier for external actors, possessing distinct logics, to gain access to emerging fields, thus additionally irritating the already still sparsely structured field (Greenwood et al., 2011, p. 336). Hence, organizations which are located within a mature field are confronted with a lower degree of institutional complexity than organization within an emerging field.

Whereas Meyer and Rowan as well as DiMaggio and Powell believe that organizations are mainly influenced by their institutional environment and therefore take a macro level approach (Walgenbach & Meyer, 2008, p. 42), Zucker, as the main proponent of the micro level approach (Walgenbach, 2006, p. 382), sees the institutionalized structure and behavior instead as variables. In Zucker's view the degree of institutionalization, which depends on personal influence and on the organizational context, affects the persistence of an institution (Zucker, 1977, p. 741). Higher institutionalization leads to greater uniformity of cultural understandings and thus to greater change resistance (Zucker, 1977, p. 742). Those behaviors exhibiting a low degree of institutionalization require positive or negative sanctions, to be conducted (Walgenbach, 2006, p. 382). Judicial independence and the associated lack of sanctions could therefore serve as one explanation for judges' initial hesitation to delegate some of their responsibilities to court administrators and also account for the culture incongruences found by Ostrom and colleagues (2007).

5. Multirationality as a Consequence of Macro Level Changes
In the previous section of this paper we have outlined some of the basic developments within courts' environment and illustrated the consequences. In the next section we intend to shift our attention from macro-level events to micro-level processes. A special focus is laid on how courts deal with increased institutional complexity and the resulting multirationality. To illustrate this we refer to findings of previous studies which addressed the phenomenon of multirationality within courts.

As illustrated so far, courts are embedded in a highly institutionalized environment and have to deal with various different expectations and demands, stemming from different stakeholders. Expect external developments, there also exist a few endogenous factors, which can trigger changes in an organization's formal structure (Walgenbach & Meyer, 2008, p. 102 ff.). Such endogenous triggers are for instance contradictions between institutional features, presence of multiple logics, and ambiguity of rules (Walgenbach & Meyer, 2008, pp. 105-107). In this context Friedland and Alford introduced the concept of institutional logics. They identified six institutional logics of Western society – capitalism, bureaucratic state, democracy, nuclear family, and Christianity – which affect the preferences and interests of organizations (Friedland & Alford, 1991, p. 249). Moreover, these multiple logics provide meaning systems and a repertoire of behavior (Friedland & Alford, 1991, p. 232). A more precise explanation provide Thornton and Ocasio who define institutional logics as: „The socially constructed, historical patterns of material practices, assumptions, values, beliefs, and rules by which individuals produce and reproduce their material subsistence, organize time and space, and provide meaning to their social reality" (1999, p. 804). Institutional logics thus reflect the institutionalized elements of a society, whereby they can greatly vary.

The reasons why we speak of rationalities in our study and not of institutional logics are manifold: First, we prefer the term rationality because it is also used by scholars from the strategy-as-practice approach (e.g. Denis et al., 2007). Similar to Denis and colleagues, we also start from the premise that there exist different archetypes of rationalities. Since our approach also entails systemic elements, we further think it is appropriate to speak of rationality and to use this term for labeling our concept. Lastly, the term rationality is in our view more suitable and more understandable in the German-speaking research area.

Nevertheless, by means of connecting institutions to actions, the concept of institutional logics makes insofar a considerable contribution to the study of multirationality, as it brings the macro perspective, proposed by Meyer and Rowan, and DiMaggio and Powell, and Zucker's micro level approach together (Thornton & Ocasio, 2008, p. 100). Besides Friedland and Alford's conception of institutional logics, there exist several slightly different approaches (Cloutier & Langley, 2007, p. 12). But, one major assumption, which all different concepts have in common, is the notion that behavior of individuals and organizations is highly influenced by their environment and thus cannot be understood detached from its institutional context (Thornton & Ocasio, 2008, p. 102). The carriers of institutions are according to Zilber the members of an organization (2002, p. 249). As he showed in his study about a rape crisis center in Israel, these carriers can be either passive, thus simply carrying a certain meaning and action respectively, or take a more active role by promoting and interpreting certain practices (Zilber, 2002, p. 249).

