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News from the Pit: Journalistic performativity and discourse on Belgian internment policy

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Abstract

This contribution examines the ways in which newspapers open or close mediated debate on the Belgian internment issue, and whether this can be connected to different journalistic practices. Although human rights guarantees are often articulated as a matter of near-universal consensus, Belgium has been convicted 23 times by the European Court for Human Rights for its treatment of mentally disabled criminal offenders. Considering news media's central role in shaping debate on human rights issues, we study internment news in two Dutch-language newspapers between 2013-2015 using critical discourse analysis. Our research shows that studying media as a site of struggle enables a deeper understanding of how debate is opened or closed, and explores the possibilities of studying discursive strategies that shape the mediated debate together with practices that reinforce journalistic credibility.

Keywords: *human rights; internment; agonistic pluralism; discursive strategies; media discourse; performativity; journalistic practices; newspapers; critical discourse analysis*

Conflicts of interest: none

Introduction

While human rights are often articulated as a matter of near-universal consensus, mediated controversies surrounding Belgium's internment policy reveal a different image. In theory, internment policy answers a legitimate concern for the wellbeing of criminal offenders with psychological issues. Under criminal law, mentally unaccountable offenders are committed to specialised facilities where they receive mental care aimed at social reintegration (Gezin, welzijn en gezondheid: n.d.). In practice however, many internees reside indefinitely in prisons without appropriate care (Directoraat-generaal Penitentiare Inrichtingen: 2016), which has prompted multiple international convictions and reprimands (e.g. 23 judgements by the European Court for Human Rights since 1998). Criminal and psychiatric experts have denounced internment in regular prisons, the lack of a set release date, and the ambiguous enforcement of 'reasonable' balance between societal and internees' interests (e.g. Commissie voor Justitie: 2015; League for Human Rights: 2011; Vandeveldt et al.: 2011; WHO & ICRC: 2005). The lack of systematic improvement¹ in the so-called "pit" of Justice (e.g. FPS Justice: 2017) since the first ECtHR conviction (Aerts v. Belgium: 1998) prompted the Court to pronounce a rare pilot judgement in 2016 (W.D. v. Belgium), setting a two-year deadline for Belgium to implement appropriate measures and reform its internment system (ECtHR: 2016).

Legal, political and advocacy actors involved in the symbolic struggle over the stakes in internment issues do not operate in a legal-political vacuum (Cavadino, Dignan & Mair: 2013), but often orient themselves toward mediated debate (Nash: 2009). From an agonistic pluralist perspective (Maesele & Raeijmaekers: 2017), we understand the internment issue as reflecting an underlying power configuration, which implies that this mediated struggle over meaning entails the inclusion and exclusion of particular perspectives. However, reducing journalism to news content limits our understanding of journalism's role in constructing the internment debate. To have a fuller understanding of the journalistic construction of internment, we also consider journalism's performative power, i.e. its professionalised strategies for presenting information in a manner that conveys truthfulness and authenticity (Broersma: 2010).

This contribution therefore explores how and about which elements of the internment issue newspapers open or close mediated debate, and whether these discursive strategies can be connected to different journalistic practices. Using a critical discourse analysis, we examine 143 articles from two Belgian quality newspapers, covering three mediated internment controversies, i.e. the 2013-trial of 'baby killer' Kim De Gelder, controversial legislative developments in 2014, and the 2015 euthanasia request of a long-time internee hinging on psychological suffering.

An agonistic pluralist perspective on mediated debate about internment

Rogers and Pilgrim (2014) point out that mentally ill offenders are often perceived as 'doubly deviant', stigmatised as both criminal and 'mentally abnormal'. They argue that public suspicion and media stereotyping might make politicians less likely to address continuing concerns with existing policies. A

¹ Policy countermeasures have generally fallen short. Internment operated largely under the law of 1964 until the 2014 Internment Act (Vander Beken, Heimans & Schipaanboord: 2016). Still, the new law did not fundamentally revise previous legislation, nor could it remedy shortcomings in available mental care (Heimans et al.: 2015). This deficit necessitated a 'reparation law' which entered into force in October 2016 (i.e. the Act of 4 May 2016 on internment and various provisions on Justice).

radical pluralist perspective on criminal justice issues (Cavadino, Dignan & Mair: 2013) urges us to consider the meanings attached to internment not as a reflection of tangible fact, but as a temporary result of underlying processes of negotiation and (re)articulation that decide what internment means from a judicial, psychiatric, political, personal, or journalistic perspective. Nash (2009) emphasises media's substantial role as spaces of symbolic struggle, where debate on human rights issues is structured, and where the 'authority' to determine the stakes is decided. This leads to the question: do media allow different viewpoints on alternative futures for internment to contest in internment news? Or does mediated debate remains closed around one set of perspectives or other?

Understanding internment news as a struggle over meaning implies interrogating the underlying mediated contestation between 'commonsensical' and alternative perspectives. Applying insights from agonistic pluralism to media coverage (e.g. Maesele et al.: 2017; Maesele & Raeijmaekers: 2017; Raeijmaekers & Maesele: 2015), we contend that mediated discourse is always the end-result of a symbolic struggle between different actors and viewpoints. We are therefore in need of particular analytical tools to examine which discourses are normalised and which are contested in discourse. Agonistic pluralism (e.g. Mouffe: 2005; Tambakaki: 2010) argues that claiming the existence of a societal consensus on any issue negates its underlying exclusionary mechanisms. *A priori* denying the legitimacy of claims that do not adhere to this presumed consensus and characterising these claims as less rational or moral, turns the symbolic struggle into an antagonistic conflict between right and wrong. Mouffe (2005; 2013) instead argues for turning to an agonistic form of debate, which recognises the plurality of voices and interests at work in any societal issue. Such a debate would revolve around adversarial contestation between different, equally legitimate claims and actions (Maesele & Raeijmaekers: 2017). Thus, mediated debate on a societal issue like internment is a reflection of one or more perspectives that have gained prominence/dominance *over* the alternative viewpoints, programmes and actors involved. This also implies that an assumed consensus can always be challenged and debated, i.e. that debate can be opened to include different perspectives.

