LAWYERS AND AGILE MANAGEMENT. ARE YOU READY TO SCRUM?[1] (PART. I)

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"... or have you finally lost it?" Is most probably what my associates thought when, a bit more than a year ago, I introduced at our firm a project management software based on agile principles.

A year later, the software has been well adopted and every day we are improving our use of it and are on a good road to become a more agile law firm.

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1. A short but interesting blog entry on the subject can be found at: https://www.ilf-ua.com/en/blog/scrum-for-lawyers-or-how-legal-business-uses-agile/.
   For a more "French" analysis, see: G. DEHARO, « Le droit, un outil du management agile », *Revue Française de gestion*, 2018/3 n° 272, pp. 33-49 (Lavoisier, disponible sur cairn.info).

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Agile is a project management methodology that has been developed in the software world, but is slowly also entering the rest of the economy and starts to be liked by lawyers as well.
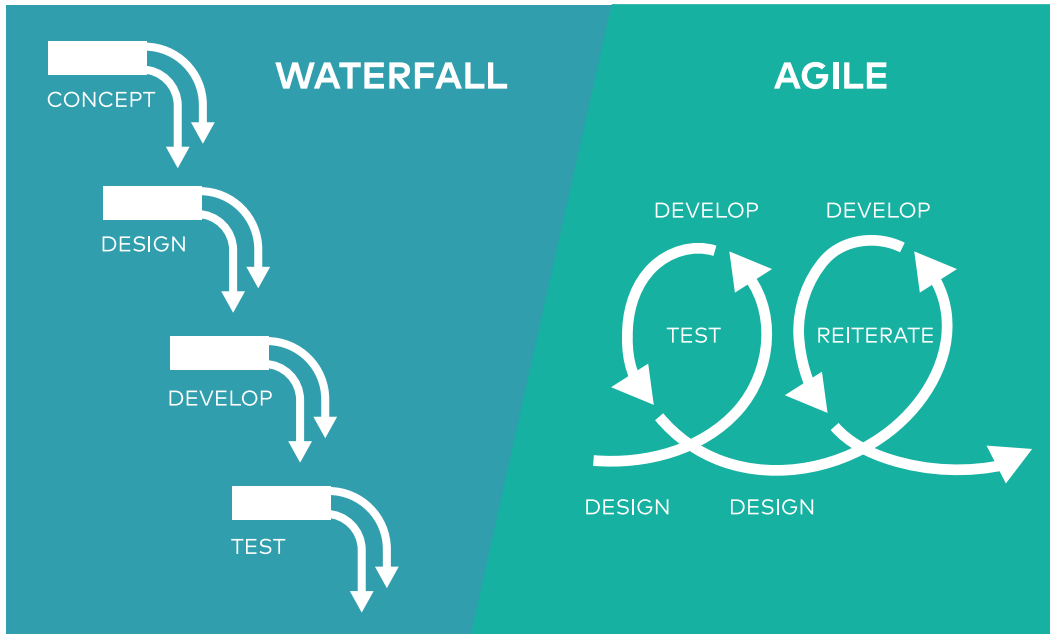
Most lawyers work in what is called the Waterfall methodology, which is based on a linear progression from the beginning to the end of a project. This way of handling projects only works if there is care-ful planning and good upfront documentation, a good *"cahier des charges"*, as the French say.

As an (a bit exaggerated) example, for a corporate lawyer, this would mean preparing all of the documentation related to a transaction after some interaction with the client to determine the client's needs and *desiderata*, but then working all on everything and delivering the whole batch of documentation in one shot, and afterwards reviewing it after the client's comments, with the effect that some basic reviews, have then to be copied into every other document of the batch.

The agile approach does the exact opposite, it takes what is called an iterative approach where processes are broken down into smaller cycles, which are often referred as sprints or iterations:

(Image source : https://www.planview.com/resources/guide/agile-methodologies-a-beginners-guide/history-of-agile/)

Agile has four core values, which have been adopted by a group of 17 software engineers who met in 2001 in a ski resort in Utah (the mountainous environment certainly helped in catalyzing thoughts, at least it does so for me), and issued the following manifesto:

- **Individuals and interactions** over processes and tools
- **Working software** over comprehensive documentation
- **Customer collaboration** over contract negotiation
- **Responding to change** over following a plan
- *That is, while there is value in the items on the right, we value the items on the left more*
(Source: agilemanifesto.org)

In short, Agile favours continuous incremental improvement through small and frequent releases.

So much for the software world.

Let's see if we can adapt these four core values to the legal world:

Individuals and interactions over processes and tools	This value should be transposable as is, but it will be hard for lawyers to do so, as they are generally used to drafting and then following strictly the drafted procedures. The core idea is to talk to each other, collaborate, and prefer substance over form, which, again, does not necessarily come naturally to us lawyers. Agile also insists on having trust in individuals and im the way in which they perform their work, which has as a direct consequence, an openness to accepting mistakes and learning from them.
Working software over comprehensive documentation	Deliver usable and efficient legal advice to the client, rather than lengthy legal opinions with high theoretical value but little practical use. I will come back to this later.
Customer collaboration over contract negotiation	Engage with the client on a regular basis: heavily involve the client at the various steps of the project. As an example, it would be possible to share early stage partial drafts with the clients, on specific sub-parts of the project, which gives the lawyer a better feel for the client's needs...
Responding to change over following a plan	This value is transposable as is to lawyers.

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"Salary is not the only motivational factor for associates "

These 4 core values lead to the 12 basic principles of Agile, which have also been adopted by the group of 17 software developers. Let's have a look at each of them:

1_Our highest priority is to satisfy the customer through early and continuous delivery of valuable software.
   As lawyers, our highest goal is to satisfy our clients. What we can do is to present the client with early stage drafts, ask their opinion and discuss these with our clients.