In what ways does this conception of multiple institutional logics contribute to the analysis of courts? Based on the explanations above, it becomes obvious that, on the one side courts have faced external pressure to adjust their formal structure. As shown, this external pressure stemmed from different developments, but was in particular pushed by the political endeavor to constrain courts' budget, which in turn relates to an increased influence of the economic rationality. On the other side, in the course of the numerous reform efforts, new actors, carrying non-judicial logics gained access to courts (e.g. Heydebrand & Seron, 1990, p. 1). This implies, that the pressure to adjust the formal structure, although originally initiated exogenously, comes increasingly also from the new court actors, and hence arises also from within the organization. Yet, due to their different societal backgrounds, these new actors are not supposed to hold a homogeneous non-judicial logic, but are rather assumed to represent different logics.

Since different court actors pursue divergent objectives, in a setting where power is diffused and knowledge-based work processes crucial, courts must operate in a highly pluralistic context (Denis et al., 2007, pp. 179-180). This view is also shared by Saari, a former court administrator (1967, p. 85). He explicitly compares the management of courts with the management of similar professional organizations like hospitals or universities and points to the dominance exerted by the professionals; in this case the judges (1967, p. 83, 85).

Shifts in logics and their implications on organizations has also been a widely spread research issue of New Institutionalits. In their study about the American higher education publishing industry Thornton and Ocasio observed for instance a shift in the prevalent field logic – from an editorial to a market logic–, which was triggered by economic and structural changes as well as by an altered understanding of these logics (1999, p. 836). In the same vein Greenwood and Hinings used the concept of archetypes which they defined as „a set of structures and systems that reflects a single interpretive scheme" (1993, p. 1052) to explore how contextual factors influence the underlying archetype of local authorities in England and Wales (1993, p. 1069, 1070). The health care field constitutes another quite extensively elaborated research setting for analyzing logics' effect on organizations (e.g. Heimer, 1999; Scott, Ruef, Mendel & Caronna, 2000; Reay & Hinings, 2005). Besides, health care organizations bear an important resemblance to courts, in that they are also dominated by professionals (Heimer, 1999, p. 28; Saari, 1967, p. 83).

As Reay and Hinings (2009, p. 629) stress, although many New Institutionalists assume that a particular logic is dominant within a field, more recent studies (e.g. Reay & Hinings, 2005) revealed that multiple logics can also coexist over a relatively long period. The coexistence of multiple rationalities furthermore must not have per se a negative impact on organizations. However, it seems clear, that the more equal the external demands and hence the less complex the situation, the easier it will become for an organization to act in accordance with the premises of its relevant referent audiences (Schedler, 2012, p. 14), which is important in order to assure legitimacy.

6. Multirationality within Courts

In a first part of this paper we have illustrated the concept of institutional logics and especially highlighted how alterations on the macro level have triggered multirationality within courts. In the following second part we intend to characterize the types of rationalities which can typically be expected to exist within courts. Moreover, we also describe some conflicts that might arise due to these different rationalities. The question about how court actors deal with these multiple logics will then be discussed in the final part of the paper. We derive our insights again mainly from the findings of previous studies, which were with no exception conducted in the USA. Thus it has to be acknowledged, that the findings are not generalizable, which is also not our claim. But, we believe that although the institutional setting of courts varies considerably across time and space, they have one similarity in common, which is being a multirational organization.

7. Legal vs. Economic Rationality

In a survey Cameron et al. studied the roles of chief justices and state court administrators and noticed that, as a consequence of the two distinct „systems" these actors embody, inherent differences were likely to exist between them (1987, p. 442). Overall, the work of Cameron et al. implies that whereas a (chief) judge embodies a legal rationality, a court administrator is supposed to act in accordance with an economic rationality. Differences in the actors' rationality are manifested in their divergent goals and values, their different decision-making processes and differences in perspectives. While a judge's primary objective is to provide impartial justice, an administrator seeks to increase system efficiency to reduce costs (Cameron et al., 1987, p. 479). A court administrator is often forced to take rapid and authoritarian decisions which were moreover frequently based on incomplete facts (Aikman, 2007, p. 130). Managing an organization therefore often requires taking some risks (Maan, 2009, p. 23) and enduring a certain degree of uncertainty.

