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Written Justifications of Judgments of Utrecht District Court: An Empirical Study on the Relationship between Case Characteristics and Text Characteristics

Philip Langbroek¹, Mandy van der Velde, and Tina van der Linden

Utrecht University, the Netherlands

The primary function of written judgments is to legitimize the decision of the court. In the Netherlands, the judiciary perceives a gap between itself and the general public. Laypeople seem to understand little of the work of the courts. An important question is: For whom do judges write their judgments? This study presumes that the various intended audiences (parties, professional lawyers, other judges, the general public) can be deduced from the characteristics of justification texts: text complexity, juridical intensity, and moral considerations. The purpose of this study is to explain differences in text characteristics by differences in legal area and various case characteristics. We used the text characteristics of 958 cases filed at Utrecht District Court in 2009–2010. The results show that conflict and management characteristics are far more important predictors of text characteristics than “legal area” (trade, administrative, criminal, small claims, family). Also, conflict characteristics are more important to explain text differences than case management aspects and legal area. So much, that there seems to be an homogeneous justification text culture over the borders of legal areas. Also, justification texts seem to be written for professional lawyers primarily.

KEYWORDS: judicial audiences, justification texts, court decisions, Netherlands, text quality

INTRODUCTION

In the Dutch judiciary is an ongoing debate about adjusting the written justifications of court decisions to the needs of the various court users that constitute their audiences—the parties themselves, professional lawyers, and the general public. Court divisions function in different societal and legal areas. In this context, we conducted an empirical study to explain the differences in written justifications of court decisions between the different legal areas adjudicated by Utrecht District Court (trade, small claims, family, criminal, administrative—further referred to as “legal area”). An important restriction was that we were not allowed to speak to the court users themselves; we could include only judges and the texts of their decisions.

Address correspondence to Philip Langbroek, Utrecht School of Law, Achter Sint Pieter 200, Utrecht 3512 HT, Netherlands. E-mail: p.m.langbroek@uu.nl

¹Philip Langbroek is professor of Justice Administration and Judicial Organisation at Utrecht Law School. Mandy van der Velde is professor of Management of Change in Large Organisations at Utrecht School of Governance. Tina van der Linden is an assistant professor of law at Utrecht Law School.

First, we present our research model for Dutch courts, as part of a continental legal system, and we relate this model to studies of case law and audiences in the United States. We position our work in the context of the existing academic discussion and knowledge in this field, and to contribute to this knowledge from a civil-law perspective.

WRITTEN JUSTIFICATIONS OF COURT DECISIONS

Research on Court Decisions and Justification Texts in the United States and in Europe

Justification of court decisions is primarily the domain of professional lawyers. There are many juridical analyses of the justifications of court decisions (Ross 2002; Cserne 2009). However, they focus on the content and its normative structuring, and primarily on the case-law of the highest courts. Lawyers in civil law systems assume that first instance courts follow the legislation and the lead of the case-law of the highest courts, as legal certainty is seen as an essential juridical virtue (Merryman and Perdomo 2007).

Philosophers and linguists also show interest in judicial reasoning (Alexander and Sherwin 2008). Examples are a philosophical study on the quality of representation of the judicial reasoning in judgment texts by Engel (2004), an empirical study on statutory interpretation in federal tax cases (Schneider 2001), and a model on the development of precedent and consistency of case law in civil law systems (Fon and Parisi 2006).

Much literature is dedicated to the judgments of the U.S. Supreme Court. These are mainly juridical analyses (Schauer 2000) but also empirical studies focusing on judicial decision-making, often using a law and economics approach (Henson 2010). Schauer positions the law and economics approach in the realist tradition. According to him, the idea is that judges are normal people with self-interest, like every human being. Assertions that the U.S. Supreme Court is ideologically biased have been investigated thoroughly (Howard and Segal 2003), also by checking the importance of precedent (Baily and Maltzman 2007); for citations of court decisions in judicial opinions (Cross, Spriggs, Johnson, and Wahlbeck 2010); the use of the texts and the intentions of the framers of the U.S. constitution of the federalists (Corley, Howard, and Nixon 2005); the influence of legal rules versus political preference of judges on judicial decisions (Bartels 2009); U.S. Supreme Court judges having a background in Washington, DC, or from elsewhere, sensitivity for press criticisms—also known as the “greenhouse effect” (Baum 2006).

There is less attention for the decisions of first instance courts. Exceptions are for criminal courts in the United States (Huber and Gordon 2004; Scott 2006), for consistency of sentencing (Ostrom, Ostrom, Hanson, and Kleiman 2008), for consistency of judging in the Netherlands (Busscher, Groot, Langbroek, Langerak, and Willemsen 2009; Ippel and Heeger-Hertter 2006), and on timeliness of judicial decision-making (Eshuis 2007).

As a further exception on the lack of attention for first instance courts may be mentioned the ongoing debate about judicial elections in U.S. states, where many judges have to run for election and, after expiration of their term, for re-election. Judicial elections appear in research as an important incentive for judges to adapt their viewpoints (Brace and Boyea 2007, 2008; Huber and Gordon 2004), especially in criminal cases. Recently, Shepherd (2013) has shown considerable bias of elected judges toward businesses when their campaigns were financed by business groups.

Naturally, this does not apply to judges in the federal courts, who have life tenure. Nonetheless, judges do have their professional interests, and the way they address their audiences can be explained accordingly. Press media are seen as an important audience for judges, also for their self-esteem (Baum 2006).

In conclusion, most studies focus on the content of judicial decisions, whereas only some focus on judicial audiences and judicial opinions, as developed by Baum (2006). Hume (2009) published a report on the effects of judicial opinion language on acceptance of the decisions as precedent in federal courts in different circuits in the United States, thus focusing on the content of judicial decisions and the content of legal reasoning. However, these studies do not apply to the way European continental courts write their judgments, because the continental judicial traditions and the administrative contexts of courts in Europe differ considerably from the American judicial traditions² and administrative contexts. This does not mean that behavior of European judges should be explained differently; they may well have motives similar to their American colleagues. However, because the context is different—judges appointed for life, collegial writing, secrecy of chambers, no individual opinion writing, courts being part of a national court system—explanations of why they write justification texts the way they do should take these differences into account. Nonetheless, European judges have audiences for their judgments too, and, as in the United States, we expect there are influences from the audiences of the courts on judgment texts, because they are also produced in anticipation of audiences' expectations.