In line with critical media scholarship (e.g. Carvalho: 2008; Dahlberg: 2007a), insights from agonistic pluralism implore us to examine the ways in which media coverage opens or closes debate on internment, by studying which sides of a social issue are (not) addressed (*scope*) and the manner in which they are represented (*form*). Although agonistic perspectives have been on the rise within political philosophy (e.g. Tambakaki: 2010; Wenman: 2013) and media research (e.g. Karppinen: 2013; van Zoonen et al.: 2011), few studies employ it to evaluate how discursive strategies play into opening or closing mediated debate.

Journalistic construction as performance

Although agonistic pluralism compels us to acknowledge that mediated debate is shaped by a symbolic struggle over meaning, instead of 'mirroring' social reality, journalism has been "remarkably successful in getting people to believe that it reports 'the truth'" (Broersma: 2010, 16). Idealising journalistic logics when analysing news about societal issues, blinds us to mechanisms of exclusion/inclusion involved in the struggle to define these issues (Raeijmaekers & Maesele: 2017). Additionally, it neglects how professionalised journalism functions to convey reliability on journalistic truth claims (Broersma: 2010). To move beyond evaluating *news content* and actively examine its *journalistic construction*, we also need to consider the ritualistic nature of journalism practices.

Critical scholarship (e.g. Curran: 2002; Dahlberg: 2007b; Hall et al.: 1978) has long questioned whether news media function as neutral transmitters of information by adhering to professional newsmaking practices. Broersma (2010) urges us to consider the *performative* nature of these journalistic conventions, arguing that standardised routines, choices and norms create a recognisable discursive format for news audiences and instil journalistic perspectives with a sense of credibility and authority. By applying speech act theory to journalistic utterances, Broersma makes a convincing case that (re)confirming the authoritative nature of discourse is an essential function of journalistic practice.

Broersma's framework (2010) examines how journalistic conventions regarding form and style relate to performativity. *Form* is conceptualised as the visual structure of discourse that confirms journalistic professionalism. This involves, first, genre conventions that impact the representation of a story, e.g. the possibility of relating background information or journalistic commentary on a story. Second, design (e.g. lay-out) informs how news is read. Third, textual structure (e.g. rhetoric, story length) reveals editorial choices regarding importance and interpretation of a story. Next, Broersma conceptualises *journalistic styles* as overarching sociocultural practices and professional conventions that inform "what news is and how a journalist should act" and "how the medium wants to be seen and how wants its readers to experience social reality" (2010, 23). He distinguishes different journalistic styles whose primary aim is either to inform the reader of certain events, or to reflect on particular perspectives about events. Even if one style is typically dominant at a certain time, different styles can co-exist in a media landscape or even an individual medium.

The 'agonistic pluralist' framework and Broersma's work on performativity share a concern with journalistic truth claiming. Performative 'form' shares traits with the way formal aspects of text and 'discursive interventions' (Carvalho: 2008) are understood in media research that applies agonistic pluralism, with several overlapping aspects (e.g. design, structure). As we will argue below, a pragmatic combination of these frameworks allows us to investigate how journalistic processes and discursive strategies together shape the internet debate.

Analytical framework

This analysis is concerned with how discursive strategies play into opening or closing the mediated debate on the internet issue, and explores how these patterns may be connected to differences in journalistic practices. To this end, we combine the performative understanding of *form* (an articulation of journalistic conventions on genre, design and story structure) and *style* (sociocultural practices and routines informing professional journalism), with the key analytical categories of *scope* (i.e. representation of different actors/viewpoints) and *form* (how these sides are represented) from the agonistic pluralist framework.

In this study, 'form' is conceptualised from both an agonistic pluralist and a performative perspective. *Discursive form* in its agonistic pluralist conceptualisation concerns the way in which social issues are presented in discourse (see below). According to Broersma's performative perspective, form articulates journalistic conventions to strengthen the authority of journalistic utterances. This is what we term *manifest form*. Both touch upon similar aspects that can be observed from journalistic content, such as lay-out/design (e.g. story length, placement) and story structure (e.g. linguistic/rhetorical choices).

Second, performative style points to a strategic interpretation of a news event which, if it connects to certain expectations of the news audience, can instil the news story with believability and the journalistic

discourse with authority. Broersma (2010) defines three styles with particular journalistic conventions and audience orientation: *reflection* (centred on opinion and analysis, to educate and convince), *storytelling news* (emotive narration oriented toward optimal readers' experiences) and *information news* (rationalist, detached and adhering to positivist ideals such as objectivity, aims to inform citizens).

Third, this study employs *scope* to refer to the inclusion or exclusion in discourse of *specific issues and* topics, social actors and viewpoints relating to the issue (Maesele & Raeijmaekers: 2017). Broersma (2010) relates some of these mechanisms to the operation of genre, i.e. organisational patterns of a story whereby specific conventions influence what type of information is included in a story.

While we can use scope, form and style as conceptual devices to analyse journalistic practices articulated in news texts, an agonistic pluralist perspective prompts us to include *discursive strategies* as a central analytical category of discursive form. These strategies are illustrated by lay-out, linguistic and rhetorical choices (Maesele & Raeijmaekers: 2017). Discursive strategies allow us to examine which discourses are normalised and which are contested, or: how debate is closed or opened in news discourse. They concern discursive mechanisms whereby certain well-defined discourses take on a commonsensical aspect, emphasizing these viewpoints as the most rational/moral/natural preferences while *excluding* others (depoliticisation). Equally, discursive strategies can make particular assumptions subject to debate (*exposing* the limitations in scope/form) and allow them to be contested by alternative actors and demands (*expanding* discourse). If alternative perspectives are introduced in rational/moral terms, discourse 'cultivates' a broader democratic debate. If this is done in ideological terms, discourse becomes politicised in the agonistic sense of the term². In previous studies we have identified an independent subsection of discursive strategies that can (de)politicise or cultivate debate, i.e. *positioning*, *de/legitimation* and *de/naturalisation* (e.g. Maesele et al.: 2017). Positioning involves constructing an issue in a particular socioeconomic, political, historical or geographical context to suggest preference of certain claims/actors over others. (De)legitimation enforces discursive boundaries, presenting some claims as more or less justifiable than others. (De)naturalisation concerns rejecting or acknowledging that there *is* a debate, i.e. either by suggesting that there is no alternative to the current order, or by contesting this order.