In this sense judges also often do not see the huge effort taken by court administrators to implement a policy decision, hence overlooking their contributions (Aikman, 2007, p. 130). Compared to the administrative decision-making process, the judicial decision-making process is relatively slow and very detailed (Cameron et al., 1987, p. 452). This becomes then problematic when the judicial decision-making process finds application in administrative matters, and thus causes

delays on tasks which require prompt decisions (Cameron et al., 1987, p. 452). Court administrators additionally often focus on the entire system and take a long term focus. Justices in contrast rather possess a short term focus, since they are more concerned with a concrete individual case (Cameron et al., 1987, p. 472; Flanders, 1991, p. 648; Aikman, 2007, p. 129; Maan, 2009, p. 23). Differences in perspectives among judges and court administrators are not only manifested in rules and forms, but are also visible in personnel decisions, i.e. the acquisition of a new computer program (Aikman, 2007, p. 134). Change resistance and concomitant the preference to preserve the status quo is another characteristic of judges which could lead to confrontations with those court actors who work more active as change agents (Cameron et al., 1987, p. 455; Röhl, 1993, p. 124).

As Cameron and colleagues note, a court administrator is likewise often confronted with a dichotomous role, meaning that his position moves depending on the situation, between being a subordinate aid and being a peer professional, whereby it is not always evident for an administrator which role he has to take (1987, p. 473).

8. Competition among Legal and Non-Legal Rationalities
Probably the most interesting insight from the study of Cameron et al. is that differences in perceptions of chief judges and court administrators often stem from their different attitude toward management (1987, p. 474; see also: Tobin & Hoffman, 1979, p. 27).

Mays and Taggart examined in this respect how the perceptions of judges and court administrators differ along the four administrative functions: budgeting, personnel, jury management and case scheduling with the last function as being the major source of conflict (1986, p. 3). The structural arrangement which leaves the ultimate management decision in the hands of the judges and differences in the perspectives about what needs to be done and how were identified as being the main reasons for conflicts (1986, pp. 6-7). The fact that judges often want to have the final say, even in non-judicial matters is also confirmed by Saari (1967, p. 84).

Based on a case study of the judicial system of Florida Berkson and Hays investigated the strong opposition court administrators had to face in the early years of their appointment from traditional court actors, particularly from judges and clerks (1976). This at least at the beginning, rather hostile environment towards court administrators is reflected in the following statement of a chief judge: „How can we expect him (court administrator) to tell an elected sheriff, clerk or judge what to do" (cit. in Berkson & Hays, 1976, p. 69).

Berkson and Hays' study revealed that in addition to judges, also clerks were rather skeptical about court administrators. One clerk stated for example: „He does nothing a good secretary cannot do" (cit. in Berkson & Hays, 1976, p. 70). The opposition on the part of clerks stemmed mainly from their fear to lose power and because they did not see the sense and purpose of court administrators (1976, pp. 70-71; Aikman, 2007, p. 103) Aikman speaks in this context of „real power struggles" (2007, p. 103) that existed between clerks and court administrators.

From a New Institutional point of view, the position of a court administrator thus at least at the beginning seems to have been mainly of ceremonial meaning, since administrators did not possess any substantial competences. Both, lacking acceptance and lacking responsibility induced court administrators to show a rather passive behavior which, although not improving the efficiency of the judicial system, at least ensured their survival (Berkson & Hays, 1976, p. 73).

