Veto Players and Interest Groups in Lawmaking. A Comparative Analysis of Judicial Reforms in Italy, Belgium, and France

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Comparative Political Studies, dec. 2014, 47, p. 1891-1918

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Abstract

The question of how to explain policy change has led to important academic debate over the past two decades. This article challenges explanations regarding veto players, arguing that interest groups sometimes play a more decisive role than veto players – depending on the degree of organization and mobilization of such groups. The comparative analysis of judicial reforms in Italy, Belgium and France shows the conditions under which interest groups – understood here as legal professions – matter in the lawmaking process. *Ceteris paribus*, the more cohesive and legitimate an interest group, the more likely it is to influence lawmaking regardless of the VP configuration. Analyses of legislative and policy change should therefore consider not only institutional and partisan actors, but also the role of social and interest groups in this process.

Biography:

Cécile Vigour is a CNRS research associate professor at the Centre Emile Durkheim, Sciences Po Bordeaux-CNRS (French National Center for Scientific Research). She is currently developing research in comparative politics, public policy, and legislative studies in three main fields: the comparative analysis of lawmaking and reforming processes in Europe, state managerial transformations (especially in the field of justice), and more recently Parliament and representation. She is the author of: *La comparaison dans les sciences sociales. Pratiques et méthodes [Comparison in the Social Sciences. Practice and Methods*]. Paris: France, La Découverte, Guides Repères, 2005. Among her main publications in English: "French MPs and Law-Making: Deputies' activities and citizens' perceptions," *Journal of Legislative Studies*, 19(2), 2013, pp. 219-245; "Professional identities and legitimacy challenged by a managerial approach: the Belgian judicial system," *Sociologie du travail*, Elsevier, 51 (Suppl. 2), 2009, pp. 136-154. She is the co-editor of a sub-section "Political Fieldwork Experiences," published in *Current Sociology* (61/5-6, 2013), and the co-editor of a volume about parliamentary debates (with Claire de Galembert and Olivier Rozenberg, LGDJ, 2013). She is preparing a book on judicial reforms in Europe.

Introduction

The question of how to explain policy change has led to important academic debate over the past two decades. Most approaches, however, have tended to focus on explanations for stability rather than change, with a focus on different factors such as veto players (Tsebelis, 2002), veto points (Immergut, 1992), path dependency (Pierson, 2004; Steinmo, Thelen & Longstreth, 1992), specific policy maker configurations, or the scarcity of media and political attention (Baumgartner & Jones, 1993). Even among the scholars who do address policy change, many have focused more on an endogenous vision of change in which political institutions matter rather than on the mobilization of social and interest groups.

The study of judicial reforms in Europe provides a compelling empirical puzzle, particularly for scholars who argue that institutions are the dominant explanation. Italy, a state widely known for its strong policy inertia, has undergone numerous and profound judicial reforms since the 1960s. The logic of veto players (VPs, defined as the institutional and partisan actors who have to agree in order for the legislative status quo to change) suggests that such sweeping reform would be nearly impossible, yet it clearly has occurred. How, then, do we explain this intensity and the scale of judicial reforms – not only passed, but implemented – in a country characterized by a high number of VPs?

Starting from the observation of this Italian paradox, this article will address the lessons and limits of a veto player-focused approach for understanding lawmaking and recommend tempering the influence of VPs with that of interest groups. This article focuses on policies which take the form of a law, because in such cases, the risk of blocking from the political institutions that have to accept a legislative change is strongest. But it considers both the number of laws and their importance in terms of outcome, by taking into account their implementation. How can we analyze the intertwined influence of VPs and interest groups on lawmaking? We will examine this process by jointly looking at the impact of both factors on judicial reforms in Belgium, France and Italy. Such cross-national comparison shows that VPs have a strong impact on the lawmaking process, but that interest groups can nevertheless be more decisive in explaining the adoption of reforms than VP configurations. More specifically, the relative influence of VPs and interest groups is tied to how the legal professions are organized and how they mobilize. To understand lawmaking, therefore, we need to consider not only institutional and partisan actors, but also the actions of interest groups.

Towards a joint study of veto players and interest groups

The framework established by George Tsebelis (2002) spurred the development of a rich body of literature that has pointed up the relevance of VPs for understanding lawmaking. According to Tsebelis, legislative change mainly depends on the number of VPs, their degree of internal coherence (party discipline) and the ideological distance between them, as well as the identity of the agenda setter. The decision-making rules of partisan players can result in increases or decreases in the effective number of VPs. This theory notably leads to the following assumption: “the greater the distance among and the number of VPs, the more difficult it is to change the status quo” (p. 19). This implies, for example, that the large number of VPs in Italy should explain the greater stability of public policy and the greater role of the judiciary and bureaucracy (p. 5).

While acknowledging that the VP-focused approach has generated convincing empirical evidence by emphasizing the role of political institutions, this article suggests that it may not be

sufficient to explain legislative and policy change. Indeed such an approach focuses on whether a bill is passed when it reaches the floor and neglects the agenda-setting stage which occurs under conditions of scarce political attention, as stressed by Cobb & Elder (1972) and Jones & Baumgartner (2005). In order to provide a more relevant account of the logic at work behind policymaking, the role of policy entrepreneurs and more specifically of IGs has to be taken into account.

Considering the role of policy entrepreneurs

Looking at the patterns of agenda-setting and government attention to policy issues leads us to distinguish two core factors behind the allocation of attention. First, an issue may become salient in the wake of a focusing event (e.g., a news story or scandal) and its media coverage.[1] Such "exogenous shocks" may inhibit reluctant VPs and allow the passing of important laws since executives focused on re-election, Members of Parliament (MPs) or parties are pushed into action by the ensuing public pressure. Indeed the sudden salience of a problem opens a window of opportunity for policy entrepreneurs with a potentially dramatic influence on the status quo. For example, the Dutroux scandal[2] in Belgium put the police and justice system on the government agenda (Maesschalk, 2002; Vigour, 2004).