In sum, we examine journalistic choices regarding the selected voices and viewpoints on three internment issues (scope), when, where and how these stories are covered (manifest form), the overarching strategic interpretation informing coverage (style), and the underlying discursive mechanisms opening or closing the debate (discursive form). This way, we aim to explore the role of journalistic practices and discursive strategies in *collectively* shaping the form of the debate.

Method

This study uses the framework outlined above to analyse media reporting on the internment issue between 2013 and 2015. Through the GoPress database we selected 143 articles from two quality newspapers that belong to different Belgian Dutch-language newspaper publishing companies, *De Standaard* (N=78) and *De Morgen* (N=65). While these mainstream newspapers have seemingly similar profiles, De Bens and Raeymaeckers (2010) describe their diverging politico-ideological backgrounds, with DS presenting itself as centrist and DM as progressive. Previous studies suggest that DS and DM

² Although 'de/politicisation' has previously been used as an analytical category in political discourse analysis (e.g. Okulska & Cap: 2010; Muntigl: 1999; Krzyzanowski: 2017), media research (e.g. Ylönen et al.: 2015) of de/politicisation as discursive practice remains scarce. Media studies often focus on governmental and societal depoliticisation (e.g. Djerf-Pierre et al.: 2014; Koffman et al.: 2015).

hold different values and ideological preferences regarding certain social issues (Maesele, 2015; Raeijmaekers & Maesele, 2014).

We selected three critical discourse moments between January 2013 and December 2015, which may have challenged or otherwise cemented existing discursive positions (Carvalho: 2008) on the internment issue. First, the trial of ‘baby killer’ Kim De Gelder was highly mediatised between 1st February and 30th April 2013 (DS=44, DM=35). Second, April 2014 saw a concurrence of legislative changes and the announcement of a private-public partnered operation of the new Forensic Psychiatric Centre in Ghent (DS=18, DM=10). Finally, in January 2015, the case of a long-time internee attracted attention when his euthanasia application was withdrawn and readdressed by the Justice minister (DS=16, DM=20). These moments cover different aspects of internment policy, with perspectives fluctuating between episodic court reporting, critical discussions on the legitimacy of forensic psychiatry and the judiciary, and potential solutions to internment issues. We collected 50 news articles, 32 analyses, 27 interviews and 11 editorials. We included 23 op-eds for a broader picture of represented viewpoints. Articles were assigned a code referring to medium (DS or DM), date (ddmmjj) and a letter when more than one article was published that date. We used the original Dutch-language data in our study; for clarity, quotes translated to English are included to illustrate the analysis below.

From our explorative framework, we draw analytical categories referring to manifest form, style, scope and discursive form of news. After ordering texts by medium, date, author, and (sub)title, we recorded genres (news/interview/analysis/editorial/op-ed/other), article placement (page and section) and length, story structure and intertextuality between articles published the same day to analyse *manifest form*. The data did not allow an elaborate analysis of design, since GoPress only keeps plain-text archives. We next recorded the main actors and themes per article (*scope*). Since *style* (i.e. reflection, storytelling news or information news) concerns the overarching performative culture of a newspaper, we limited our analysis to reflecting on prominent stylistic parameters per discourse moment and newspaper. Finally, for *discursive form*, we paid particular attention to discursive strategies that closed mediated debate (depoliticisation) or opened it in rational/moral (cultivation) or ideological terms (politicisation), by examining how claims and actors were positioned, de/legitimised and de/naturalised. Positioning can be done for example by pointing to historical information (e.g. previous convictions by the European Court) or socioeconomic/political relations (e.g. contextualising policy measures within specific party politics). (De)legitimation could among others refer to the ethical uncertainty of internment issues, or propose seemingly rational solutions. (De)naturalisation involved either recognising alternative solutions to internment issues, or presenting a situation as the only valid option. In what follows, we discuss scope, manifest form, style and discursive form for each selected discourse moment, i.e. the 2013-trial of a potential internee, legislative reforms (2014), and the 2015-controversy surrounding the euthanasia request of a long-term internee (2015).

2013: The ‘babykiller’ trial

The first case concerns the 2013-jury trial of Kim De Gelder, who in 2009 attacked infants and their caretakers in a nursery. With regard to scope, both newspapers are preoccupied with discussion of De Gelder’s mental accountability³. A predominant subtheme is the psychiatric advice provided to the jury by prosecution and defense. When covering this, journalists tend to contrast court psychiatrists as experts

³ Ultimately, De Gelder was held mentally accountable and received a ‘regular’ prison sentence.

and counterexpertsⁱ. Several textsⁱⁱ emphasise the contrast between the prosecution's and defense's psychiatric evaluations of De Gelder's mental state, raising questions about the function of forensic psychiatry within the Justice system. As they are observed in court, legal-psychiatric experts' viewpoints construct the contours of the debateⁱⁱⁱ. These actors receive power to frame the debate in news discourse; other parties relevant to the discussion (such as victims, perpetrators, advocates) stay in the background. Despite these similarities in scope, an examination of manifest and discursive form shows how DS legitimises the primacy of Justice, while DM proposes equalising the two.