2_Welcome changing requirements, even late in development. Agile processes harness change for the customer's competitive advantage.
   A continuous contact and exchange with the clients increases the chances that the final product of our work meets the client's expectations.

3_Deliver working software frequently, from a couple of weeks to a couple of months, with a preference to the shorter timescale.
   As we do not deliver software, what we can do, is break the project down into smaller parts, and set milestones to be achieved.

4_Business people and developers must work together daily throughout the project.
   In agile, the idea is for different departments to work together and collaborate on a regular basis, and communicate to share information and resources. Lawyers can do exactly just that. And, even further, the whole team of lawyers working on the project should be in contact not only with the general counsel, but also with the board and other stakeholders, (such as, for instance, the owner / shareholders of the client). Which goes against a frequent model used by law firms, where the direct contact with the client is generally limited to one person (or very a small circle of persons), the partner or senior associate in charge.

5_Build projects around motivated individuals. Give them the environment and support they need, and trust them to get the job done.
   Salary is not the only motivational factor for associates (albeit a very important one), there are lots of other factors: a good place to work certainly plays a big part.

6_The most efficient and effective method of conveying information to and within a development team is face-to-face conversation.
   This statement is certainly true. It is one of the reasons that I am not a big fan of remote working, as it cuts the visual contacts, the small chats at the coffee machine, but also the more formal progress meetings that take place when working in the same building. This principle clearly advises to do weekly if not daily progress meetings, even if they are very short. To keep them short and efficient, these meetings should take place as standup meetings.

7_Working software is the primary measure of progress.
   For us lawyers, delivering advice that is useful and efficient to the client is the best measure of success. For that we need to understand our client's business and needs. This principle tells us to adapt our work to the client, and not to forcefully try to adapt our client's needs and wishes to our standard templates.

   This reminds of an episode a number of years ago where I assisted a client in selling his company which had only one asset. He told me that he had a clear agreement with the buyer, and they only needed a 4 pager to hammer that down, which I prepared. The buyer's lawyers managed to insist on using their standard 30 page base template (which was not adapted to the transaction), we ended up with additional 4 individual sub-contracts of over a 100 pages in total and 600 pages of schedules, signed 3 times in original. It cost both clients a lot of money, and brought them zero advantage over a short and clear contract. The signing / closing took an entire day, when it was finished, the bank had closed and the payment of the purchase price to my client could not be made

that same day. He expressed his dissatisfaction to the opposing law firm in no unclear terms. He was furious.

8_*Agile processes promote sustainable development. The sponsors, developers, and users should be able to maintain a constant pace indefinitely.*

Sustainable development also means taking good care of associates. Overworked and tired associates do not deliver high quality work and are not able to maintain a constant pace. Good and careful planning can reduce the need for overtime and be more sustainable for the team as a whole in the long run (teams where people are overworked also have a high turnover, too frequent changes in the composition of the team is generally not that beneficial to quality in the long term).

Moving away from a deadline-driven way of working[2] (i.e. prioritizing work where the point of no return deadline is nearest and then clocking in a lot of overtime) to a model where work is handled when it comes in, thus not having to be stressed by deadlines, has a huge advantage and reduces overtime drastically, limiting it only to the case where it is really needed. Such a way of working preserves the good health (and work-life balance) of associates and makes them

more efficient in the long run (and less likely to leave the firm or burn out).

9_*Continuous attention to technical excellence and good design enhances agility.*

Lawyers should think and write in a structured fashion, strive to create easy-to read documents, rather than complex legal opinions containing the most beautiful doctoral and theoretical analysis, but leaving the client with an unclear answer, and only options. Clients want their lawyers to help them. Not confuse them with technical terms, and overly complex reasonings.

10_*Simplicity--the art of maximizing the amount of work not done--is essential.*

Simplicity is key, also for lawyers. A good pleading will be short, structured and clear arguments help in catching and keeping a judge's attention The same goes for contracts. A contract should always be drafted keeping into mind that one day it will have to defended in an oral pleading before a Court where there will be little time to discuss the contract in detail. The clearer and better structured, the higher the chances of winning the case. Period.

11_*The best architectures, requirements, and designs emerge from self-organizing teams.*

This principle is difficult to implement, even for me, who gives a lot of maneuvering margin to my team (or at least I think I do, reality might be different). But it certainly helps, the best documents are produced, the best strategies designed and implemented when they come from the heart of the people doing them, when they feel a sense of belief and belonging in what they do.

12_*At regular intervals, the team reflects on how to become more effective, then tunes and adjusts its behavior accordingly.*

Such meetings are also called retrospectives. During this phase (often under the form of a short standup meeting), the team will analyze what worked, what did not, and what can be improved, applying the 4 L's: Liked, Learned, Lacked and Longed[3].

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2. See for instance the very interesting blog entry relating to that subject: https://www.atlassian.com/blog/technology/10-signs-deadline-driven-development.

3. The 4L's are a classic review in software development:
Liked – What did people like about the last sprint run? This could be anything from a process, an achievement, a particular team action or even a technology.
Learned – What things did the team learn from experiments, testing, conversation and from working with each other. These are any new discoveries, points of interest or highlights.
Lacked – What seemed to be missing from the last iteration? On reflection, this might be something that was unclear or needed to be implemented to ensure that things continue to run smoothly.
Longed for – What is something that they wish existed or was possible that would ensure that the project would be successful.

(Source: https://www.teamretro.com/retrospectives/4ls-retrospective)

"Simplicity is key, also for lawyer"