Butler, who investigated the attitudes of chief judges' towards court administrators, acknowledges that apart from judges' attitudes also other factors like the historical development of the court or statutory and constitutional limitations affect the role of court administrators (1977, p. 184). On the basis of a list which comprised several duties Butler analyzed how willing judges were to delegate some of their responsibilities to court administrators, whereby the willingness of judges to grant administrators „broad powers" proved to be the most controversial issue (Butler, 1977, p. 186). Therefore, it does not surprise that non-judicial tasks were delegated most often to administrators, while more judicial tasks or tasks which could present any risk to the judicial independence were delegated only tenuously (Butler, 1977, p. 187). Instead of viewing court administrators as equal „co-managers" judges rather accredited them administrative and technical work (Tobin, 2004, p. 112). Tobin refers in this context to a quote of a nationally prominent court administrator who said that he often had to leave meetings with judges, because as the judges noted: „The technical part of the meeting is over. You can go now" (cit. in Tobin, 2004, p. 112). Even though this request for leaving the meeting before its official ending might be reasonable from a judge's point of view, it nevertheless underlines the lack of acceptance and esteem court administrators receive.

The fact that judges try to avoid any changes that could undermine their power is also observed in other organizations. A study which investigated how institutional forces affect professional role identities revealed for example that professionals,

in this case physicians were often hesitant to delegate duties which they perceived as being particularly important to their role (Chreim, Williams & Hinings, 2007, p. 1530).

With his statement „court administrators and judges differ" Flanders (1991, p. 640) also points to the existence of some inherent differences between court administrators and judges. Flanders notes that court administrators differ from other administrators since they have to manage judges, who are even more professionally distinct than physicians (1991, p. 641). Contrary to previous studies Flanders highlights the rather high influence of court administrations in inter-governmental relationships. He also states that the symbolic role of the judiciary often proves to be a quite powerful argument to prevent budget cuts (1991, p. 644).

Another interesting point Flanders mentions in his article, refers to the conflict between court administrators and court reporters. The reason for this conflict, as Flanders suggests, is due to the fact that court reporting, which represents a central problem area within courts, often falls within the competence of court administrators (1991, p. 649). Hence, power struggles not only exist among judges and court administrators, but also among other court actors.

In a case study Wasby (2005) showed in this context, that judicial secretaries can under certain circumstances also become quite powerful, because their daily business often goes far beyond the formally assigned secretarial services (p. 155).

However, subsequent studies about the relationship between chief judges, clerks, and court administrators did not paint such a gloomy picture. In this regard Cameron and colleagues mentioned the following five reasons which improved court administrators' situation in the USA: the first reason was the increasing workload, which raised judges' willingness to delegate some of their (non-judicial) duties. The second and third factors related to the rising pressure of politics to increase efficiency. The fourth reason was the establishment of the circuit executive act of 1971 and the seminal leadership of the American Chief Justice Warren E. Burger, who explicitly stressed the advantages of this new profession, marked the fifth reason (Cameron et al., 1987, p. 446). But although the situation improved over time, some animus and controversy continue to exist (e.g. Butler, 1977; Aikman, 2007, p. 103). Power struggles and turf struggles still seem to be the main factors which put the relationship of judges and court administrators under strain (Flanders, 1991, p. 647).

Notwithstanding some studies which examine the relationship between court actors we still know too little about it. Especially the role and rationalities of non-legal actors thus warrants further investigation.

9. Multirationality as an Expression of Competing Values

Another interesting concept which indicates the presence of multiple rationalities within the judiciary, although it speaks of values and not of rationalities or logics, is the concept of local legal culture, which was originally developed in the 1970s in connection to studies that dealt with the topic of delay reduction (Ostrom, Ostrom, Hanson & Kleiman, 2007, p. 8; Nimmer, 1978). Concerning the connection of culture and institutional logics Hinings notes „the existence of logics and zeitgeists informs the content and structure of organizational cultures and vice versa" (2012, p. 99). Therefore, we think that competing values might well serve as an indicator for the presence of multiple rationalities.