Alternatively, the attention placed on a political problem may be driven by the mobilization of policy entrepreneurs inside and outside government, including policy makers (from the executive, bureaucracy and agencies), professional communities, and interest and citizen groups (see for instance Kingdon, 1995). According to Sabatier and Jenkins-Smith (1993), within a policy sub-field, advocacy coalitions compete over the framing of policy issues [and the way they should be tackled]. However change mainly occurs at the margins. In their analysis of lobbying in Washington, Baumgartner *et al.* (2009) also observed the strong stability of frames over one decade in many fields; yet the rare successful attempts at modifying the "spin" placed on an issue led to profound transformations to the policies involved.[3]

In both cases, a prolonged stalemate can cause pressure for reform. As such pressure builds, even a powerful VP may not be able to stop it. Policy entrepreneurs may draw benefit from such situations in which reform is first impeded but then subject to a breakthrough (Jones and Baumgartner [2005] call this phenomenon "friction"; see for instance Vigour [2004] regarding Belgium).

Understanding the number of laws and the scale of lawmaking in a given policy field thus requires a look at both political institutions – which play a role of primary importance in lawmaking – and the policy entrepreneurs who act within or outside them. Such policy advocates are a crucial driver for policy change through their efforts to push specific topics on the agenda, either by their own initiative or in response to exogenous shocks. This is true in particular of interest groups (IGs). IGs are sometimes highly influential but cannot be considered VPs in Tsebelis's sense of the term since they do not have the power to block the lawmaking process, but must work with allies inside the institutions. Nevertheless, powerful IGs can create *informal* institutional policy obstacles or drivers. Indeed, they can be actors in their own right or influence the ideal points of other actors.

Including the specific role of IGs in the analysis of lawmaking

In order to address such cases, this article assumes that IGs' capacity to initiate lawmaking (by setting new issues on the parliamentary agenda) or promote or counter reforms (by striving to influence, for example, the content of policy options and the decisions of public officials) is likely

to vary according to their degree of organization and the legitimacy of their involvement in policymaking. The influence of their social and societal resources[4] is linked to issue competition. Indeed, policy attention is scarce, especially when there is no "external shock". Yet, many policy entrepreneurs compete to gain political attention.

A main IG that is united may be able to reach internal consensus on the need for a reform in a given policy field, and then convince political elites (especially potential VPs) of its relevance. The influence on policymaking is even greater when the IG is perceived as legitimate (regardless the source of its legitimacy: a constitutional or institutional body, a large audience in public opinion, etc.). A cohesive and legitimate IG can also counter a bill that goes against its interests by mobilizing its members or partisans *via* diverse means (the media, petitions, demonstrations, referenda, etc.) with the hope of inciting potential VPs to block the reforming process. Having a large and diverse repertory of strategies – not only negotiation and direct participation in decision-making, but also the dissemination of expertise and even protestation – may help build influence (Baumgartner & Leech, 1998, p. 148).[5] Hence united, well-structured and legitimate IGs are in a better position to push issues onto the media and political agendas, to force government, parliament and parties to position themselves, to overcome VPs, and to push the adoption of numerous laws with significant effects, either alone or in combination with others.

Conversely, weak, disorganized and divided IGs leave more room for VPs to exert their veto. More fragmented communities tend to be less efficient (Kingdon, 1995). Indeed, they are less likely to agree either on the needed reforms or on their content. Given this, it is harder to put a problem onto the agenda and political elites may use such disagreement to impose their own views or not act. The configuration of VPs thus becomes the main variable in explaining lawmaking.

My hypotheses can be formulated as follows: First, following Tsebelis (2002), I expect the probability of a legislative change to decrease with the number of VPs and with the ideological distance among them (H1). However, the impact of VPs may be moderated or even neutralized by IGs: it decreases as the cohesiveness and organization of the group increases (H2). In other words, *ceteris paribus*, more cohesive and legitimate IGs are more likely to influence the lawmaking process regardless of the VP configuration. Table 1 summarizes my expectations.

Investigating lawmaking in judicial affairs in Belgium, France and Italy

The next sections seek to test these hypotheses in the case of judicial reforms. Regarding the logic of agenda-setting, the way justice and crime are framed as public problems varies over time as well as in different countries, depending on the political tradition and the relationship between justice and politics. Depending on the media's coverage, justice can become a partisan political issue. Further, justice is also a political institution since it contributes to the building and legitimacy of a system of power. Therefore, political issues are often involved in judicial reforms. Moreover, justice is emblematic in areas where reform is difficult; indeed this field can provide good examples of "friction". Finally, with regard to the role of IGs, the limited existing research shows the strength of some legal professions and the advocacy coalitions that surround them; for example, international epistemic communities in criminal matters in Western countries (Enguéléguélé, 1998), as well as magistrate and lawyer organizations in Italy (Vauchez, 2004; Vigour, 2004 & 2014).

I will focus here on three Western European countries with a Roman-law tradition: Belgium, France and Italy. These countries represent three relevant cases for examining the logic behind reforms to the legal system both from a theoretical and empirical perspective. Although close

culturally and geographically, data show that judicial reforms have occurred under very different circumstances in each country.[6] In Italy, such reforms, undertaken on magistrates' initiative starting in the 1960s, created a break with the previous tradition of the magistracy's dependence on the executive. Justice has been on the political agenda ever since. But political-financial scandals in the early 1990s deeply transformed the political landscape and the relationship between magistrates and politics. In Belgium, justice was not on the political agenda before 1996 when major reforms occurred following the Dutroux case. In France, the difficulty of reforming the French justice system is a *leitmotiv* in political and judicial discourse; the main organizational reforms occurred with the 1958 constitutional change, although a significant number of laws have since been adopted, especially with regard to criminal justice. The judicial situation in the three countries after the Second World War[7] differed in three respects: the magistracy's independence from the political sphere, the judicial system's ability to deal with the increasing amount of litigation, and the extent to which justice was subject to partisan competition.