In the Dutch context, the discussion about justification texts can be placed in the context of an ongoing debate about bridging the gap between the judiciary/the courts on the one hand and the general public on the other regarding the way in which the courts account for their decisions.

Justification Texts for Dutch Court Decisions: Functions and Audiences

The literature on Dutch courts interprets differences in attitude and application of rules between court divisions as cultural differences. Indeed, judges perceive the other court divisions as “different” (Ippel and Heeger-Hertter 2006; Boone et al. 2007). For example, in administrative court decisions, extensive references are usually made to relevant legislation, but in family cases, such references are relatively scarce.

Research on the best way to communicate justifications of court decisions is also scarce. There are some Dutch publications by Malsch, Lavender, and Nijboer (2006), Malsch, de Poot,

²Merryman explained the difference between continental judgments and American judgments by referring to the French revolution, which happened also to be a revolution against conservative magistrates that blocked changes in pre-revolutionary France. Where American and English courts continued the development of the law from the Middle Ages onward, the French Revolution marked a deviation from that development in France and the other European countries that have a civil law system (Merryman 1996).

Therefore, judges just had to apply the legislation as the will of the people. They were not expected to use their own views and interpretations in the process. Originally, this gave French judges a radically different position compared to American judges—also in status. And this deviating perspective on judges was exported by Napoleon to a large part of the European continent. Continental judges, therefore, do not write opinions. They write justifications. And when there are more judges on the bench, they share a responsibility for the justification text. The opinions of individual judges remain hidden, and it usually is a crime to break this so-called secrecy of chambers.

Verkuylen, and Wolters (2006), Malsch and van Manen (2007), and Komter and Malsch (2012). We assume that the functions of the justification of court decisions are to legitimize the decision, to persuade the contra-party, and to show how the court decision is in agreement with the general legal system. Lawyers want to see what the judge did with their arguments.

These functions can be related to the different functions and audiences of the justification texts. If the court adapts justification texts to the various audiences in different cases, this would be an indication that the court tries to meet the demands of public accountability for court decisions.

Legitimacy of a court decision depends not only on the justification but also on the conditions in which the case was prepared, heard, and decided. Fairness in court hearings is also a psychological truth, as offering parties to participate in proceedings tends to increase the acceptability of the decision (Van den Bos 2003). A basic condition for legitimacy is that judges should not be biased or appear to be biased.³ Furthermore, there is a connection between the general legitimacy of the government and the general trust of citizens in their government (Visser 2008; Jensma 2010; Kor 2011).

Convincing the parties and the superior courts also demands that the justification fits in the legal system. The law is a primary legitimizer of the judicial decision. In this respect, advocates mediate between the law, the judge, and the parties. Judges mediate between the law and the parties in a case. Judges and advocates thus fulfill an *explanation* function (Malsch, Lavender, et al. 2006; Malsch and Van Manen 2007).

Apart from explaining the law (the legal explanation), the justification should also show that the decision made is fair and just.⁴ This can be done by reference to *morals* in the justification text (i.e., moral explanation), not only to convince the parties but also to convince the general public and politicians. In this sense, the press and wider media function as an intermediate between the courts and the public and between the courts and politicians. In doing so, they try to create *news value*. Often journalists represent the moral indignation hanging over the case, and thus they appeal to everybody's sense of justice.

The explanation function serves the legitimacy of court decisions by enabling *control* on the content, by means of appeal and cassation by parties and their counsel and by means of comments and proposals by legal academics and by politicians (Malsch, Lavender, et al. 2006; Malsch and van Manen 2007). Thus, different audiences are served. The audiences include policymakers and media journalists, but especially lawyers in their different qualities of advocate, fellow judges, appeal court judges, and academics. Advocates should be able to assess whether or not it is worth the effort to appeal to a higher court. Policymakers want to be able to evaluate whether a court decision should lead to modification of existing legislation. Like the academic perspective, the legislative perspective is also directed at the legal system, and therefore references to the legal basis of a court decision are important.

The explanation function and the control functions are different sides of the same coin. By formulating a justification, the judges develop insight in the case and in the way the law should be applied. We call this the *inculcation* of the reasoning for the judge writing the justification text. In

³There is a vast amount of literature on this issue; it is a standard of constitutional law and also of Article 6 European Convention on Human Rights.

⁴Opinions of economists that first instance court decisions should not be motivated at all, or only in a standardized way for efficiency reasons, ignore the fact that the parties must be convinced. See Bar Niv and Safra (1999).

this sense, judges are also an audience themselves. Finally, it should be mentioned that audiences of court decisions are not separate groups, but they (may) consist of overlapping groups.

In Table 1, we present the relations between the intended audiences of justification texts and the text characteristics. The intended audiences overlap largely with the audiences described by Baum (2006). Nevertheless, there are fundamental differences between the political systems of the Netherlands and of the United States. Dutch courts and judges operate in a civil law system, and the courts are not considered the important political actors as the higher U.S. courts, which certainly holds for the Utrecht district court as a first instance court.

Bridging the Gap between Authors of Justification Texts and the General Public

From a court administration perspective, the Dutch debate about the functioning of the judiciary has also focused on the perceived gap between the judiciary and the public (Elffers and de Keijser 2008; de Keijser, Elffers, and van de Bunt 2008; de Keijser and Elffers 2009). This gap is seen as detrimental for the legitimacy of the courts (Van den Brink 2009; Langbroek 2009). Apart from deploying deliberate media strategies by the judiciary (Gies 2005), central court administrators have also focused on the comprehensibility of justifications of court decisions, in order to make judgments more comprehensible for laypeople. Comprehensible justifications of court decisions are considered essential from a (public) accountability perspective for judicial decision-making.

Justifications of criminal court decisions and the decisions themselves are written on networked PCs, having a strict format and using standard text blocks. Often, justification texts are prepared by court staff, usually (specialized) lawyers working under judicial supervision. Justifications of criminal court decisions have to be written within a fortnight after the last hearing of the case. These factors—time pressure, the use of text blocks, and many hands on the text—can be mentioned as some of the causes of complaints about the incomprehensibility of justification texts of criminal court decisions. Neither juridical language nor the use of legal terms contributes to good readability. Involvement of legal court staff in the preparation of the texts of court decisions is common in all legal areas served by Dutch first instance courts and is expected to contribute to court efficiency.