Regarding manifest form, DS opts mainly for courtroom reports narrating the day-to-day events^{iv} from the establishment of the jury to the final verdict, combined with interviews^v (e.g. with psychiatrists, De Gelder's lawyer). Most journalistic articles are sorted into the national news sections at the front of the newspaper. Some articles are combined in 'dossier'-style sections^{vi}, indicating the importance attached to the trial. Performative choices have immediate implications for the discursive form we observe. As far as style goes, DS combines storytelling news in its courtroom reports (e.g. lively descriptions of victims' reactions to the testimonies^{vii}) and information news (e.g. an interview with an expert to explain the function of forensic psychiatrists at trials^{viii}). Courtroom reports often employ chronological narration and clear good/bad-delineations. Together with the represented actors (scope), this emphasis on courtroom perspectives appears to have informed the discursive form of the debate, i.e. staying close to the dominant legal construction. Nonetheless, evaluative genres also comprise a considerable part of coverage (analyses^{ix}, editorials^x, op-eds^{xi}), which suggests that the De Gelder-case also inspired reflection.

DS closes the debate around the weakness of forensic psychiatry within the semi-unchallenged Justice system. Several reports delegitimise the 'confused' statements of prison psychiatrist Guido Stellamans ('no legal expert'^{xii}), one of the first to argue for internment. According to one report, he may have misjudged De Gelder's mental status earlier on: 'Did he make a mistake? Or did Kim De Gelder hoodwink him?'^{xiii} This type of courtroom coverage of psychiatric advice gives framing power to the legal discourse at the trial, where heavy scrutiny of the defense's evidence is normal. Defining the psychiatric evidence for internment as faulty, partial or irrational, excludes this argument from the discursive debate. Instead, in a post-trial analysis^{xiv}, a courtroom reporter who regularly covered the trial naturalises the divisive nature of expert advice, and legitimises the finality of the court's decision as the logical endpoint: 'There is no point in postponing the decision by waiting for another expert, [...] or a new edition of a psychiatric manual. [...] There is only the certainty of the jury decision'. The journalist closes the debate by emphasising psychiatry's mere advisory function and making it dependent on the court's decisive sovereignty as the only outcome.

An editorial and two analyses delegitimise the weak position of court psychiatrists, e.g. the editorial^{xv} explains that 'court psychiatrist is an underpaid side job for which no specific recognition or education is needed'^{xvi}. In line with the perceived deficiencies of psychiatry's function, these reflective pieces suggest the rational need for policy to improve psychiatry's *modus operandi*, yet do not offer a specific alternative to existing legal-psychiatric procedures.

Manifest form in DM coverage differs from DS. The newspaper also covers the daily events at the trial in longer articles, often sorted into the national section, and presented as day-to-day courtroom updates^{xvii}. However, evaluative articles are prominent (analyses^{xviii} and editorials^{xix}) and seem to allow more (discursive) space for journalists' interpretation and reflection on events. Moreover, while DM publishes fewer relevant op-eds^{xx} or interviews^{xxi}, we observe an overlap between mental experts' criticism and journalists' evaluations. This suggests a close relation between manifest form, performative style and the discursive form.

DM positions prosecution and defense psychiatrists as ‘fighting’ with equally valid arguments, and attempts to explain why they come to different conclusions about De Gelder^{xxii}. For instance, when the newspaper covers statements by the psychiatrist that DS marginalises, a court reporter reflects that:

‘Yet, a wretched feeling comes over me when psychiatrist Stellamans is roasted by both the presiding judge and the attorney-general. In the account of the psychologist that testified just now, contradiction also showed through, and, said the man literally: “I think that I don’t have certainty about everything”. However, he was not put down, and I can’t shake the thought that they went after Stellamans hard because he is the first to call De Gelder mentally unaccountable’^{xxiii}.

Whereas DS primarily reproduces the prosecution’s arguments against the defense, this DM reporter contrasts the response to the defense’s psychiatrist with the response to a prosecution’s psychiatrist. By reporting her own experience of the proceedings, she denaturalises the supposed neutrality of the court.

Several articles delegitimise the perceived legal-psychiatric imbalance in rational and moral terms. They take issue with the mismatch between the black-and-white categorisation of the courts versus the inherently nuanced psychiatric evaluations of mental health. Journalists draw heavily on mental experts’ criticism published in op-eds or interviews to specify this ‘weakness of Justice’^{xxiv}. One journalist reflects that, at the end of the trial, ‘the observation emerges that the dual legal criterion – accountable or not – no longer suffices’^{xxv}. His delegitimation and denaturalisation of the system confirms earlier assertions by the Flemish Association of Psychiatry (VVP) that “The strict legal interpretation of the concept of accountability (yes or no) does not allow a nuanced psychiatric judgement”^{xxvi}. The (performative) preference for courtroom coverage may explain this overrepresentation of legal-psychiatric expert perspectives.

Beyond this exposure of the limitations of the Justice system’s sovereignty, some analyses legitimise reform to a scaled diagnosis modelled on the Dutch example, reproducing experts’ suggestions published elsewhere. Echoing the op-ed by the VVP^{xxvii}, two analyses argue that, within the Dutch system, ‘[m]uch more consideration is given to the connection between a potential disorder and the possible effect on the facts’^{xxviii}, and that it ‘enables a unanimous but nuanced judgement’^{xxix}. This cultivating discourse allows that an alternative to the current diagnostic procedure for deciding mental accountability becomes the preferred one in the course of DM’s coverage.

2014: The Internment Act and the first Forensic Psychiatric Centre

Arguments for significant reforms of internment policy – already visible in the 2013-discourse^{xxx} – echo through the mediated debate on internment in April 2014. Thematically, the 2014-case covers the socio-economic dimension of internment policy, focussing on two events. First, an amendment in the new Internment Act required internees to pay a share of their treatment costs. Second, the government opted to outsource operations of a new Forensic Psychiatric Centre (FPC) to a consortium of private companies⁴ instead of a non-profit stakeholder⁵. The newspapers prefer official and expert information to report on these reforms. DM consults critical experts^{xxxii} (e.g. a magistrate, a professor in general medicine) and political/commercial actors involved with the reforms^{xxxiii}. Psychiatric and labour

⁴ Sodexo, a multinational facilities’ management corporation; and Parnassia, a commercial mental health foundation.