My research here is based on a qualitative analysis of parliamentary debates over several salient reforms in each country (focused on the main arguments used and their evolution over time), on the study of institutional reports and of the general and specialized press since the mid-1980s, and on seventy in-depth interviews with the main actors of reforms: MPs and Ministers' cabinet staff, high ranking bureaucrats, legal professionals (magistrates, lawyers, law professors), and representatives from associations and trade unions. Depending on the country, both the successful and failed reforms examined notably involve the legal role of the Ministry of Justice with regard to magistrates' careers and inquiries, the creation or transformation of a Council for the Judiciary, changes in criminal procedures, as well as the creation of justices of the peace in Italy.

VPs and IGs vary significantly in the three countries, a necessary prerequisite to test my hypotheses. In Italy, there are numerous VPs that are active at all stages in the lawmaking process; legal IGs, especially magistrates' associations, are well organized and magistrates unite to support or counter reforms. In Belgium, there are numerous VPs, mainly within the government coalition; the legal professions, however, remain divided, and were even more divided prior to 2000 (since, their cohesion has been reinforced through the creation of two representative institutions). In France, there is a limited number of VPs, especially when the President and the Prime Minister belong to the same party; further, the legal professions are not as united as in Italy.

Following H1 (the probability of legislative and policy change decreases with the number of VPs and the ideological distance among them) and H2 (the impact of VPs may be moderated or even neutralized by cohesive IGs), I expect judicial laws to be more difficult to pass in Belgium, where coalition governments include at least four parties, than in France, where laws are most likely to pass once supported by the head of the executive – except when a qualified majority is required. Despite an important number of VPs, I expect intense legislative activity in Italy, as well as a better ability to oppose the reforms they contest given the organizational strength and cohesion of the Italian legal professions.

I will now point up the indisputable impact of VPs on lawmaking. Then, in the last section, I will argue that under certain conditions, IGs may nonetheless have a more decisive influence than VPs.

The crucial impact of veto players on lawmaking

This section will attempt to identify the institutional and partisan VPs in the three countries. I will focus on similar factors to assess their influence in each case and hence to test the relevance of

Tsebelis's theory. I have identified five types of VPs in Belgium, France and Italy that may impact the policy process to varying degrees: parties within government coalitions and, in France, the majority leader (depending on the government's internal coherence and on the ideological range within it); houses of parliament (depending on party discipline); the head of state (who signs or enacts laws); the Constitutional Council; and the electoral arena (via elections or popular referenda).

The comparison of the three countries shows that the length of a reform process is related to the number of VPs and to the degree of cohesion between them both inside and outside the government – an outcome that conforms to Tsebelis's theory. Indeed, changes to the status quo require one of the following: unanimity between some VPs (e.g. negotiations between coalition parties in Belgium and Italy), a relative majority (normal in Parliament) or a qualified majority (in the case of constitutional change). The actual influence of VPs depends first on the nature of the political regime and on the rules of the political game – that is to say all the constitutional clauses, the formal and informal institutional measures implemented in order to reach a compromise, and all the rules and observed practices which shape the behavior of political actors and institutions, and which structure decision-making. Further, past and present mobilization of political and legal groups (either to promote or counter a reform) empowers such potential vetoes. Indeed anticipation of a veto may be as influential as its actual use in lawmaking since those involved are aware of the potential for a veto and try to either avoid or provoke it.

How the type of political regime shapes the configuration of veto players and its impact on the legislative process

The way VPs are organized in each country greatly depends on the nature of each political regime. Deep divisions exist in Belgian and Italian society and in their political systems. While Italy was divided between two main social models – socio-democracy and communism – from 1945 until the 1980s, their progressive de-structuring contributed to the partisan fragmentation. This made it difficult for the government to control lawmaking. In Belgium, three main divisions run through the political and partisan system (Catholic, socialist and, since the 1960s, community division, mainly between the Flemish and Walloons: Delwitt, 2010). They reinforce the nature of consociational democracy (Lijphart & Hottinger, 1997, p. 530).

Further, Italy and Belgium are partitocraties, marked by the involvement of political parties at each level in the decision-making process, at least four-party coalitions in the government, as well as nepotism (Deschouwer & *al*., 1996; De Winter & Dumont, 2006). The challenge of building coalitions in a context of growing heterogeneity (which makes it difficult to reach political agreement on reform projects within the government: Timmermans, 1994) and the instability of such governments (which reduces the period of legislative examination) are obstacles to the success of reforms. Compromise is as such an indispensable condition for lawmaking (Devillé, Dupont Bouchat, Gérard & Paye, 1993).

Conversely, the legislative process in France has been dominated by the executive since 1958 with two different scenarios (Thiébault, 2006). When the President of the Republic belongs to the same majority as the Prime Minister, the regime becomes semi-presidential: the President, who is the majority leader, defines the orientation of policies and pushes or blocks reforms before they are presented to Parliament. Discipline within the majority is imposed on ministers and MPs. During periods of "cohabitation"[8], the Prime Minister supervises the government, even though the President retains important powers, such as in constitutional affairs.

Let us specify who can be a VP in each country.

Main veto players in the executive branch

Divergence within the executive branch is the leading cause of vetoes in all three countries. The main VPs are the coalition parties in Belgium and Italy; in France they are the President of the Republic and, under cohabitation, the Prime Minister.

The greater the degree of political fragmentation, the more a consensus is needed either before reaching parliament (Belgium) or within it (Italy). In Belgium, parties within the ruling coalition are the real agenda setters; further, given the party discipline and the predominant role of each party's president, compromises are rarely questioned in the houses. In Italy, internal divisions may block the reform process with credible threats of leaving the coalition[9]; for example the capacity for action of Berlusconi's governments between 2001 and 2006 was sometimes restricted by minority parties, opposed to several aspects of the reform to the judiciary's organization.

In France, the majority leader – either the President or the Prime Minister – is the agenda-setter and therefore the main VP. The existence of a majority structured around a main party is a facilitating factor for enacting reforms pushed by the executive.

Parliament: an occasional veto player, except in Italy

The houses of Parliament are a common VP in Italy and an occasional one in the other countries when specific constitutional restrictions exist.