The Netherlands' Council for the Judiciary's policy aims to stimulate the courts to produce justification texts that are comprehensible for the parties and for the public at large. The alleged gap between the judiciary and the public should somehow be overcome. On the other hand, the Council wants the courts to balance efforts for writing justification texts with the characteristics of the case. Not all cases deserve an extensive justification, and in some cases, a verbal explanation of the court decision is supposed sufficient.

Several projects have been implemented to train judges to write justification texts that are more accessible to non-lawyers. One of the most successful projects is the so-called Promis project,⁵ aimed at writing justifications of criminal court decisions, following a pattern of syllogistic reasoning and presenting the facts and the relevant interpretation of facts and issues of the law. The problem to be solved by this project was that many justifications of court decisions in

⁵Despite the alleged success, language analysts have published their doubts about the comprehensibility of justification texts following the Promis format (Van den Hoven and Plug 2008).

TABLE 1
 Functions of Justification Texts of Court Decisions and Intended Audiences

<i>Intended Audiences</i>	<i>Function of the Justification Text</i>	<i>Expected Text Characteristics of Justifications of Court Decisions</i>	<i>Text Characteristics Measured As:</i>
Parties	Decision Explanation	Comprehensibility Moral explanation	Text Complexity, Occurrence of moral considerations
Professional Lawyers: Advocates	Explanation, Control	Legal explanation	Number of references to case-law and to legislation
Judges	Inculcation, Explanation, Control	Legal explanation	Number of references to case-law and to legislation
Academic Lawyers	Explanation, Control	Legal explanation	Number of references to case-law and to legislation
Politicians	Control	Moral explanation and legal explanation	Occurrence of moral considerations, Number of references to case-law and to legislation
Media/General Public	Explanation, Control	Moral explanation, Comprehensibility	Text Complexity, Occurrence of moral considerations

criminal cases were incomprehensible, even to lawyers. The present study examines if and how justification texts serve their audiences.

RESEARCH: AIM, QUESTIONS, MODEL, AND HYPOTHESES

Aim and Research Questions

The aim of the present study is to gain insight in how authors of justification texts address the different audiences of their texts, by relating case characteristics to text characteristics. The research questions are

1. Are there any differences between the written justifications of court decisions for different legal areas?
2. Are there other possible causes for differences between written justifications of court decisions?
3. Which causes are more important for differences in text characteristics of written justifications; legal area or other case characteristics?

We answer these research questions by connecting the intended audiences of court decisions to text characteristics (i.e., from the text characteristics, the primary intended audience of a written justification is deduced). We connect the text characteristics with the case characteristics: “legal area,” “conflict characteristics,” and “case management/organization characteristics.” We investigate to what extent case characteristics other than “legal area” influence text characteristics. In Figure 1, the research model is presented.

Research Model

We include the following *text characteristics*:

Text complexity. A text will be more accessible to people if it is written in more simple language with a minimal use of legal jargon. As judges told us during our preparatory interviews, the prime audience of a justification text is the parties. The public and the media will also find it easier to understand a text if it is written in simple language.

Juridical intensity. The justification of a court decision is intended to create the normative basis for the decision in terms of establishing the facts and the applicable law. Applicable law consists of legal rules and leading case-law of higher courts and colleagues. The more juridical the character of the justification text, the more likely it is that the text has been molded to an audience of professional lawyers. The operationalization distinguishes between the number of references to case-law and the number of references to articles in statutes and international treaties.

Moral considerations. By moral considerations, a judge may try to reach certain audiences. We think that when using moral considerations, judges turn to other audiences than the parties, in particular when these considerations are superfluous for the justification of the court decision. For example, in a family case: “A child should feel safe and secure in the family where it grows up, and therefore it should know that it may stay, even when it sometimes behaves annoyingly.” And in a criminal case: “Thus the victim was reduced to an object and a commodity. A worse

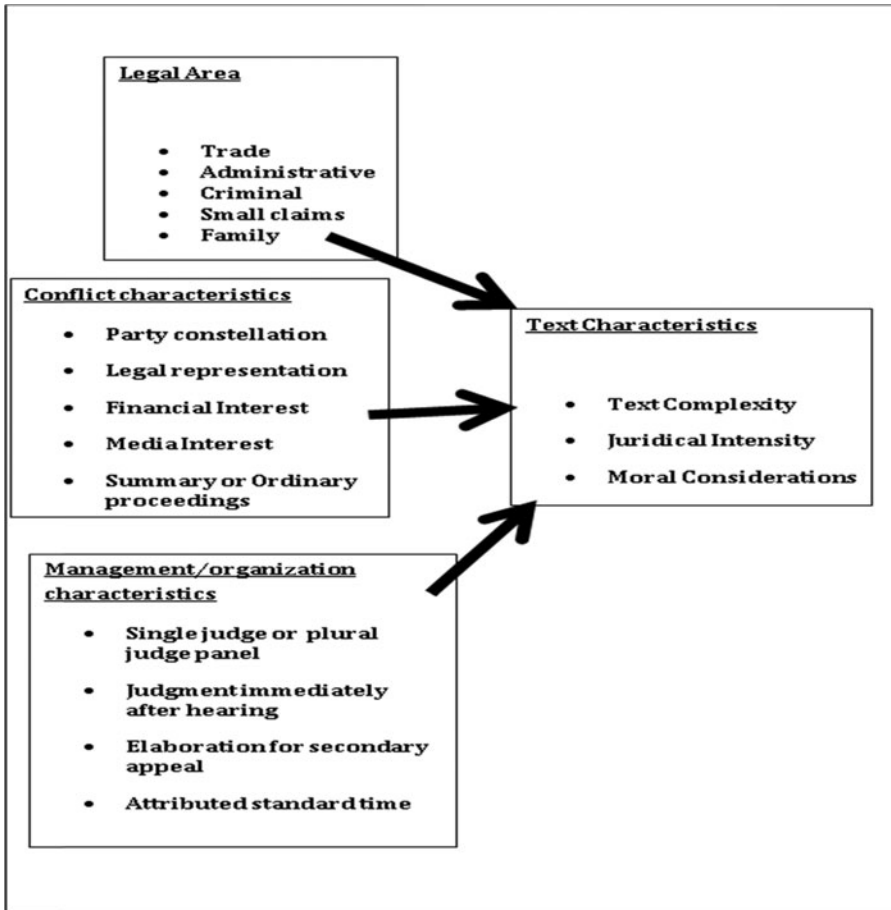


FIGURE 1 Research Model Case Characteristics and Text Characteristics.

way of contempt is almost unthinkable.” Sometimes, also apart from the justification of the court decision, the judges give parties advice in the judgment.⁶ Audiences of moral considerations are the parties but also the general public, media, and politicians.