⁵ Platform FPC Gent, a not-for-profit umbrella organisation including forensic care organisations and local governments.

experts^{xxxiii} critical of these policy developments also impact DS's discursive construction. This prominence of experts may inform performative genre preferences or vice-versa: the representation of internment policy is largely constructed through interviews with^{xxxiv} and op-eds by (only DS^{xxxv}) experts.

The 2014-case also differs from 2013 regarding story placement. While the De Gelder-case employed the broad spectrum of available sections and regularly comprised multiple articles published on the same day and back-to-back, the 2014-reforms tend to be discussed in the latter parts of the national section, spread out over the first two weeks of April with some additional publications at the end of the month. An information news style dominates DS-coverage. This is visible in manifest form choices (e.g. balancing various official/expert information) and in discursive choices (e.g. weighing arguments for and against policy developments). As with the De Gelder-case, DM seems to verge towards reflection, which may inform the discursive construction (e.g. pronounced scrutiny in interviews).

Despite the differences, both newspapers cultivate discursive debate on socio-economic aspects of the reforms. DS does this by expanding discourse to a diverse set of voices for and against applying a market-driven logic to internee care. The small number of articles in DS about the legal cost amendment problematises the proposed framework for financing internee care. DS first reports on the inclusion of the amendment by inviting experts (the chair of the administrative court for internment⁶, a forensic psychiatrist, a rights advocate) in two separate interviews to 'make mincemeat of [the] provision'^{xxxvi}, e.g. for creating inequality between internees and detainees. These articles allow alternative viewpoints into discourse; one even offers an alternative policy strategy (i.e. relocate budgets spent on dealing with prison overpopulation^{xxxvii}). When the law is approved, an editorial^{xxxviii} naturalises these criticisms, delegitimising the government's decision retain it, '[e]verybody knows for sure. It has a monster of a provision: that internees should pay for their own stay; everyone knows this is impossible, but they kept it'. The experts' evaluation is thus recast as common knowledge. However, their delegitimation is contrasted with the moderate voices of a socialist senator and a representative of the Christian-democratic party who articulate arguments supporting the law. Despite regretting the amendment's inclusion, they applaud the general idea of significant reforms to internment policy. At the end of the month an article in DS argues that, while controversial, the '[l]aw takes internees out of the pit' because it guarantees the right to treatment^{xxxix}. In sum, coverage exposes the limitations of arguments for including the cost amendment and expands discourse to expert viewpoints.

This cultivating discourse extends to coverage of the government's decision to assign the operation of the new FPC in Ghent to commercial actors. DS balances the pros and cons of this decision, aware of potential criticism of privatising a public function, yet constructing the move as progressive. In a number of articles, alternative voices have a distinct platform to question the governmental decision, e.g. an interview with a member of the green opposition (Q: 'What can the government do?' [...] – A: "It is [the government's] damn duty to [establish the playing field] in a way that quality and affordability remain ensured"^{xl}), three expert op-eds that criticise the move to a profit-based model for internee care^{xli} and a critical reaction of a non-profit stakeholder on the prioritisation of financial matters by the FPC's commercial operators^{xlii}. Nonetheless, *journalistic* discourse on the matter paints a different picture of the FPC-debate. Journalistic discourse remains carefully optimistic, and looks for a middle ground between caution and confidence in government regulations for the private-public partnership. An article^{xliii} sets out to test whether 'commercial organisations skimp on care more than non-profit or public institutions' by looking at statistics about the occurrence of accidents and bedsores in privatised retirement homes. The text concludes that privatised homes are no worse than public ones. This

⁶ The former Commission for Protection of Society ('Commissie tot Bescherming van de Maatschappij').

sentiment confirms an earlier statement in an editorial^{xliv} that ‘the government kept setting the bar high for all retirement homes [...] Today, most commercial retirement homes deliver quality.’ DS’s preferred reading of the FPC-debate is also summarised here: ‘[w]ariness is allowed, prejudice is not’. In other words, applying a market logic to internment policy is not in itself problematic for DS, as long as government regulations are in place to prevent excesses. The private-public partnership is positioned as being ‘of great symbolic value’^{xlv}, ‘a first’^{xlvi}, a ‘trophy’^{xlvii} for then-Justice Minister Annemie Turtelboom (liberal party). Despite acknowledging the bad track record of the commercial consortium^{xlviii}, a favourable analysis counters the concerns over a loss of quality raised in the interviews and op-eds^{xlix}. Although the private-public partnership is challenged by the selected interviewees and commentators, the journalistic construction of the issue points to a preference for arguments supporting the government’s decision.

DM’s discourse on the reforms can be contextualised by examining their coverage of potential reforms proposed in a 2013 Bill by socialist senator Anciaux. When psychiatrists involved with the De Geldertrial distribute a petition with an urgent call for internment reform, DM publishes a news article, an editorial and an interview that build framing power for these psychiatrists^l. Accordingly, the editorial argues that it is a matter of moral integrity ‘to restore the absolute subsistence of decency regarding this category, the greatest shame of our Belgian judicial system. [...] regardless of your political convictions, a margin of compassion is a basis of human civilisation and dignity’^{li}. In legitimising the call for psychiatry-judiciary reform in axiological terms, debate becomes politicised.