Compared with other European democracies, the Italian Parliament remains influential in lawmaking.[10] Since the legislative agenda is not exclusively defined by the executive, a significant number of political groups can act as VPs. This has been further reinforced since 1994 since party representation is quite different in the two houses (Zucchini, 2001, 2008). Moreover, because parliamentary fragmentation has increased and party discipline remains low, "inter-institutional conflict and bargaining (between Parliament and Government)" prevails over "political confrontation (between the parliamentary majority and opposition)" (Capano & Vignati, 2008, p. 54). However the government has asserted its power through different means to overcome opposition from Parliament (Kreppel, 1997; Zucchini, 2008, 2011), including a rapid increase in law decrees (*decreto legge*) since the end of the 1970s and in legislative delegated decrees (*legge delega*) since the 1990s.[11] Hence, "the new dualism created by cabinet and Parliament implies a stronger cabinet role in ordinary policymaking and a clear dominance for the Parliament with regard to institutional reforms" (Verzichelli, 2006, p. 460). Some fields like the judiciary[12] are regulated mainly by Parliament.

Conversely, in France under the 5th Republic, several institutional procedures have almost suppressed the parliamentary veto. On the one hand, government can legislate by order (*ordonnances*) without parliamentary debate (using article 49.3 of the Constitution: the 1958 judicial reforms were adopted by this means) or it can ask for a final vote on a bill including only amendments accepted by the government (*vote bloqué*). On the other hand, unity within the government and party discipline are quite strong; these drastically limit the risk of a parliamentary veto. There are two important exceptions to this: the majority can be deeply divided over certain ideological reforms, e.g. with regard to the relationship between justice and politics. Further, since the Senate had a right-wing majority from 1968 to 2011, senators were able to influence the content of reforms proposed by left-wing governments and were thus a serious VP when constitutional or organic laws were debated.

In Belgium party discipline limits the centrifugal forces once a political agreement has been reached in the government.

In all three countries, the parliament and opposition parties can be very important VPs when a bill involves constitutional changes, deals with community or regional issues, or is examined at the end of a legislative term (at a time when parties are trying to reaffirm their differences prior to upcoming elections). Constitutional reforms which require the explicit agreement of the King in Belgium or of the President in France must get a qualified majority and often need to be approved by MPs outside the government coalition. Further, laws cannot interfere with regional competences in Italy and Belgium (Flanders and Wallonia especially).

After Parliament, three additional potential veto players

After a bill has been adopted by Parliament, three other VPs may impact policymaking to varying degrees, mainly depending on institutional or constitutional rules: the Head of State (particularly in Italy), the Constitutional Council, and citizens through a referendum by popular initiative in Italy.

Heads of State may veto bills under certain circumstances. This veto is credible and efficient in France and Italy, but not in Belgium. The Belgian King marginally intervenes in lawmaking although he must countersign all laws.[13] The Italian President of the Republic is a credible VP given his provisory veto power over bills adopted by Parliament. This means was used for instance against the 1991 bill creating justices of the peace; it was amended in 1994 to reflect lawyers' demands. The mere threat of this veto can draw out the lawmaking process, which explains some concessions made by the Berlusconi government in 2003-2004 to the opposition despite the fact that it had a majority in the two houses. Like his Italian counterpart, the French President can ask Parliament to re-deliberate a bill; he may also refuse to sign orders. Outside of periods of cohabitation, however, the President controls lawmaking *ex ante* by giving instructions to the government and to the majority parties. Under cohabitation, the legitimacy of such a procedure can be challenged, except in cases of constitutional change, since French Presidents are responsible for convening the Congress and organizing referenda. Such a veto was used against projects under the Jospin government to reform the *Conseil supérieur de la magistrature* and the relationship between the Ministry of Justice and prosecuting attorneys.

With the increase in constitutional review in Europe (Stone Sweet, 2000), the Constitutional Council has become another VP whose importance depends on how the court appointment system works and on the modalities of court referral. This veto may be anticipated by taking into account *ex ante* the points of view of legal professions and non-constraining advice on bill drafts by the Council of State in France and Belgium. In France, the Constitutional Council is mainly composed of political figures and functions more as a means of political control than of judiciary control. Until the 2008 reform, only the President of the Republic, Prime Minister, President of the National Assembly, President of the Senate and sixty MPs could appeal before the Council between the time a bill was voted and its enactment. As many laws are appealed at the initiative of the opposition (Brouard, 2009, p. 388), the Council acts as a counter power or even as a "third legislative chamber" (Stone, 1992). In Belgium and Italy, while there are more ways to refer cases to the Constitutional Court, their impact on judicial reforms remains quite limited, unless a law involves regional issues.

In Italy only, opponents to change can threaten to use a popular initiative referendum.[14] Abrogative referenda, more frequently used since the 1990s, have occasionally been successful with regard to family issues (e.g. abortion: Pocar & Ronfani, 1993), but rarely with regard to justice (Bruti Liberati & Pepino, 2000). In March 1986, three major referenda proposals were presented by the Radical Party, Socialist Party and Liberals in the context of judicial inquiries into corruption and

collusion between MPs and the mafia. In 2000, three other referenda were organized: over the reform to how magistrates are elected to the Council for the Judiciary, over the separation of the careers of prosecutors and judges, and over the extra-judiciary role of magistrates. The quorum of signatures or voters was not obtained, showing how difficult it is to actually mobilize citizens over judicial reforms. Given this, the threat of a referendum is not a credible means of pressure, even though it may limit the enacting of unpopular laws by Parliament. Nonetheless, in 2011 the referendum to repeal the law impeding the President of the Council and ministers from appearing in criminal court was successful.

Table 2 presents the number of VPs in each country and their means for decision-making.

A partial validation of the veto-player theory

Analysis of these three cases, and the contrast between Italy and Belgium regarding the number and the importance of judicial reforms, underlines how stimulating Tsebelis's theory is. Indeed, although Italy and Belgium are both partitocracies with a fragmented political system, their VP configurations and their impact on judicial policy are very different. The Belgian executive and Parliament have limited autonomy with regard to parties, which explains the absence of a veto in the decision-making process after an agreement has been reached within the coalition. In Italy, there are numerous VPs, since control over the agenda is shared between many players. Four main vetoes may block lawmaking: dissension within the government majority; disagreement between parties in the houses; opposition of the President of the Republic; and judicial review. The justice of the peace reforms involved all of these vetoes: governmental and parliamentary prior to 1991, presidential in 1991 and constitutional in 1994.