Furthermore, we distinguish between the following case characteristics: “legal area,” “conflict characteristics,” and “management/ organization characteristics.”

The *legal areas* are specializations organized in court divisions. We distinguish between the legal fields “trade,” “administrative,” “criminal,” “small claims,” and “family.”

⁶E.g., in a summary proceedings case where a convicted pedophile who had done his time in prison tried to find a place to live. Mayors of several municipalities had issued orders for the pedophile not to rent an apartment in their municipality. When deciding on one of those “banning orders,” the judge declared them to be illegal because of abuse of powers and explained (to all mayors and the general public) that also a convicted pedophile, when released from prison, has a right to live somewhere in the Netherlands. Utrecht District Court 3 December 2009, LJN BK5246.

Conflict characteristics are the experience, expertise, and opportunities of parties with litigation (one-shotters or repeat players),⁷ presence or absence of legal representation, the financial interest at stake in the case (in euros), the presence or absence of media interest in the case, and the choice for summary or ordinary proceedings.

The *management/organization* characteristics concern the way in which the case is dealt with by the court. Case management aspects are: Was there a single judge or a three-judge panel, was the case decided immediately after hearing? Is the justification an elaboration of the court decision because secondary appeal has been filed? How much standard time (based on the financing system) does the court have available for the case?

METHOD: SAMPLING, OPERATIONALIZATION, AND ANALYSES

First, we held five pilot interviews with judges. These interviews were used to develop a valid codebook to enable our investigations of the text, legal area, and conflict and management/organization characteristics of written justifications of court decisions. We then scored the case characteristics and text characteristics from these written justifications, from Microsoft Word files from the electronic archives of the Utrecht District Court.

Sampling

The cases were selected by means of a stratified random sample. For the sampling, we used case numbers from production lists over 2009 and 2010. The stratification was designed as a representative mix of procedures and specific subjects per legal area within the divisions of Utrecht District Court. Verbal court decisions were included in the sample only insofar as they were elaborated in writing after hearing. With the lists, we tried to retrieve the selected Word files of the court decisions from the courts' electronic archives. We found the e-archives not to be complete for all legal areas, so sometimes we had to settle for the court decision with the next case number from the e-archive within the indicated category. This sample consisted of 852 cases.

This sample was merged with a collection of 150 cases with media interest. The media cases were collected by checking national and local media on the Internet. The cases were retrieved from the website on which they are published. The cases with media interest *within the sample* were removed in order to avoid overlapping counts. Also case-management decisions without a judgment were removed from the sample. Finally, we had 958 unique judgment texts.

Operationalizations

The following operationalizations were scored in a SPSS database by the researchers and five research assistants. We developed an instruction with the codebook, with pilots on a random set

⁷The distinction has been introduced by Marc Galanter, "Why the Haves Come out Ahead: Speculations on the Limits of Legal Change," *Law and Society Rev.* 95 (1974–1975): 95–155.

of twenty court decisions from www.rechtspraak.nl, in order to make sure that the choices were made in the same way by all researchers and thus to guarantee reliability of the measurements.

Legal Area

At the time of the study, Utrecht District Court was a first instance court in the Netherlands, as an institution of the Dutch Civil Law system. The Court serves five legal areas that define organizational court divisions. Specialized units of judges and court secretaries deal with cases from a legal area (Langbroek 2007). The court system in the Netherlands was in a reorganization process affecting the traditional legal areas of court divisions (civil, administrative, criminal, small claims). We selected the legal areas “trade,” “administrative,” “criminal,” “small claims,” and “family.” At the time of the study, Utrecht District Court had 98.5 fulltime equivalent (FTE) judges and 272 FTE staff, of whom 126 FTE administrative support.⁸

Conflict Characteristics

Party constellation. We distinguished between three different combinations: (1) both parties are one-shotters; (2) a repeat player opposes a one-shotter; or (3) both parties are repeat players.

Legal Representation. In administrative, some family, and some small claims cases, legal representation is not mandatory. In other cases, legal representation is mandatory.⁹ A judgment (= justification plus court decision) shows whether or not there is professional legal representation. We scored whether there is professional legal representation in a case (1), or there is no professional legal representation in a case (2).

Financial Interest. We coded only amounts of euros that were explicitly mentioned in the justification text. We did not count fines, court fees, and litigation costs. For the analysis, we used €0 = 0; €0–5,000 = 1; €5,000–50,000 = 2; and >€50,000 = 3.

Media interest. With “media interest,” we mean there was attention for the case in a newspaper, on radio, or on television. We did not take Internet blogs into account. One hundred and fifty cases were identified based on media publications in 2009 and 2010. Media interest was coded as 1, and absence of media interest was coded as 2.

⁸Annual reports do not show absolute numbers of staff and production, only proportions. Those numbers were provided by B. J. van Eteekoven, 2 March 2011. See <http://www.rechtspraak.nl/Organisatie/Publicaties-En-Brochures/Pages/Jaardocumenten.aspx> accessed on August 24, 2012.

⁹Art. 28 Code of Criminal Procedure, art 79 Code of Civil Procedure.

Ordinary Proceedings and Summary Proceedings. Summary proceedings was coded as 1, and ordinary proceedings was coded as 2.

Management/Organization Characteristics

Single Judge Panel and Plural Judge Panel. Single-judge panel cases were coded as 1, and plural-judge panel cases were coded as 2.

Written Elaboration of Verbal Court Decisions Immediately After Hearing. Sometimes in single-judge cases a decision is given verbally immediately after hearing. The clerk makes a note on the verbal court decision. For example, in single-judge panel criminal cases the justification is given orally, but this is not elaborated in the minutes, which contain only the court decision. In small claims, family law, and administrative law cases, the justification of the verbally given decision is usually elaborated in writing after hearing. Verbal court decision is coded as 1, whereas no verbal court decision is coded as 2.

Elaboration for Secondary Appeal. This variable could be measured for criminal law cases only. Elaboration for appeal is coded as 1, and no elaboration for appeal is coded as 2.