This open debate in 2013 appears to inform DM’s discourse on the 2014-reforms. DM publishes a front-page article and an interview dealing directly⁷ with the cost amendment included in the Internment Act. In a front-page article, DM points out that similar provisions remained unimplemented or were left out of earlier versions of the Internment Act⁸, thereby positioning the provision as historically invalid. A professor in criminal law is asked to comment. He critically positions financial assertions of the government within the wider concern that the amendment creates inequality between internees and detainees, which ‘is strange’^{lii}. Both arguments are reiterated in similar wording by the same journalist in a subsequent interview with the liberal senator who proposed the amendment^{liii}. Although the senator gets a platform to defend the amendment, the journalist confronts him with the much-repeated statistic that ‘[m]ore than one thousand internees are currently in prison. Isn’t it strange that one should and the other [detainees, NB] should not pay for his stay?’ The newspaper weighs arguments for introducing the amendment against its historic and legal context, supported by expert information, and ends up delegitimising the amendment.

The newspaper also takes issue with the government’s decision to outsource operations of a new Forensic Psychiatric Centre (FPC) to a commercial consortium. Unlike the pro-con discourse of DS, DM focusses on exploring criticisms of the private-public partnership, by repeatedly discussing ‘known’ issues and perceived expert criticism. Several articles^{liv} discuss examples of ‘frequent scandals’ and ‘incidents’ involving patients at international branches of the commercial consortium. These worries are aggravated by ‘outrage’ within the health care sector: ‘Zorgnet Flanders⁹, the Flemish Society of Mental Health, the unions... All of them warn against an evolution in which profits take precedence over care. Particularly the fear that this will be at the expense of quality, is great’^{lv}. Thus, DM reports under the assumption that there is a broad consensus *against* a move toward commercialisation. When a spokesperson for the consortium is invited to respond to the criticism, the interviewer puts her on the

⁷ Two articles on the FPC mention the amendment in passing (DM070414a, DM070414b).

⁸ cf. Law 1964 – law 2007 (unimplemented) – proposed bill 2013.

⁹ A social profit umbrella association made up of Flemish care organisations.

defensive. The consortium's profit-based nature is presented as troublesome. The interviewer compels the spokesperson to rebuke every concern with an emphatic, but perhaps unconvincing, testimonial, e.g. "Every cent, every form of profits, will go back to the care centre, so to the patient. How we will handle this in Ghent, we still have to discuss. There is no framework yet."^{lvi} In short, DM holds to criticising governmental reforms in the direction of a market-driven approach. In line with earlier legitimisation of reforming the Justice system to allow better psychiatric diagnosis, the newspaper emphasises a (mental) care perspective.

2015: The euthanasia controversy

In January 2015, the case of Frank Van den Bleeken attracted mainstream attention. The long-time internee had successfully applied for euthanasia on the basis of intolerable mental suffering in a regular prison, but his request was unexpectedly repealed five days before the intended euthanasia date. The following days, Justice minister Koen Geens announced a transfer to a specialised care centre. Coverage of the 2015-case across DS and DM is similar regarding scope, manifest and discursive form, and style. Thematically, human rights concerns play a prominent role (i.e. the right to health implied in internee care), focussed on the interrelated themes of internee care policy and political responsibility for addressing its perceived issues.

As we will detail below, the newspapers draw considerably on expert viewpoints and information, constructing an interplay between authoritative evidence and editorial evaluations. They consult medical and legal experts involved with Van den Bleeken's euthanasia request, such as his palliative doctors^{lvii} and lawyer^{lviii}, or external commentators such as the chair of the administrative court for internment, a psychiatrist who works on euthanasia-cases or a prison director^{lix}. These actors confirm criticism on existing internment policies connected to Van den Bleeken's plight, e.g. lack of adequate mental treatment. Multiple references to convictions by the ECtHR further confirm these criticisms^{lx}. By contrast, governmental viewpoints are sparse. For instance, some articles cite Geens to explain developments in the case^{lxi}, but not to contest criticisms on internment policy expressed elsewhere. Critical voices thus set the terms of this discussion.

Regarding manifest form, the newspapers employ a similar mix of news^{lxii} and interviews^{lxiii} on the one hand and editorials^{lxiv} and analyses^{lxv} on the other to present their take on the case. The decision to halt the euthanasia and transfer the internee is a critical moment in the journalistic construction. The day after Geens' announcement, each publishes front-page articles^{lxvi}, an interview with Van den Bleeken's lawyer^{lxvii}, in-depth analyses^{lxviii} and editorials^{lix} covering multiple angles in the front sections of the newspapers. As was the case with the 2013 trial, this case is generally covered in both factual terms and reflective pieces. In the words of one editorialist: it seems that an individual case is able to 'wake up politics and public opinion, an abstract principle is not'^{lxx}. The latter is illustrated below in the discursive analysis which suggests that the 2015-case is the only one that stimulates newspapers to employ politicising discourses.

We find considerable discursive similarities between the newspapers. First, both recast the individual case as an exemplar of the structural issue, i.e. the existence of a care deficit. This is established as 'fact' in discourse by 2015, and is expressly delegitimised. For instance, across cases and newspapers a statistic concerning internees in regular prisons is reiterated, e.g. in an analysis of a 2013 legislative proposal (DS): 'Over 1.100 internees [...] currently reside in a prison without care or treatment'^{lxxi}. This

quote shares marked similarities with an article that connects the Van den Bleeken-case to the structural issue (DM): ‘[Psychiatrists] confirm that [the man] suffers greatly from his stay in prison. [...] without appropriate therapy, he is a danger to society. [...] Up to 1.150 of [Belgian internees] reside in prison, where the vast majority does not receive any kind of mental care’^{lxxii}. Internment care practices are thus presented as irrational by connecting these numbers and their negative implications to the individual case. Claims like this have been normalised by 2015, illustrated by statements which matter-of-factly connect the euthanasia request to ‘the complete hopelessness of life as an internee’^{lxxiii} (DM), or that ‘the bottom line is of course the absence of an appropriate treatment and care’^{lxxiv} (DS). These arguments are sometimes underpinned by referring to the many ECtHR convictions: ‘He was denied [appropriate care] by a prison system that has been condemned by the European Court time after time for the cruel and inhumane way that we deal with our internees’^{lxxv}. Newspapers thus position the authorisation of the euthanasia request as a direct consequence of inadequate mental care in regular prisons.