There is no strict correlation between the number of VPs (even when the distance between them and their degree of coherence are taken into account) and the risk of lawmaking being blocked, however. In Italy, where the greatest number of VPs exists, profound judicial reforms have been undertaken since the 1950s. This situation does not comply with the predictions in Tsebelis's theory. Indeed Tsebelis (2002, p. 184) argues that many VPs and low government agenda control lead to incremental change, whereas few VPs and significant government agenda control produce sweeping changes. However, in Italy, the enactment of the Council for the Judiciary in 1958 or the introduction of a more accusatorial criminal system in 1992 cannot be considered minor reforms. While there are fewer VPs in Belgium, they are more powerful because they are located upstream in the lawmaking process.

VPs influence not only the ability to enact bills, but also the modalities surrounding reforms and sometimes their content as well, since the most credible vetoes can often be anticipated. This explains the importance of a set of institutions (not always forecast by the Constitution or law) which play a key role in the decision-making process; indeed, by facilitating consensus, they limit the number of vetoes within the executive and legislative bodies. For example, in Belgium, negotiations are facilitated by the drafting of a coalition agreement when the government is formed (Timmermans, 2006) and through the logic of compromise that exists within the "inter-cabinet" where the representatives of each coalition party reach an agreement before a bill is presented to the Council of Ministers.

While VP configurations are often decisive, to explain the Italian paradox, we need to consider the mobilization of specific IGs and how such mobilization can moderate or neutralize the impact of VPs.

The intermediating impact of the mobilization of legal professions

In the field of justice, legal professions play a crucial role in flagging judicial issues as public problems which require government intervention. In all three countries, the more the legal professions mobilize to convince political actors, the more justice is present on the political agenda: by order of importance, in Italy, France and then Belgium. This section will focus on how the legal professions act collectively (or do not), on the reasons behind this variable propensity for collective action (especially the definition of claims, the existence of a strong collective identity within the profession), and the conditions under which collective action may or may not be influential in the reforming process (in particular their ability to be considered a key player by the authorities). The propensity of the legal professions to mobilize may be facilitated by the fact that the law is a unique resource (Bourdieu, 1987). However, such mobilization has to take a particular form in order to be acceptable. Indeed, the law is seen as neutral and the legitimacy of the public positions taken by legal professionals (outside their work) varies across societies, political systems and time; it depends in particular on the degree of recognition of IGs among their profession as well as by the State, and on their ability to generate support (from citizens, political and administrative actors, the media, etc.). I will review four main factors which influence interest representation: how the legal professions are organized in each country and their resources, which explain their unequal ability to influence both political agenda-setting and reform projects in this field.

The relationship between justice and politics: a tense situation

In all three countries, recent changes in the balance of power between justice and politics have renewed the debate on their respective legitimacy and on the place of justice in a democratic regime (Guarnieri & Pederzoli, 2002). The relationships between justice and politics influence the degree of affinity or disagreement that exists between magistrates, lawyers and political actors (such as members of parties, Parliament or government), which in turn has an impact on the orientation of reform projects (e.g. their main topic; their effect on the balance of power between magistrates and politics). Three main areas help define such relationships: the position of justice in the institutional system in principle and in practice; the means available for politics to interfere in this field; as well as the judiciary's treatment of political-financial scandals and their political fallout.

Depending on each constitution, the judiciary is considered either a power (in Belgium since 1830 and in Italy since 1948) or an "authority" (in France since 1958, where the status of the judiciary is the product of a very ancient fear of "a government of judges"; Troper, 1981). The Belgian judiciary was conceived as a counter power which keeps the executive and legislative branches in check; until 2000, however, parties controlled the recruitment of magistrates (Martens 2001). In Italy, the status of justice was debated during the drafting of the 1948 Constitution: some constituents wanted to break away from the magistracy's traditional dependence on the Ministry of Justice (Chieffi, 2000, p. 19-22). In all three countries, the balance of power between the executive, legislative and judiciary branches has been modified over the past twenty years, with greater importance placed on the latter, notably with the development of constitutional review, judicialization and the mobilization of magistrates against parties' illegal funding.

The executive's ability to influence the judiciary depends on magistrates' ability (or lack thereof) to self-govern, mainly through a Council for the Judiciary, and the ability of the executive to influence individual judiciary cases. In Italy, the executive has no direct means of influencing justice (Pizzorno, 1998). Since the 1960s, the *CSM* has handled recruitment examinations and managed magistrates' careers. The Minister of Justice cannot give directions about a case. In

France, the *Conseil supérieur de la magistrature* is not independent from the executive. It recommends candidates for nominations and promotions, but the President of the Republic attributes the highest positions, often with a political orientation. Moreover, the Minister of Justice has the right to give orders on individual cases and even to close inquiries. Belgium is a middle ground: the Minister of Justice cannot give orders about individual cases, except to open an inquiry; since 2000, the *Conseil supérieur de la justice* (CSJ) is responsible for the nomination and promotion of magistrates. The Italian and Belgian magistracies are much more independent from the executive than their French counterpart.

The increased number of inquiries into party corruption and illegal fundraising in the 1980s and 1990s modified the place of the judicial branch in the institutional system, because any member of an elected body became in practice accountable before the law.[15] At the same time, widespread media coverage enhanced the political repercussions of the judiciary's activity on the political system. In Italy, in 1992, one third of parliamentarians were under investigation; the 1992 elections were marked by the dismantling of the Christian Democracy party and the creation of *Forza Italia*. Between 2001 and 2011 conflicts between magistrates and politics gained in intensity because Berlusconi's governments overtly challenged the so-called "politicization" of the Italian magistracy and the supposed partiality of some magistrates in their inquiries and rulings.