Attributed Standard Time. According to the financing system of the courts, cases are attributed a certain amount of time in minutes. This can vary from 90 minutes to up to 1,500 minutes per case. This attributed standard time per type of case is based on time registration research. We distinguished the attributed standard time categories into three: 1 = low, 0–150 minutes; 2 = middle, 151–400 minutes, and 3 = high, >400 minutes.

Text Characteristics

Text Complexity. Text complexity is measured by using the calculations of readability testing. Readability tests of texts are based on a calculation taking the number of sentences, the average number of words per sentence, and the average number of syllables per word into account. They were especially developed in the United States for American English—for example, the Gunning-Fog and de Flesch Kincaid readability tests.¹⁰ The measure in this study is the Douma. The Douma test was adapted to the Dutch language, because the Dutch language contains more long words compared to the English language. The Douma was applied to only the justification parts of court decisions by cutting and pasting the text from the Word files into the window of <http://standards-schmandards.com/exhibits/rix/>. Douma varies between 0 and 100, where 100 represents the most simple texts, and 1 the most complex texts.

¹⁰The Flesch Kincaid readability test uses the following algorithm: $206.835 - 1.015 \times (\text{number of words/number of sentences}) - 84.6 \times (\text{number of syllables/number of words})$. This results in a number between 0 and 100, where a higher score refers to better readability.

Juridical Intensity. We used two indicators for juridical intensity:

- the number of references to articles in statute acts, regulations, and treaties. Multiple references to the same article were counted according to the number of their occurrence.
- the number of explicit references to Dutch and European case-law—again, multiple references to the same court decisions were counted according to the number of their occurrence.

Moral Considerations. Justifications of court decision sometimes contain moral considerations. We coded moral considerations as present = 1 and absent = 2.

Analyses

First, we conducted a MANOVA to examine the differences in mean scores in the text characteristics between the five legal areas. Then, we conducted *t*-tests and ANOVAs to examine differences in text characteristics between case characteristics. Next, using regression analyses, we examined which case characteristics have the strongest influence on the text characteristics. Finally, we performed two MANOVAs, for text characteristics and case characteristics, one with and one without legal area as a fixed factor.

RESULTS

Differences in Text Characteristics between Legal Areas

The results presented in Table 2 show that there are indeed differences in all text characteristics between five different legal areas. The differences are statistically significant.

The table shows that trade justification texts are the least complex, whereas administrative and small claims justification texts are the most complex. However, the differences are small; justification texts score around 50 on the Douma scale. The juridical intensity of administrative law justification texts is high for both number of references to legislation and number of references to case-law. The juridical intensity of criminal law justification texts is high for the number of references to articles in legislation but low for number of references to case-law. Moral considerations do occur most often in criminal cases and in family law cases, but are quite rare in other cases.

In sum, the answer to the first research question is that there are significant differences in text characteristics between the different legal areas. Overall, the legal areas have a remarkably low number of references to case law and a text complexity rating of about 50 on the Douma scale.

Differences between Case Characteristics in Text Characteristics of Justifications of Court Decisions

The results of the *t*-tests and ANOVAs are shown in Table 3. The results of Table 3 are discussed in relation with Table 4 in the next paragraph.

TABLE 2
Results of MANOVAs. Differences in text characteristics of justification texts between legal areas of Utrecht District Court

<i>N</i> = 958		<i>Trade</i> (<i>N</i> = 190)	<i>Administrative</i> (<i>N</i> = 231)	<i>Criminal</i> (<i>N</i> = 277)	<i>Small claims</i> (<i>N</i> = 107)	<i>Family</i> (<i>N</i> = 153)	<i>F</i>
Douma text complexity	M (Sd)	55.94 (6.95)	48.84 (4.73)	51.19 (7.58)	49.83 (7.39)	51.90 (9.60)	27.32***
Number of references to case-law	M (Sd)	.55 (1.88)	.81 (1.20)	.09 + (.44)	.14 (.63)	.045 (.20)	20.52***
Number of references to articles in legislation and treaties	M (Sd)	4.36 (7.59)	8.26 (7.25)	8.92 (6.56)	2.03 (4.20)	1.46 (2.72)	55.81***
Occurrence of moral considerations	M (Sd)	1.94 (.22)	1.97 (.15)	1.57 (.49)	1.96 (.19)	1.83 (.36)	60.03***

p* < .05; *p* < .01; ****p* < .001.

TABLE 3
Results of ANOVAs and *t*-test for differences in case characteristics and in text characteristics in justification texts¹