Local legal culture is defined as „a stable set of expectations, practices, and informal rules of behavior" (Church, Carlson, Lee & Tan, 1978, p. 14). According to this concept court performance is to a large degree dependent on „the shared beliefs, expectations, and attitudes, within the local court community about how fast criminal cases should move" (Ostrom et al., 2007, p. 9; see also: Saari, 1982, p. 13). Probably one of the most path-breaking studies ever on local legal culture combined several research concepts and analyzed the culture of twelve U.S. trial courts along the five dimensions: case management style, judge-staff relations, change management, courthouse leadership and internal organization (Ostrom et al., 2007, pp. 38-39). Ostrom and colleagues found that the cultural setting of courts is quite heterogeneous and varies even across work areas (Ostrom et al., 2007, p. 60). The different values existing within courts, so their opinion can either be complementary or competing. The higher the cultural homogeneity, the more consistent are the views of court actors supposed to be (Ostrom et al., 2007, p. 60). Based on the insights of their study Ostrom et al. regard cultural incongruence as a sign of different goals and strategies that prevail across work areas and which thus explain why court reforms did often just partly succeed (2007, p. 61, 67). Contrary to many private organizations, public organizations are hence characterized by the coexistence of multiple cultures. The researchers also note that: „Each culture type emphasizes a distinct blend of values that represent different ways of seeing the world of judicial administration" (Ostrom et al., 2007, pp. 132-133). For this reason, culture affects the attitudes, norms and beliefs of different court actors in a substantive manner (Ostrom et al., 2007, p. 11).

Overall, with regard to an effective court management, Ostrom et al. illustrated that competing values constitute an additional challenge for court managers (Ostrom et al., 2007, p. 67). But, given that culture can be altered, it offers also a possibility of promoting management reforms. Studying court culture is thus inevitable in order to increase comprehension of the functioning of courts (Hanson, Ostrom & Kleiman, 2010, p. 5).

Unfortunately, this study does not examine whether different groups of court actors are carriers of different court cultures. Therefore we propose for subsequent research to examine whether different actors are driven by different values and if so how these values are characterized. It is for example conceivable that the culture which prevails within a court and within a certain work area is dependent on the rationality of that court actor who is in charge of this work area. In this context Hinings (2012), by referring to some studies which point to the coexistence of multiple logics (e.g. Reay & Hinings, 2009), illustrates that such a multirational situation is probably also characterized by the presence of different subcultures. Cultural homogeneity in comparison could indicate the dominance of a single logic (Hinings, 2012, p. 99).

Based on the concept of local legal culture, Coolsen conducted a stakeholder opinion survey and an empirical investigation to analyze the consequences of a differentiated case management system, that aimed at reducing delay (2009, p. 70). Depending on their role, respondents' opinions concerning for example time standards varied quite substantively (Coolsen, 2009, p. 80, 83). Coolsen's conclusion that judges play an essential part in improving the overall acceptance of time standards coincides with the findings of Greenwood, Suddaby and Hinings that professional communities are able to ease change trough theorization (2002, p. 74).

How the capability of anticipating other court actors' perception influences court effectiveness was the main question of Sherwood and Clarke's research (1981). Surprisingly, opinion differences were very small. To explain this result Sherwood and Clarke presented an interesting argument. They stated that agreement over a certain topic can also be a means to prevent change, in that it serves as a topic for „empty discussion" (1981, p. 213). In order to underpin this argument Sherwood and Clarke point to a meeting which took place in 1971 and which aimed at examining the reasons for delays within the judiciary. While judges identified „practices of lawyers and law firms" as the main reason for delay, attorneys instead believed that delays were primarily caused by „judges and their practices" (1981, p. 214). As it came to discussions in small groups, however, both actors mentioned completely different delay reasons. Based on this observation Sherwood and Clarke derived the conclusion that there must exist a cultural norm which interdicts discussions about collegial dissatisfaction (1981, p. 214), thus implying that rationalities, if at all often compete in secrecy.