Hence, in all three countries, the increased role of the judicial system resulted in tensions with political power, and also made more visible the means available for politics to interfere in this field. This confirms arguments in favor of more independence for magistrates (France, Belgium until 2000). It may also encourage political parties not to let the magistracy strengthen its powers (Italy, France). Finally, it explains why reform projects regarding this issue are different in each country and across time.

The status and role of the Council for the Judiciary in lawmaking

The Council for the Judiciary has a very different role in each country. The greater its sphere of competence and legitimacy, the more it is able to influence how justice is reformed since the strong influence of magistrates does not strain the relationship with political power.

The Italian *Consiglio superiore della magistratura* (*CSM*) is endowed with important powers. Foreshadowed in the 1948 Constitution, it was implemented in 1958 after strong mobilization by magistrates (Bruti Liberati, 1997). The *CSM* is a self-governing institution of the judiciary, responsible for managing magistrates' careers and training. As "the real representative of the judiciary power", it is "a relay institution between the magistracy and other powers" (Pizzorusso, 1990, p. 38). Through various means and given the legitimacy conferred by the Constitution, the *CSM* has the ability to make important proposals and counter-proposals with regard to justice reforms. Its reports often synthesize the debate that took place within and between professional associations, doctrinal discussions and differing opinions among the Council's members. The *CSM* has as such helped to put certain issues on the political agenda (e.g. with regard to justices of the peace). Its role is all the more important given that as a body of expertise it is composed mainly of legal professionals, but also of members from diverse political backgrounds.

Although the prerogatives of the French *CSM* have gradually increased, its responsibilities remain limited with regard to managing magistrates' careers and as a lever for judicial reform. Its annual report serves as a means to comment on and sometimes criticize the executive branch's handling of justice. Yet because this practice is not always seen as legitimate – since it is not explicitly authorized by the Constitution –, *CSM* reports do not act as a channel for calling on

parliament and the government or for proposing projects. The French *CSM* remains "a political dwarf" (according to a French magistrate) without much influence on lawmaking.

The Belgian *CSJ* was designed as an interface between justice, politics and citizens. It proposes magistrates for nominations and promotions and it audits the courts. Since the *CSJ* is composed primarily of magistrates willing to introduce changes, it has spurred a managerial turn in the judicial system. However, although its position on government reforms is required before their examination by parliament, it remains a "second rank" institutional actor in lawmaking.

In sum, according to their prerogatives and legitimacy, the Council for the Judiciary in each country plays a different role in the reform process depending on the ability of each to propose legislative solutions.

How the internal organization of professional associations affects the unity and legitimacy of legal professions

The more fragmented communities tend to be less efficient, especially because the diversity of opinion makes it difficult to take a common stand. Conversely, a single spokesperson and the recognition of that person's representativeness facilitate the impact on the reforming process. Given this, there are three main differences between the three countries: the internal organization of the magistracy and, as a consequence, its means of action, as well as lawyers' cohesion.

The internal organization of the magistracy is extremely influential in determining its (in)ability to unite in order to influence lawmaking. At least three things affect the cohesion of the magistracy: training, recruitment and their consequences on how the profession is represented; internal divisions; and the extent of "reserve duty". Until the mid-1990s, the closed nature of the judicial system in Belgium was linked to the judiciary's desire to remain independent from parties. A very demanding "reserve duty" existed (magistrates interviewed by the media about the general state of justice in the country could be sanctioned by their superiors), although some magistrates in activist associations challenged this principle. Further, divisions within the magistracy were important: between French- and Flemish-speakers, but also depending on specialization and involvement in the general trade associations and more activist associations. This diversity was not offset by a unique representative institution until the creation of the *CSJ* in 2000 and of a Consultative Representative Institution of Magistrates in 2007. In Italy on the other hand, strong cohesion exists between magistrates unified through a strong collective identity, despite diverse political differences (Piana, 2010). The different *correnti* are represented by several associations all of which belong to a single Association of Italian Magistrates. Almost all Italian magistrates are members of this organization. The election of magistrates to the *CSM* gives them another representative institution. Moreover, since the 1960s, there has been a soft hierarchy and no marked distinction between the careers of judges and the body of prosecuting attorneys. French magistrates are a middle ground. There is a stricter hierarchy than in Italy, especially among prosecuting attorneys. Magistrates are also split between three main unions (leftwing, rightwing[16] and "center"; the latter being numerically largest). The standard training for all magistrates at the French National School for the Judiciary further works to forge a common professional identity which extends beyond the diversity of peoples' political orientations.

More generally, the strength or weakness of the different legal professional associations explains the unequal ability and means of influence that the legal professions have on lawmaking in each country. The main characteristic of Italian magistrates is their ability to orient policymaking. Their unity in a single association allows them to discuss issues at their annual congress, reach

compromises and often adopt a shared position in the reforms they propose or with regard to those prepared by the government or Parliament. The diversity of their means of action is also striking. Their congress and some reviews (in which magistrates express their points of view, even in the general press) are a forum for debate about justice. During periods of conflict, important strikes are organized. In Belgium prior to 2000, reformist associations which attempted to promote reform projects to political parties were not well accepted; most associations were corporatist and organized along professional lines. At the time, magistrates were not very involved with political life or the media. In France, three main associations contribute to a strong professional identity, which in turn facilitates collective action (Devillé, 1993; Ficet, 2009). From its creation in 1968 until the 1980s, the left-wing *Syndicat de la magistrature* was very involved in promoting certain reforms, whereas the *Union syndicale de la magistrature* was more focused on improving social and working conditions. The division between the two (sometimes overcome to oppose specific projects) explains why it was difficult for these associations to be effective drivers of change.