Across 2013-2015^{lxxvi} the newspapers refer to internment as the pit of Justice or in a literal translation of the Dutch term¹⁰: ‘the oubliette’, for the medieval subterranean cells where the worst prisoners were put to forget. Accordingly, Van den Bleeken’s internment in prison is delegitimised in moral terms. For example, an editorial contrasts the prolonged lack of care with the relatively straightforward permission for euthanasia: ‘The parallels with the death penalty were plentiful. Belgium locks up a man without trial for thirty years, keeps him without an end date, in no way treats him and assists him in taking the only step he still can, ending his life. You have to admit it’s bitter.’^{lxxvii}

Second, the newspapers attribute responsibility for the care deficit to a perceived political unwillingness to correct structural issues. The chair of the Life End Information Forum (LEIF) is a particular source for delegitimising this perceived political reticence, e.g. in an analysis of ‘[w]hy Geens now does what Turtelboom¹¹ didn’t at the time’, the journalist ascribes the reason for this via a statement by this expert: ‘Internees, they obviously don’t win you any votes’^{lxxviii}. Similar quotes by this expert suggest that for him, the structural lack of improvement in internee care is related to political values governing the policy process. The significance of expert evaluations like this, as well as statistics and convictions ascribed to political unwillingness, is illustrated by an editorial in DS which presents an overview of events:

‘But the understructure is clear: the government has never attached importance to the right of internees to treatment of their disease. They were and are still just locked up as prisoners, without treatment. Politics did not lose sleep over the negation of that right, neither did the justice system, nor the people. [...] A specific individual case can wake up politics and public opinion, an abstract principle cannot.’^{lxxix}

This editorialist refers to familiar information to make these claims, and relates Van den Bleeken’s situation to a disregard for human rights. The final sentence confirms that this case is defined as emblematic for a systemic issue. In equally scathing evaluations, DM delegitimises policymakers’ unwillingness to handle ‘the failing of the [internment] system’ in general^{lxxx}: ‘The level of civilisation is still measured by how [our country] handles its weakest’^{lxxxii}. For these journalists, appropriate internee care policies are an ideological issue. Debate on Van den Bleeken’s situation becomes politicised: the perpetuation of a systemic care deficit is rejected because it violates certain civic values. We could

¹⁰ In Dutch: ‘de vergeetput’

¹¹ The respective Justice ministers for the government’s tenures of 2011-2014 and 2014-today.

speculate that newspapers are able to make this diagnosis because it is founded upon an assumed consensus about the right to health.

Discussion

This study proposes viewing media coverage of internment as a symbolic struggle, implying that prevailing meanings attached to it are not fixed, but open to challenge and debate. To then understand how and when newspapers open or close debate on internment, and whether this can be connected to different journalistic practices, we examined the role of performative actions and discursive strategies in two quality newspapers for three successive internment controversies.

This study indicates that performative practices and discursive strategies operate conjointly to guide journalistic truth claims. In line with a previous study (Reul et al., 2016) indicating that DS favours a conservative take on professional reporting, prioritising ‘verifiable’ and ‘trustworthy’ information, our analysis suggests that DS tends to confirm dominant legal-political perspectives. The newspapers understand the 2013-trial in terms of legal-psychiatric tension, covering the controversial diagnostic procedure for deciding De Gelder’s mental accountability. Both employ a mix of courtroom coverage and reflection on (systemic) issues with internment. However, DS stops at exposing the limitations of the existing legal-psychiatric framework, whereas DM expands discourse to include alternative perspectives.

By contrast, both newspapers cultivate debate on the 2014-reforms, covering criticisms and counter criticisms regarding socioeconomic concerns. Nevertheless, DS appears more confident in these policy developments than DM, which emphasises social accountability over reform for reform’s sake. Particularly when covering the De Gelder-trial and the 2014-reforms, DS stays close to the official narrative. DM often takes a more reflective stance, e.g. by reproducing critical experts’ concerns and solutions as a starting point. In the 2014-2015 cases, the newspaper’s observations were also implicitly and explicitly guided by an overarching care perspective.

The 2015-case is distinct for its inclusion of politicising discourses. Policymaking on the underlying right to health is understood here as a *political* choice, while perceived political reticence is ascribed to competing political values and claims. Moreover, although coverage includes both evaluative and hard news genres, and displays reflection and information news style elements, we argue that this case most inspired newspapers to attempt to “persuade readers of certain political or sociocultural positions” (Broersma: 2010, 24), i.e. a reflection style. This also illustrates our claim that a mediated understanding of human rights issues is the outcome of a symbolic struggle between varying viewpoints and actors, and can thus be challenged.

An agonistic pluralist’s framework urges us to examine exclusionary discursive mechanisms. Both newspapers have a blind spot for non-elite positions on internment. Inaccessible internees have no voice in news concerning them. The relative absence of advocates is more surprising, considering that the NGO ‘League for Human Rights’ and the social-profit organisation ‘Broeders van Liefde’ define internment as a core cause. It is possible that elite supporters of internee rights (psychiatrists, politicians) simply fit more easily into journalistic rituals for objective reporting (see e.g. Schudson’s assessment (1996) that official sources are typically overrepresented). It also confirms that *diverse* mediated internment debate (i.e. including a variety of different sources) is not the same as a *pluralistic* mediated debate with contestation between equally legitimate voices with various claims and programmes (see also Raeijmaekers & Maesele, 2015).

Since studying media content necessarily limits our account to performative strategies discernible in text, we can only speculate on the latent production process. We suggest that future research combines studies of content and production, e.g. by interviewing journalists and editors. While we included op-eds in our analysis, we limited our discussion of the genre, instead focussing on journalistic constructions. Nevertheless, we believe that including genres that operate under different assumptions and directives provides a more comprehensive view of the construction of an issue. Examining this distinct genre also facilitates observing the influence of journalistic socialisation and professional cultures on journalistic genres. Similarly, future enquiries may aim for a holistic view on the media landscape by including different types of media, not only different formats (audio-visual, online) but particularly media with different economic-organisational, production, content and normative characteristics such as popular or alternative media.