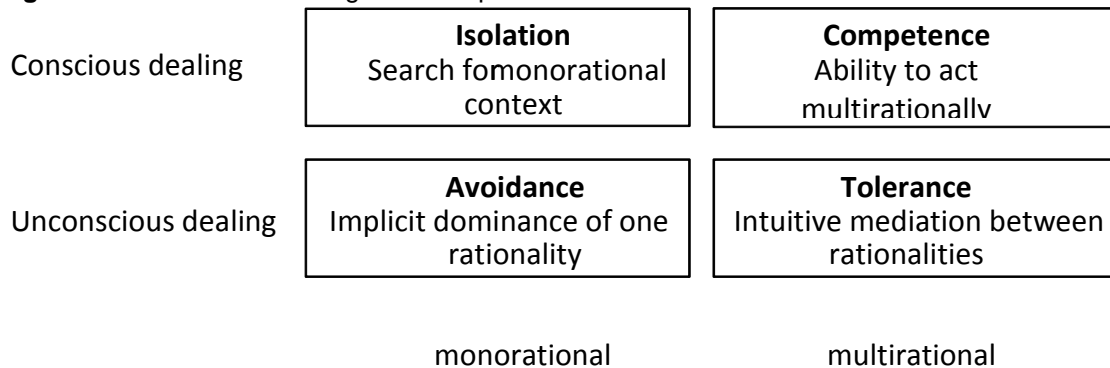## 10. Strategic Responses to Multirationality

Overall, the literature mentions two types of responses an organization can take to deal with multirationality. It can either respond by adopting its structure or by developing specific strategies (Greenwood et al., 2011, p. 348). Meyer and Rowan see decoupling as the main response organizations take to cope with multirationality. They believe that organizations maintain the ceremonially adopted myths by decoupling their formal structures from their actual work activities (1977, p. 340). Decoupling bears the advantage of conflict avoidance or minimization and additionally increases external legitimacy, which in turn is essential for an organization's survival (Meyer & Rowan, 1977, p. 357).

In her study about a division of the provincial government of Alberta, Townley also found in this regard that although strategic performance measurement systems were formally implemented as requested by the government, they were factually not only challenged but also refused (2002, p. 175). In connection to Meyer and Rowan's concept of decoupling, some researchers also mentioned hybridization, the possibility of combining elements which were consistent with different rationalities as a possible reaction to multirationality (D'Aunno, Sutton & Price, 1991, p. 641; Pache & Santos, 2011, p. 14). While decoupling and hybridization reflect structural responses (Greenwood et al., 2011, p. 351 ff.), there also exist many concepts which try to categorize the different strategies available to organizations for dealing with multirational situations (Greenwood et al., 2011, p. 348).

Friedland and Alford for instance explicitly highlight, that multiple logics can be manipulated or reinterpreted and hence, besides functioning as constraints, simultaneously also serve as a means for individuals and organizations to gain their ends (Friedland & Alford, 1991, p. 254). Oliver identifies the following five strategic responses an organization can take to counter multirationality: acquiesce, compromise, avoid, defy, and manipulation (1991, p. 152). Which option an organization chooses depends especially on the cause, constituents, content, control and context of the pressure (Oliver, 1991, p. 159). Similar to Oliver, Kraatz and Block also mention four options to cope with multirational situations. Organizations can simply resist or eliminate pluralism, compartmentalize identities, try to find a cooperative solution or build institutions in their own right, which means that organizations can build own sources of legitimacy through creating own identities (2008, pp. 249-252).

Yet, another approach, to which we will mainly refer in this paper, identifies four types of practices for handling multirationality, as depicted in figure 2 (Schedler, 2012, p. 19). The additional value of this approach compared to others lays in its differentiation between a conscious and an unconscious dealing with multirationality, which seems to be of special importance when analyzing organizations that were traditionally dominated by professionals. Contrary to non-professional organizations, the protagonists of professional organizations might often be well aware of the existence of multiple rationalities, but consciously seek to isolate them to ensure both their power and their privileges. Moreover, professionals almost always want to have the final decision and think long and hard about those decisions they delegate (Saari, 1967, p. 84) – and they seek to protect their room to maneuver.