	Party constellation (ANOVA)		Legal represent- tation (<i>t</i> -test)		Financial interest in Euros (ANOVA)		Media interest (<i>t</i> -test)		Summary proceedings versus Ordinary Proceedings (<i>t</i> -test)		Single or Plural judge panel (<i>t</i> -test)		Written elaboration of verbal judgments immediately after hearing (<i>t</i> -test)		Elaboration for appeal (criminal law only) (<i>t</i> -test)		Attributed standard time (ANOVA)			
	One- shotter and Repeat- player (310)	5001- 50,000 (217)	Yes (883)	No (75)	0 (580)	>50,000 (51)	Yes (150)	No (840)	Summary Ordinary (132)	Summary Ordinary (825)	Single (711)	Plural (246)	Yes (114)	No (808)	Yes (32)	No (245)	Low (0-150 min- utes) (292)	Medium (151-400 minutes) (325)	High (>400 min- utes) (373)	
Doorna text complexity (SD)	53.72 (8.49)	50.43 (7.24)	51.53 (7.59)	51.36 (8.02)	50.38 (7.47)	54.52 (6.99)	49.46 (6.64)	51.89 (7.73)	51.03 (7.03)	51.60 (7.72)	52.00 (7.64)	50.16 (7.43)	54.68 (7.91)	51.25 (7.45)	52.40 (7.39)	51.00 (7.59)	52.50 (8.89)	50.06 (7.53)	51.75 (7.76)	
F/T		F = 20.46***	<i>T</i> = .19				<i>T</i> = -3.57		<i>T</i> = -.798		<i>T</i> = 3.27**		<i>T</i> = 4.46***		<i>T</i> = -1.712		F = 8.06***			
Number of references to case-law	M 0.24 (0.96)	M 0.40 (1.18)	0.35 (1.13)	0.34 (0.95)	0.41 (1.04)	0.49 (1.02)	0.52 (1.37)	0.32 (1.06)	0.31 (1.12)	0.38 (1.16)	0.26 (0.77)	0.38 (1.16)	0.40 (1.19)	0.15 (0.51)	0.07 (0.43)	0.09 (0.42)	0.58 (1.01)	0.38 (1.48)		
F/T		F = 4.39**	<i>T</i> = .06				<i>T</i> = 1.99*		<i>T</i> = 2.53*		<i>T</i> = 1.39		<i>T</i> = -2.87**		<i>T</i> = 0.947		F = 14.91***			
Number of references to articles in legislation and treaties	M 2.26 (4.73)	M 7.47 (6.96)	6.05 (7.15)	4.04 (4.33)	6.24 (7.13)	6.74 (10.22)	10.66 (9.65)	5.03 (6.00)	7.14 (7.49)	5.70 (6.89)	4.98 (6.49)	8.54 (7.70)	6.65 (4.85)	6.01 (7.30)	9.21 (4.41)	8.88 (6.80)	3.43 (4.41)	6.29 (7.17)	7.08 (7.43)	
F/T		F = 80.51***	<i>T</i> = 2.40**				<i>T</i> = 6.83***		<i>T</i> = 2.07*		<i>T</i> = 11.51***		<i>T</i> = 0.751		<i>T</i> = 0.27		F = 25.35***			
Occurrence of moral con- siderations	M 1.94 (0.23)	M 1.78 (0.41)	1.82 (0.38)	1.94 (0.22)	1.84 (0.36)	1.82 (0.37)	1.47 (0.50)	1.89 (0.30)	1.94 (0.22)	1.81 (0.38)	1.90 (0.29)	1.60 (0.49)	1.96 (0.18)	1.81 (0.38)	1.56 (0.50)	1.57 (0.49)	1.85 (0.35)	1.93 (0.25)	1.65 (0.47)	
F/T		F = 20.67***	<i>T</i> = -2.77**				<i>T</i> = -13.69***		<i>T</i> = 3.83***		<i>T</i> = -9.06***		<i>T</i> = 4.01***		<i>T</i> = 0.95		F = 74.73***			

* $p < .05$; ** $p < .01$; *** $p < .001$.

¹We performed ANOVAs for the independent scale variables with more than 2 categories, and independent sample *t*-tests for the other independent variables.

TABLE 4
Results of hierarchical regression analyses with four text characteristics of justification texts as dependent variables and 7 case characteristics as independent variables ($N = 919$)

	Text complexity			Number of references to case-law			Number of references to articles in statute acts			Occurrence of moral considerations		
	B	SE	β	B	SE	β	B	SE	β	B	SE	β
Conflict Characteristics												
Party constellation	-2.98***	.54	-.19***	-.25**	.08	.20**	4.90***	.46	.35***	-.12***	.02	-.15***
Legal representation	1.17	.88	.04	-.03	.13	-.01	-2.01**	.75	-.08**	.07	.04	.04
Financial interest in four categories	1.40***	.28	.16***	-.01	.04	-.00	.24	.24	.03	.00	.01	-.01
Media interest	3.19***	.77	.14***	.09	.12	.03	-3.37***	.65	-.16***	.49***	.03	.42***
Ordinary or summary proceedings	.34	.73	.014	-.20	.11	-.06	-1.05	.62	-.05	-.17***	.03	-.15***
Management/Organization Characteristics												
Written elaboration of verbal judgments immediately after hearing	-5.20***	.67	-.25***	.19	.10	.07	-1.05	.56	.06	-.13***	.03	-.13***
Attributed standard time	.65	.33	.07	.07	.05	.05	.88**	.28	.11**	-.04**	.02	-.09**

* $p < .05$; ** $p < .01$; *** $p < .001$.

The Relative Influence of Case Characteristics on Text Characteristics

The results of the regression analyses are shown in Table 4.¹¹

Conflict Characteristics and Text Characteristics

For *Party constellation*, the outcomes are robust for both text complexity and for references to legislation. Cases with only one-shotters have justifications with a lower text complexity compared to cases with repeat players, but the differences are small (5 Douma points on average). More repeat players in a case relate to more references to articles in legislation and to more references to case law in justification texts. It therefore appears that justifications texts are tuned somehow to the type of parties in a case. Apparently, there is an inclination to serve repeat-players with more legal sophistication than one-shotters.

Legal Representation

Differences in text complexity are small. Legal representation doesn't make much difference, neither for references to case law nor for moral considerations. For the number of references to legislation the differences are significant, but small.

Financial Interest

Texts in cases concerning the largest financial interest are less complex (Douma = 54) than cases with a low financial interest (Douma = 50). These results are robust for both the F-test and the regression analysis.

Media Interest

Of the 147 cases with media interest, 76 are criminal cases, the other 68 cases are trade, administrative and family cases. Media cases have a higher number of references to legislation and a higher occurrence of moral considerations. The results are robust both for *t*-tests and regression analysis. When there is media interest for a case, the court is inclined to address professional lawyers (juridical intensity) and the general public (moral considerations) primarily. For text complexity, media interest does not matter.

Ordinary and Summary Proceedings

In summary proceedings justification texts, moral considerations occur less often than in ordinary proceedings justification texts. Apparently, summary proceedings justification texts are

¹¹We left the variable "elaboration for secondary appeal" out of the regression analysis, because this variable overlaps with the independent variable "written elaboration of verbal judgment immediately after hearing." We also left out the variable "single judge and plural judge panel," because it overlaps 100 percent with the category ordinary proceedings in the variable "ordinary or summary proceedings."

more oriented toward professional lawyers than to other audiences, whereas justifications of ordinary proceedings seem more oriented to the general public.

Management/Organization Characteristics and Text Characteristics

Single and Plural Judge Panels

Differences in text complexity are small. The difference in number of references to case-law between single judge and plural judge cases is not significant. The difference in number of references to articles in legislation is significant (on average 4 articles less in single judge panel justification texts than in plural judge panel justification texts). The occurrence of moral considerations is higher in plural-judge panel justification texts than in single-judge panel justification texts.

Written Elaboration of Verbal Judgments

Written elaborations of verbal court decisions immediately after hearing are more complex than “ordinary” justification texts.

Attributed Standard Time

Text complexity is not affected by attributed standard time. The more attributed standard time, the more references to legislation. Moral considerations do occur more often in cases with a higher amount of attributed standard time.