This contribution sought insight into the journalistic construction of mediated debate on internment. Combining the ‘agonistic pluralist’ framework with the performative model was useful in pinpointing certain analyses, e.g. the importance of individual cases like De Gelder’s and Van den Bleeken’s in shaping the journalistic construction of the ‘abstract’ internment issue. We also trust this exploration of the performative framework has shown its analytical applicability. Our research shows the fruitfulness of studying coverage of criminal justice and human rights issues through an agonistic pluralist perspective. This discussion suggests that studying discursive strategies that shape the mediated debate together with the prevailing performative strategies that reinforce their credibility, contributes to a fuller understanding of journalism as a discursive construction of social reality.

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ⁱ E.g. DS160313e

ⁱⁱ E.g. DS160313d and DS160313f are reports published on opposite page, the former narrating the prosecution's arguments, the latter the defense's.

ⁱⁱⁱ E.g. DS060313, DS160313d, DS160313f, DS200313, DS210313, DS220313; DM040313, DM060313a, DM210313, DM220313, DM230213a

^{iv} DS200213, DS230213, DS260213b, DS010313a, DS020313, DS160313d, DS160313f, DS200313, DS210313, DS220313, DS230313b, DS230313d

^v DS160213a, DS010313b, DS040313, DS250313a, DS260313b, DS130413b

^{vi} E.g. Four articles published in the national section on 23rd March reflect on the implications of the jury verdict

^{vii} E.g. DS010313a, DS160313f, DS220313,

^{viii} DS160213a

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- ix DS190213, DS160313e, DS230313a, DS040413b, DS150413a
- x DS160313b, DS230313c
- xi DS260213a, DS260213c, DS150313, DS160313a, DS160313c, DS250313b, DS150413c
- xii DS060313
- xiii DS110313; see DS220313 for an example of delegitimisation of psychiatric arguments made by De Gelder's lawyer.
- xiv DS230313a
- xv DS160313b; see also DS040413b, DS150413a
- xvi DS160313b
- xvii E.g. DM230213a, DM260213b, DM060313a, DM090313, DM210313
- xviii E.g. DM040313, DM090313, DM150313, DM230313b, DM250313b, DM300313
- xix DM230313c, DM040413b, DM130413a
- xx DM160313b, DM230313a, DM040413a
- xxi DM230313e, DM260313, DM130413c
- xxii DM160213, DM150313
- xxiii DM090313
- xxiv DM230313b
- xxv DM230313b
- xxvi DM160313b; see also DM230313c, which draws on DM230313a; and arguments made in DM160313a, DM230313d
- xxvii DM160313b
- xxviii DM160313a
- xxix DM230313b
- xxx E.g. Articles about the 2013 Bill proposal (DS060413c, DS150413a; DM040413c, DM040413d, DM040413e), the petition calling for reforms (DS130413a, DS130413b; DM130413b, DM130413c)
- xxxi E.g. DM040414a , DM040414b, DM070414a, DM050414a
- xxxii E.g. DM050414a , DM050414b, DM070414b, DM080414b
- xxxiii E.g. DS070414a, DS070414b
- xxxiv DM040414b, DM070414a, DM230414, DS070414a, DS070414b
- xxxv DS070414c, DS080414a, DS090414, DS100414
- xxxvi DS070414a; DS070414b
- xxxvii DS070414b
- xxxviii DS250414a; see also DS250414b for criticism on the parliamentary voting process.
- xxxix DS240414
- xl DS080414b; see also DS050414c for an interview with the socialist mayor of Ghent.
- xli DS070414c; DS090414; DS100414
- xlii DS230414
- xliii DS180414
- xliv DS050414b
- xlv DS050414c
- xlvi DS020414; DS230414
- xlvii DS020414
- xlviii DS020414
- xlix DS050414a
- l DM130413a; DM130413b; DM130413c
- li DM040413b
- lii DM050414a
- liii DM050414b
- liv DM050414a; DM040414c; DM070414a; DM080414b
- lv DM050414a; see also: DM040414a;DM080414a
- lvi DM080414a
- lvii DS050115, DS070115g, DS210115a, DM060115, DM070115a; op-ed DM050115a
- lviii DS070115b, DS070115f, DS080115a, DM030115b, DM070115a, DM070115c, DM080115c
- lix Resp. DS070115g, DM070115b, DM100115b,
- lx DS070115c, DS210115b, DM030115b, DM050115b, DM070115d
- lxi E.g. DS070115a, DS070115b; DM030115a, DM070115a
- lxii DS050115, DS070115b, DS080115a, DS240115; DM030115b, DM070115a, DM080115b
- lxiii DM100115b, DM070115c; DS070115f, DS210115a
- lxiv DM030115a, DM070115d; DS070115c, DS210115b
- lxv DM050115b, DM060115, DM070115b, DM080115c, DM260115a; DS070115a, DS070115d, DS070115g

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- lxvi DM070115a; DS070115b
lxvii DM070115c; DS070115f
lxviii DM070115b; DS070115a, DS070115d
lxix DM070115d, DS070115c
lxx DS210115b
lxxi DS040413b
lxxii DM030115b
lxxiii DM030115b
lxxiv DS070115g
lxxv DM070115d; see also analysis DM050115b
lxxvi E.g. DM250313b; DM030115a; DM050115a; DM070115e; DS130413b; DS240414; DS070115c; DS220115
lxxvii DS070115b; see also editorials DS210115b and DM070115a
lxxviii DS070115g; see also DS050115, DM070115a
lxxix DS210115b
lxxx DM080115c
lxxxi DM070115d