Figure 2: Practices for dealing with multiple rationalities

Conscious dealing	**Isolation** Search fomonorational context	**Competence** Ability to act multirationally
Unconscious dealing	**Avoidance** Implicit dominance of one rationality	**Tolerance** Intuitive mediation between rationalities
	monorational	multirational

(Source: Schedler, 2012, p. 19)

Since courts traditionally enjoy a relatively great legitimacy and because courts are also strongly bound by the law we do not think that structural responses are very common. Instead we assume that courts and particularly judges respond to institutional complexity by taking appropriate strategies. This assumption is to some degree also confirmed by the results of previous studies. In the case of Florida, for instance, many court administrators were not selected on the basis of their skills. Instead, presiding judges preferred to hire acquaintances or even friends, thus assuring control (Berkson & Hays, 1976, pp. 69-70). Also Tobin and Hoffman noticed that administrative skills were not the major selection criteria for hiring court administrators. Judges preferred to hire administrators with a legal background (1979, p. 27). By way of explanation Maan states that non-judicial managers are often assumed to have an inadequate understanding of the courts' work, which is in turn supposed to decrease their loyalty towards the courts (Maan, 2009, p. 23).

This raises a special dilemma: In order to be able to fulfill his duties properly a court administrator must be accepted by the judges, which requires that he exhibits a legal background, even though his position would require many non-legal skills (Friesen et al., 1971, pp. 124-126; Aikman, 2007, p. 147).

Another instance which points to the application of isolation as a common practice to prevent the emergence of a new rationality refers to the hesitation of many judges to delegate some of their duties to court administrators. Whereas some practitioners from the judiciary and especially many politicians appreciated the creation of this position, the judges, at least at the beginning, were rather critical of this change (Berkson & Hays, 1967, p. 68; Friesen et al., 1971, p. 110; Röhl, 1993, p. 127 ff.). As the literature shows, many judges consciously tried to constrain a court administrator's power by delegating only minor duties (e.g. Berkson & Hays, 1967, p. 68; Butler, 1977, p. 184; Aikman, 2007, p. 126). And in some cases they even still intervened in an administrator's daily tasks, like the allocation of parking spaces (Aikman, 2007, p. 126). A third indication for this suppression of the economic rationality of court administrators emerges as one compares the main sources of frustration of the chief justice and the court administrator. While the latter pointed to the former as being the major reason for frustration, the chief justice perceived the legislature as the main cause of frustration (Cameron et al., 1987, p. 464). This observation can be interpreted in two ways. Either court administrators' competences were constrained in such a way that they could not cause any trouble for chief judges or they resigned and conformed their behavior to that of their superior. This observation also coincides with the findings of Reay and Hinings who illustrated that the introduction of a business-like health care logic (similar to a business-like court logic) posed a challenge on the traditionally dominant logic of medical professionalism (2009, p. 630). But, contrary to the judicial system professionals of the health care field seem to have found ways to manage this rivalry of competing logics.

The practice of isolation was not only used to inhibit the introduction of an economic rationality represented by court administrators, but was also applied on clerks. In their analysis about the influence of law clerks on the judicial decision-making process Swanson and Wasby (2008) showed that similar to the selection procedure of court administrators, also clerks were carefully chosen. One judge stated for instance: „Judges pick people who we will get along with, and have a somewhat similar point of view". Another statement underlined the conscious avoidance of hiring a different thinking clerk even more clearly: „You screen your law clerks – that is pretty much in tune with my philosophy. I am not gonna hire a redneck law clerk" (cit. in Swanson & Wasby, 2008, p. 36). And even if the perspectives of clerks and judges might differ at the beginning of their collaboration, over time many clerks either adjust their perspective or they even start to share the same views as their judges (2008, p. 44).

The recruitment policy many judges used also reflects an element of normative isomorphism. The more the new employees equal their colleagues the more equal will future processes, structures and decisions of an organization be and hence contribute to preserving the status quo (Walgenbach & Meyer, 2008, p. 39). In addition, hiring staff with similar views also reduces institutional complexity and thus can be regarded as a strategy to inhibit multirationality.