In sum, the answer to the second research question is that the case characteristics offer alternative explanations for variances in text characteristics and for intended audiences in justification texts, compared to the independent variable “legal area.”

The variance in text complexity is small.

The variance in the number of references to case-law, although small, can be explained by party constellation. The variance in the number of references to articles in legislation can be explained by party constellation, by media interest in the case and by attributed standard time. Also, the variance in occurrence of moral considerations can be explained by party constellation, media interest and by type of proceedings.

Complexity of Justification Texts (Douma)

The variance in text complexity is small on a 1–100 scale. The significance of the differences is probably caused by the relatively large sample size.

In Table 5 the results of two MANOVAs are presented, for text characteristics and case characteristics, without and with legal area as fixed factor respectively, displaying the proportion

TABLE 5
Adjusted R squared values

<i>Text characteristics</i>	<i>Text complexity</i>	<i>Number of references to case-law</i>	<i>Number of references to articles in statute acts</i>	<i>Occurrence of moral considerations</i>
Case characteristics	0.14	0.02	0.21	0.30
Legal area plus Case characteristics	0.19	0.09	0.27	0.41

of variance explained as adjusted R2 values. Table 5 shows that the case characteristics party constellation, legal representation, media interest and written elaboration of court decision immediately after hearing explain 14 percent of the variance in text complexity as measured by the Douma. With legal area added, 19 percent of the variance is explained.

Juridical Intensity: References to Case-Law and to Articles in Legislation

The mean number of references to case-law is lower than 1 per case. The results from Tables 3 and 4 show that the variance in references to case-law is limited and mainly explained by party constellation. Table 5 shows that the variance in references to case-law can hardly be explained by differences in case characteristics (2% of the variance.).

The variance of references to articles in legislation is best predicted by party constellation ($\beta = .34^{***}$), media interest ($\beta = -.16^{***}$) and attributed standard time ($\beta = .10^{***}$). The presence of repeat players increases the number of references to legislation, and so does media interest in a case. This is true for all legal areas. Another significant but less important predictor of number of references to legislation is legal representation.

As can be seen from Table 5, these variables explain 21% of the differences measured in the number of references to articles in legislation and international treaties. Here, also conflict characteristics are dominant in contributing to the explained variance.

Occurrence of Moral Considerations

The strongest predictor of moral considerations is media interest ($\beta = .42^{***}$). Summary proceedings ($\beta = -.15^{***}$) decrease the occurrence of moral considerations significantly. This is present in all legal areas. With the presence of repeat-players in a case, there is a higher occurrence of moral consideration in the justification texts ($\beta = -.15^{***}$). The presence or absence of legal representation in a case is not significant for the explanations of variances in occurrences of moral considerations.

Table 5 shows that the case characteristics: media interest, summary or ordinary proceedings, and written elaborations of verbal court decision immediately after hearing are relevant in explaining the variance of occurrence of moral considerations. Together they explain 30 percent of the variance in the occurrence of moral considerations.

The Relative Influence of the Variable Legal Area on Text Characteristics

With “legal area” included in the MANOVA as a fixed factor, the independent variables explain 19 percent of variance in text complexity, 9 percent of variance in number of references to case-law, 27 percent of variance in the number of references to articles in legislation, and 41 percent of the variance in the occurrence of moral considerations.

Our results suggest that case characteristics are more important predictors of variances in text characteristics than the variable legal area.

The results also show that conflict characteristics have a larger influence on text characteristics than management/organization characteristics. It is especially meaningful to notice that attributed standard time—in accordance with the courts’ financing system—only contributes to the explanation of variance in text characteristics regarding number of references to legislation and occurrence of moral considerations.

The outcomes show that that legal area does not affect text complexity. The influence of legal area on the variance of references to case-law is smaller than those of other case characteristics. Especially the small influence of the variable legal area on the number of references to articles in legislation and treaties seems to be meaningful, even though in criminal law judgments references to alleged crimes in legislation are obligatory. The peculiarities of the legal area or the peculiarities of the organizational units authors of judgments work in seem much less important than other case characteristics.

Also the outcome for the relation between “legal area” and “occurrence of moral considerations” is surprising. Media interest and ordinary proceedings compared to summary proceedings are much more important for the “occurrence of moral considerations” than the variable “legal area.” Nonetheless, legal area has some considerable influence on the occurrence of moral considerations, mainly caused by criminal law cases.

In sum, the answer to the third research question is that differences in text characteristics are explained for the smaller part by the variable “legal area” and for the larger part by “conflict characteristics” and “management/organization characteristics.”

DISCUSSION

Below, we discuss the implications of our results for judicial administration research.

Implications for Judicial Administration Research

We first discuss several aspects of text characteristics and then discuss relevant aspects of case characteristics.

For the interpretation of the results of this study, it is important to note that there are no absolute indicators to relate a specific score of a text characteristic to a specific intended audience. Only if we accept that relatively high scores on a specific text characteristic are an indicator of a primary intended audience, the interpretation of the outcomes can be used as an instrument to improve communication qualities of justification texts. In order to verify this presumption, the

combination of text characteristics would have to be set against both the actual intentions of authors of justification texts and the different perceptions and wishes of their readership.

Another important issue to discuss is the concept of text complexity. Text complexity is measured by an algorithm using the number of words per sentence and the number of syllables per word. It does not reflect the experience of readers. The qualities of the reader also influence the comprehensibility of the text. Comprehensibility is an interactive concept. Therefore, the Douma does not represent readability but rather is a measure for the success or failure of the authors of court decisions to write relatively short sentences and to use plain language.

This can be demonstrated by a result beyond the scope of our model, indicating that ordinary criminal case justifications do not have a significantly different score on the text complexity scale compared with criminal law justification texts following the syllogistic reasoning scheme of the Promis project.¹³ Research has shown that judges consider Promis court decisions an improvement, but language research shows that there is no lesser complexity in reasoning (Van den Hoven and Plug 2008). This is an indication that the Douma as a measure for text complexity may be relevant for comprehensibility. This is supported by the fact that the so-called “Jus10fication project”¹⁴ instructed judges to write short sentences, use simple language, and avoid legalese in order to better communicate justification texts to the parties. The court has succeeded in producing texts of average complexity (around a Douma score of 50), but we did not find relevant variances indicating that judges differentiate between audiences with texts of different complexities. However this may be, more research is needed to explain the relationship between the use of legal language and text ccomprehensibility.