Lawyers[17] in the three countries share their diversity (by specialization, their income, etc.). Due to the local rooting of most lawyers, their independence, and the difficulty in reaching compromise given their diversity, the fragmentation of lawyers' representation (Karpik, 1995) limits their ability to make themselves heard by the government during reform processes. This weakness is offset by the relatively large number of lawyers in parliament through whom they make their preferences known. Attempts have nonetheless been made in Italy and France to create more powerful representative structures. For example, since 1995 Italian criminal lawyers are organized in a strong *Unione delle Camere Penali* modeled on the *Associazione Nazionale Magistrati*, with the aim of reaching a similar audience in political and media spheres. These lawyers want to promote a more accusatorial model of justice. Despite their actions (strikes, etc.), they have nonetheless not been satisfied with the reforms adopted by the Berlusconi governments over the past decade.

The different internal workings of each organization are reinforced by the political features of each political regime. In Italy the fragmented nature of the political system has encouraged lobbying from IGs at many stages in the decision-making process (Della Salla, 1999, p. 67). This is reinforced by the affinity which exists between legal professions, professional associations and some parties. The situation is completely different in Belgium since most magistrates have chosen to keep their distance from political institutions and since governmental agreements among coalition parties cannot easily be re-opened once a compromise has been reached.

The over-representation of legal professions in lawmaking bodies

The ability of legal professions to influence lawmaking also depends on their involvement in lawmaking bodies, especially in the Ministry of Justice, within the Minister's cabinet and in parliamentary law committees (Vigour, 2014). Indeed, although the legal professions have to lobby in order to assert their claims, some of them are very much insiders through their own members in decision-making bodies. Even though they do not necessarily share the same views as their professional group or organization, they may nonetheless voice their positions. Two such forms of *multi-positionality* can be identified: *multi-functionality* refers to alternating between several law occupations and more overt political positions at different periods over a career (e.g. responsibilities in different strategic bodies in the lawmaking process – professional associations, Council for the Judiciary, Ministry of Justice, parties, committees, etc.); *plural-membership* corresponds to an

accumulation of different statuses at the same time (a magistrate can simultaneously be a member of the Minister's staff, president of a citizen's association and a member of a professional association). In Belgium, elite legal professionals' careers tend to be more multi-functional, whereas both phenomena are observed in France and, above all, in Italy not only for judges, but also for lawyers. As such, those involved may serve as a channel for specific reform projects between the judicial and political spheres.

The Minister's cabinet staff is primarily made up of magistrates in each country, but there are important differences in how the teams are composed. In Italy and France, some magistrates' associations have ties with parties, even though representation is always diverse; activist magistrates among the Minister's cabinet can act as a buffer to facilitate the transfer of ideas about reforms fostered within the legal professions. Further, in both countries, Department directors and their deputies are frequently chosen among magistrates and closely connected to the political appointment of the Minister. In Belgium, the choice of the Minister's cabinet staff is more individualized and generally only involves prosecuting attorneys; the bureaucracy is also more disconnected from the Minister's staff and directors usually remain in place even when there is a government shakeup. Thirdly, as far as the Minister is concerned, in Italy, s/he may be a "politician" or a so-called "technician" (a person recognized for his or her legal competence, unaffiliated with a political party, such as a former magistrate or law professor). In France, Minister is clearly a political position, although most appointed ministers have legal skills. In Belgium, until the Dutroux case, the Ministry of Justice was often paired with another more prestigious Ministry (e.g. Finance). Since then, it has become a highly mediatized and important position.

Finally, unlike other fields where the complexity and specificity of issues limits political intervention (Culpepper, 2011), there is an over-representation of legal professions in parliamentary law committees and a quasi-monopoly in plenary interventions over judicial bills. At the turn of the 21st century, lawyers formed a majority in the law committees of the Belgian houses; there were an equal number of lawyers and Court of Cassation magistrates in Italian parliamentary law committees; and lawyers made up one quarter of French law committees. With experience, some MPs become *de facto* legal professionals due to their seniority in committees where hearings (of legal professionals above all) are organized and political compromises reached (except in Belgium where a political agreement is often reached ahead of time between leaders of the coalition parties). Professional diversity is hardly greater in *ad hoc* parliamentary inquiries whose reports constitute a reserve of reform proposals.

Other expert institutions (e.g. working groups, consultative committees) are sometimes formed by the Minister of Justice (or by the head of state in France) to make proposals on a specific topic. In some cases, such expertise is not always completely distinct from pressure groups.

Conditions, forms of collective action and their impact on lawmaking

The crossover between the above parameters explains the strong influence of Italian magistrates in the lawmaking process since they are over-represented in lawmaking bodies and are often characterized by their multi-positionality. Further, they manage to remain united despite their diversity and are represented by a Council for the Judiciary with strong powers (as a self-governing as well as legitimate body for proposing (counter-)reforms) which allows the magistracy to get issues debated and to gain media and political attention. Conversely, the same parameters explain the relatively limited position of Belgian magistrates prior to the creation of a Council for the

Judiciary in 2000 (due to their divisions, fewer opportunities for multi-positionality and the absence of a unique representative and self-governing body at that time). French magistrates are a middle ground: the common training of magistrates and the activism of their associations are not enough to offset the relative weakness of the Council for the Judiciary and suspicion about the judiciary's lack of independence from the executive.

Legitimate policy entrepreneurs strongly engaged in favor of some reforms are crucial for promoting legislative and then policy change, even though such mobilization may be interested and come with negative distributional effects (Olson, 1965; Weber, 1978).[18] The mobilization of judicial actors is neither sufficient nor necessary, but it is decisive for convincing political players. Indeed, the unequal awareness of judicial issues between countries is certainly linked to the unequal capacity of legal professionals to catch their attention. Figure 1 summarizes how all of these parameters are interrelated.

Conclusion

Based on in-depth and detailed empirical data, this article shows why it is interesting to combine two different but complementary approaches to explain legislative and policy change. VPs – in particular the executive – exert a considerable influence on the enactment of laws in each country. This influence is all the more decisive since their veto can be anticipated by other actors in the lawmaking process. The identification of VPs and analysis of the likelihood of veto use thus constitute real progress for understanding lawmaking. However, a solely VP-focused approach fails to capture what drives change and does not explain the Italian configuration. I demonstrated the relevance of studying IGs in order to overcome such gaps. Important differences in how the legal professions mobilize account for the different explanatory power of a VP-focused approach. The representation of different interests is influenced by the resources and forms of organization of IGs, their repertoires of action, the attitude of authorities, the media and public attention, as well as IGs' ability to garner support. The better organized and more cohesive lawyers and magistrates are, the more they are able to put reforms on the legislative agenda and push for their adoption – and the less room exists for political veto.