Still, contrary to this practice of isolation some judges, although being the exception, also said that they prefer hiring clerks with a somewhat different and new perspective (Swanson & Wasby, 2008, p. 37). One judge said for example: „I try to hire clerks different from my philosophy and background to get different perspectives" (cit. in Swanson & Wasby, 2008, p. 37).

The instances mentioned above indicate that courts and judges in particular deal relative consciously with multirationality. Whereas isolation was apparently a common practice in the past, the recognition of the necessity of intentionally supporting an economic rationality in administrative and managerial matters seems to have increased over time. A similar conclusion was also drawn by Reay and Hinings in the health care field. Although the introduction of a business logic led at the beginning to some irritation on the part of the traditionally dominant physicians, four mechanisms were developed to successfully manage this rivalry of competing logics (2009, p. 630). These mechanisms included a distinction between „medical" and „other" decisions, the incorporation of informal input from the physicians in the decision-making process of the regional health authority, a joint alliance against the government, and joint innovations (Reay & Hinings, 2009, pp. 640-643). It would be interesting though, to know to what extent these mechanisms also apply within the judiciary or what other practices for coping with multirationality exist.

11. Concluding Remarks
Before drawing some conclusions we have to point out the basic constraints of this review. First it has to be stressed that the findings used to illustrate the concept of multirationality stem, without exception from studies which were conducted in the USA, and which were besides quite old. In addition, multirationality varies without doubt strongly according to its context, which further reduces generalizability. Another constraint relates to the fact that, except in the case of (chief) judges and court administrators, knowledge about other court actors' relationships and attitudes is still relatively scant. Increasing this knowledge is thus inevitable if we want to improve our understanding about multirationality and its consequences for the judiciary.

Studies implicitly addressing the phenomenon of multirationality can be divided in two research streams. The first research stream implicitly focuses at multirationality by examining the perceptions, attitudes, and relationships of different court actors. Local legal culture is the second research stream which indicates multirationality through the existence of culture incongruence within a single court. Competing values are moreover seen as the major factor affecting court performance.

Overall, the findings of previous studies revealed, that while judges and clerks traditionally hold a legal rationality, court administrators embody often an economic rationality. Given the host of other new, non-legal court actors, like computer experts and support staff (Heydebrand & Seron, 1990, p. 1) it is however likely that apart from the legal and economic rationalities other rationalities exist as well. Despite the fact that isolation seems to be a common practice of judges to prevent the rise of the economic rationality within courts, the relationship among judges, clerks, and court administrators still seems to be „positive and supportive" in most cases (Aikman, 2007, p. 104).

Although these two research streams implicitly point to the presence of multiple rationalities within the judiciary, multirationality has not yet been identified as a core challenge of court management.

By referring to insights from New Institutionalism, we have demonstrated that courts, as a consequence of certain developments in their environment, became multirational organizations, thus rendering court management extremely demanding. Mutual incomprehension and goal divergence are for example supposed to cause latent conflicts. The

ambiguity of court actors' relations as well as the fact that courts are often lacking a clear command structure pose additional challenges on the management of courts.

A last point which complicates court management refers to the communication processes which are supposed to be often disturbed within the judiciary.

Nevertheless, multirationality is not per se negative and can even be associated with positive effects. The presence of multiple rationalities can for instance broaden an organizations' repertoire of practices to respond to institutional complexity and thus, even if causing some ambiguity, also increase its problem solving capacity (e.g. Lounsbury, 2008, p. 354; Aikman, 2007, p. 135). As long as an organization's rationalities are compatible or „can be tailored to be so", they do probably not hamper an efficient court management (cf. Greenwood et al., 2011, p. 332). Yet still, situations where multiple rationalities collide and conflict will pose an additional challenge on court management (Greenwood et al., 2011, p. 318). For this reason, we believe that the concept of multirationality makes an important contribution to the study of court management since it directs attention towards the diverse challenges arising from the coexistence of multiple rationalities and the associated consequences on courts' efficiency. In order to be able to systematically handle and master the described challenges it is in our view inevitable to take a multirational management approach. Notably, we suggest for further research to structure possible management responses in courts into the four types of practices: isolation, avoidance, tolerance, and competence.

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