For the measurement of conflict characteristics, we also encountered limitations. We tried to measure “the importance of the case.” This term was elaborated as the societal meaning of the case, importance for other cases (development of the law), and as financial interests of the parties. This seemed highly relevant but could not be measured from justification texts, except for the financial interest in the case. In this context, media interest may be relevant for the societal interest of the case, but it is not the same as the financial interest of the parties. Media attention as an activity creates societal meaning. When a case receives media attention, more people will have an opinion about it. Moreover, “societal disturbance” as an indicator for “societal meaning of the case” is difficult to measure. Societal meaning could be measured with the maximum punishment for different crimes, or in administrative cases with the possible environmental impact of a license. In trade cases, societal interest could be related to the number of interested persons in the case. We suggest that future studies develop a measurement for the concept of “societal interest,” so that it can be used to compare different cases within a legal area and for cases in different legal areas.

Furthermore, we found that financial interests of parties in the case can be measured, but especially so for trade cases and small claims cases. In family cases, money may be at stake, but they are also often about tutelage. In administrative law cases, the stakes may be about money, but especially in licensing cases, financial interests often remain unmentioned. Measuring the amounts mentioned in a justification text may therefore not be adequate as a measure of the real financial value at stake. This also is a challenge for future research.

¹³Both score a mean of 51 on the Douma text complexity scale.

¹⁴In Dutch: “motiveren” in the context of judicial decisions means: to justify. The project name “Mo10veren” therefore can be translated as “Jus10fication.”

Another factor that could be involved in future studies is the use of standard text formats in justification texts, by recording the recognizable elements in the court decisions. Also, the questions on the evolution of proceedings, the way facts are described, and representation of viewpoints of parties in the justification texts may be of interest.

Finally, it may be also relevant to use years of experience of judges as independent variables, as an experienced judge may have more language abilities to adapt a text to intended audiences than a less-experienced judge.¹⁵

Implications for Judicial Administration Theory

This study showed that only very few references were found to case-law in general and to case-law from international or supranational courts (twelve times in the entire sample). This is relevant, because the Netherlands' constitution enables judges to apply directly applicable provisions of international treaties as a part of the national legal order. Therefore, we expected references to the European Court of Human Rights. We also expected references to the case-law of the European Courts of Justice. The court here shows itself as a civil law system court in the French tradition (Merryman 2007, Chapter VII, The Interpretation of Statutes), where case law is a much less important source to legitimize court decisions of a first-instance court than case-law.

Another outcome concerning management/organization characteristics worth mentioning is that the financing system of the court (operationalized as "attributed standard time") has almost no impact on the text characteristics. Constitutional lawyers have protested against the output financing of the courts in the context of organizational supervision of the courts by the Council for the Judiciary. The Council itself functions under the supervision of the Ministry of Security and Justice. Constitutionalist feared the financial administration of the courts would jeopardize judicial independence. This fear is not supported by our results, as they show that conflict characteristics have more effect on text characteristics than management/organization characteristics. This is an indication that traditional constitutional theory on judicial independence and impartiality could be further developed by results of empirical research on the relation between different aspects of court management and both judicial decision-making and text production behavior.

Implications for Judicial Administration Practice

Judges can only express their reasons for a court decision in the justification text. Therefore, judicial accountability for court decisions is realized via court justification texts. These texts are essential in the communication between the courts and their audiences. An important result of this study is that it is possible to develop insight into the intended audiences of justification texts of judgments by analyzing their text characteristics.

Generally, the justification texts in our sample are of an average complexity, which make them unlikely to be understood by laypeople. Moreover, the justification texts of judgments do not differentiate between audiences by adapting the text complexity. In order to legitimize court

¹⁵Unlike in Anglo-Saxon legal systems, in most civil law systems, competitions for judicial training positions are also open to law school graduates.

decisions, judges use references to case-law and to legislation, and they will also sometimes display moral considerations in justification texts. There are two dominant predictors of text characteristics: party constellation and media interest. Media interest has the largest impact on occurrences of moral considerations and the second largest on number of references to legislation. It should be noted that cases with media interest are not only criminal cases. They are also trade, administrative, and family cases. The question is, who is the primary intended audience in these cases? We think that judges' primary concern here is twofold. First, they want to show their professionalism to their colleagues and to the advocates. Second, they try to communicate with the general public and journalists, as we have seen that moral considerations were used in almost half the cases with media interest.

The variable "party constellation" shows strong relations with text complexity and the juridical intensity of justification texts and with the occurrence of moral considerations. This shows the willingness of judges to choose among intended audiences, especially between the parties and juridical professionals.

However, our results show that courts may develop policies to enhance communicative qualities of justification texts for intended audiences, depending on the type of case, based on text evaluations as conducted in this study by encouraging judges and court clerks to write short sentences and use plain language.

CONCLUSION

This study shows significant relations between case characteristics and text characteristics of justification texts of decisions of the Utrecht district court. It is possible to measure case and text characteristics in a way that is applicable to different legal areas. Not the traditional differences between legal areas appear to be the dominant explanatory factor for variances of text characteristics of justification texts, but much more the conflict characteristics of the case.

Overall, the text complexity of justification texts makes it unlikely that laypeople can read and understand most of these texts.

Party constellation and media interest in a case have a large impact on the number of references to legislation.

Media interest is a predictor of the occurrence of moral considerations. Both summary proceedings and written elaborations of verbal judgments are predictors of a much lesser occurrence of moral considerations in justification texts.

We have also shown that differences in text characteristics of justification texts are more strongly related to conflict characteristics than to management/organization characteristics. "Attributed standard time," for example, makes only a small difference for justification text characteristics. This means that judges writing a court decision primarily take the conflict into account as it has been presented to them, with a view to legal professionals and the general public as audiences, and much less so with a view to the parties. Management/organization aspects are not very dominant for these variables. The small variance of text complexity however, is an indication that text production routines are a possible explanation to that effect, also almost regardless of legal area.

These outcomes are an indication that it makes sense to connect text characteristics to the intended audiences of the court. Judges and professional lawyers are as important audiences

as the general public is, mediated by the news media. Even so, parties in a case are rarely recognizable as intended audience. However, the average text complexity of justification texts is medium. This disregard of the parties and ordinary people in most justification texts may undermine the legitimizing effect of justification texts of court decisions.

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