To understand lawmaking, we therefore need to include the analysis of both institutional and partisan actors, as well as IGs and other types of policy entrepreneurs (e.g. social movements, cause lawyers and professional communities). A more complex explanatory approach could also focus on the nature and timing of reforms in order to address the combination of radical and more incremental measures which nevertheless sometimes lead to decisive policy change (Streeck & Thelen, 2005; Mahoney & Thelen, 2010).

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Table 1 – Hypotheses and expectations

		Interest Groups	
		Cohesive and strong IGs	Divided IGs
General Expectations		***Neutralization or moderation of VPs by IG activities***	***Primacy of the VP theory***
Veto Players	Numerous and distant	Many laws (a)	Few laws
	Few and close	A moderate degree of reform (more than in a & b, because IGs are able to challenge reforms that limit their influence)	Many laws undertaken on the initiative of political actors (b)

Table 2 – Main veto players in the lawmaking process in Belgium, Italy and France

	Belgium	**Italy**	**France**
Agenda setters & main VPs	**Parties in the coalition**		**The majority leader** (the Prime Minister under cohabitation, the President otherwise)
	+ the Parliament		Some parties in the ruling coalition
Party discipline	Strong	Weak	Strong
Ideological distance within the coalition	Sometimes significant		Usually limited
Other VPs	The Constitutional Council		
		The President	The President
		Abrogative referenda	
Consequences according to VP theory	**Strong stability in public policy**	Either the status quo or a case by case majority	**Capacity for change**
Observed situation in the field of justice	**Strong stability until 1996**. Crucial reforms in 1998-2000. Gradual changes thereafter.	Numerous and crucial changes to judicial laws → **An Italian paradox**	**Quite numerous judicial laws** (especially in criminal matters) → Conforms to Tsebelis's theory.

Footnotes

The author would like to thank Sylvain Brouard, Isabelle Guinaudeau, Leanne Powner, Steven Campbell, Olivier Rozenberg, Nathalie Berny, Andy Smith, and the reviewers at *Comparative Political Studies* for their generous comments on drafts of this paper, as well as Jocelyne A.L. Serveau for her re-read of the English version of this text.

[1] The media agenda can impact the political agenda in many ways, as Vliegenthart and Walgrave (2009) have shown, although this can be indirectly (Walgrave & *al*., 2006).

[2] The rape and murder of young girls by Marc Dutroux generated a major political crisis in Belgium in 1996, resulting in massive demonstrations pressing for fundamental change to the judiciary and police. This was reactivated in April 1998 when Dutroux briefly escaped from court.

[3] Depending on the policy field, the salience of an issue may not be the best solution for policy change, as IGs may lose control over it. According to Culpepper (2011), quiet politics is a more efficient strategy for IGs in business: the less attention there is on an issue, the more IGs are able to disproportionately influence the rules of business. Conversely, I observed that in the judicial field calmness is often synonymous with the *status quo*.

[4] The social resources of IGs include their degree and type of organization, the nature of their elites, the degree of institutionalization of the group inside the administrative and political system, the type of relations between IGs, political and administrative actors (depending on their networks, career paths, etc.), the knowledge and expertise IGs develop, their ability to define their own interests alone, their presence in the media, etc. The societal resources of IGs mainly refer to their perception in society (Grossman & Saurugger, 2006: 16).

[5] Baumgartner & Leech (1998) also insist on the importance of "contextual" factors such as the salience of issues, degrees of conflict or consensus among IGs.

[6] This observation stems from a review of journals and law books and from interviews with legal professionals. It is confirmed by data from the *Comparative Agenda Project*: from 1986 to 2007, 47 laws about justice and crime were passed in France while 86 were passed in Italy.

[7] Such contrasts are important since the stability of the status quo depends on the initial position (Tsebelis, 2002: 23).

[8] This term refers to situations in which the President and the Prime Minister are not of the same political leaning.

[9] There were sixteen governments between 1975 (when a restrictive reform of the Italian *conciliatore* was first mentioned) and 1991 (enactment of the law creating justices of the peace).

[10] One third of Italian bills adopted between 1953 and 1994 were private member bills, not always micro-legislation (Della Salla, 1999), whereas in other western democracies 90% of bills are government bills.

[11] Delegated decrees (one fifth of legislation: Della Salla, 1999: 75) allow the government to legislate in a specific field, but bills must be approved by MPs within a short delay.

[12] Between 1996 and 2001, 10% of ordinary laws concerned organizational, institutional or procedural aspects of the legal system (Capano & Giuliani, 2001: 26). The 1992 Criminal Code was adopted through the ordinary legislative process, whereas legislative delegated decrees were used to implement the *giudice unico* reforms.

[13] When King Baudouin refused to countersign a bill legalizing abortion, he agreed to the application of article 82 of the Constitution. The Council of Ministers declared him unable to reign, took on his constitutional duties and the bill was passed on 3 April 1990. On 5 April, the King regained his duties.

[14] Citizens may contest legislation if they collect 500 000 signatures. For a law to be repealed at least 50% of voters must vote and a majority of them must support the repeal.

[15] Social transformations within the magistracy and its increased autonomy from the political sphere explain this break with the previous practice without any legal changes (Roussel, 2002), as do changes to professional norms, new types of investigations and evidence (Vauchez, 2004).

[16] Active mainly between 1982 and 2000.

[17] In 2010 there were over 120 000 lawyers and 9000 professional magistrates in Italy compared to 51 000 lawyers and 8200 magistrates in France, and 15 000 lawyers and 1500 magistrates in Belgium (excluding justices of the peace).

[18] The numerical importance of Italian lawyers (when compared to other countries), as well as the fact that they are a rather well mobilized and rent seeking interest group, has a pernicious effect, namely the difficulty in getting a timely ruling out of an Italian court.