

INNOVATIVENESS OF THE JUDICIARY POWER. A CASE STUDY USING THE VIABLE SYSTEM MODEL (VSM)

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ABSTRACT

For several years, the use of technology, open data and customer focus as innovation engines has been imposed worldwide. And the Judiciary Power as a key player in the system of administration of justice of the Argentine Republic do not escape this trend. As a consequence of this, it has implemented innovative processes in order to reduce their management times, improve the user-citizen experience and bring transparency to the process. Never the less, in Argentina these innovations are rare exceptions. In this paper the case of the “Judiciary Power of Tucumán State” will be use as a leading case for its high level of innovativeness during the last ten years. The main objective of this paper is to model using Beer’s Viable System Model approach the system in which this case is embedded, discuss and determine whether the system is a viable one or not, and compare the findings with the theoretical framework associated with the “new public management”.

Keywords: judicial system, innovation, innovativeness, modernization, judicial management, court administration, new public management, judiciary power.

INTRODUCTION

Argentina adopts by its national constitution the representative, republican and federal way of governance. By adopting this way of governance, the democratic system recognizes three fundamental and independent powers: a legislature, an executive and a judiciary. Due to its federal character in Argentina coexist two government structures: the national government or so called federal, 23 States plus the Government of The Autonomous City of Buenos Aires. According to the national constitution when talking about State attributions , in the article no. 123 it declares that each State dictates its own constitution, according to the article no. 5 ensuring the municipal autonomy, regulating its scope and content in the institutional, political, administrative, economic and financial order (Ley n° 24.430, 1995).

According to the pact of San José — American Convention for Human Rights — the Judiciary Power has judicial protection, meaning that:

Everyone has the right to be heard, with the guarantees and within a reasonable period of time by a competent, independent and impartial judge or tribunal, established previously by law, in the prosecution of any criminal accusation against her for the determination of her rights and obligations of civil, labor, fiscal or any other nature (Ley n° 23054, 1984).

Since in 1984 Argentina adhered to this pact, and as a result of that, this mandate — transformed in a constitutional mandate — confers each and every Judiciary Power in Argentina the authority but also the obligation to provide the citizens with a fair judiciary service.

Citizens perceive the justice service as slow Performing a deep evaluation of the several diagnoses made to determine in which degree the Judiciary Powers are fulfilling its constitutional mandate some aspects arise that are transversal to all of them. These aspects include budget shortages, outdated and slow working methods, confusion of activities, anarchy in the management, absence of new methods at the judicial units, lack of processing and use of the information, weakness in the law career, lack of theoretical training in matters related to management, lack of proper infrastructure, delays in the notification system and proceed dilatory by the lawyers (Chayer, Marcet, & Soto, 2018; Infobae, 2018; Ministerio de Justicia y Derechos Humanos Presidencia de la Nación, 2018; Palma, 2017).

In an attempt to change the situation many Judiciary Powers started to modernize themselves to catch up with the requirements of the citizens and the open government paradigms (Gómez, 2014; Lillo, 2013; Moore & Hartley, 2008; Muller & Barendrecht, 2013; Roberto Benegas Lynch (h), 2016). Most of these attempts include full digitalization of files at San Luis Province (Dirección de Prensa y Comunicación Institucional del Poder Judicial de San Luis, 2017), separation of judiciary functions from administrative functions of courts at Mendoza Province (Chayer et al., 2018), inclusion of artificial intelligence to solve simple cases using Prometea Platform (Corvalán, 2018), implementation of hearings in the civil law at a national level for the probatory phase in the knowledge process (Chayer & Marcet, 2018; Ministerio de Justicia y Derechos Humanos Presidencia de la Nación, 2018; “Oralidad en el proceso civil,” n.d.; Suprema Corte de Justicia de la Provincia de Buenos Aires, n.d.) and deploying the use of TICs (Lillo, 2013).

In general innovations mediated by technology are more popular, nevertheless, there are another group of innovations called organizational innovation, that includes the new ways of organizing a business and/or a whole industry that are gaining visibility in the public sector (OCDE & Eurostat, 2005; Schumpeter, 1934). Associated to this, in 1966 Evan incorporates the concept of organizational lag as the tendency in which innovations introduced in the administrative system of an organization is adopted with a certain delay in comparison with the technological innovations [CITATION Eva66 \l 1033]. Dodgson and Bessant (1996) defined innovation in terms of changes in product and process by which firms or organizations try to acquire and build over its technological distinctive competence and transform the whole set of resources of a firm using its innovative capacity (Dodgson & Bessant, 1996, p. 38). This capacity of innovate — also known as innovativeness — refers to the continuous improvement of both capacities and resources of a firm to exploit and explore the opportunities that the development of a new product present to satisfy the market needs (Boly, Morel, Assielou, & Camargo, 2014; Forsman, 2011; Szeto, 2000).

This characteristic of the innovation process had often been refer to as a conflict of competences between ‘path creation’ and ‘path dependency’ — this last one comprehended as the resistance to leave habits and manners to adapt to change — (Garud & Karnoe, 2001). Both path dependency as the routine are often seen as particularly characteristic of public

organizations, and, hence, innovation literature refers to this type of organizations as highly institutionalized. This is phenomena happens because in general public organization work under hierarchy formal structures with a Weber's type of pronounced bureaucracy (Lipse, 2014).

While referring to innovation in the public sector, Müller and Baendrech propose a definition of 'judicial innovation' as follows: "The effort to create better o more efficient products of justice, processes, services, technologies, or ideas that to be accepted to markets, governments and societies" (Muller & Barendrecht, 2013). According to the definitions provided by the Oslo Manual (OCDE & Eurostat, 2005), this definition is complying with what would be innovation activities instead of innovation as a process or a product in terms. This way of defining judiciary innovations clearly contributes with a way forward for the actors involved in the judiciary system to improve it.

JUDICIARY POWER OF TUCUMAN. INNOVATIONS AND INNOVATIVENESS

It is well known not only in Argentina but also in all Latin America that the organizations that are essential components of the judiciary system present several aspects that results in what is perceived as slow justice. Of the 23 provinces mentioned above, Tucumán province and special its judiciary power deserves special attention due to the high level of innovativeness it has reached during the last 10 years. The question at this point is considering provinces with similar budgetary and cultural backgrounds whether there are some conditions specific to the Judiciary Power of Tucuman Province that enables it to innovate in a sustained manner. To address this matter the system will be model using the Viable System Model and the findings will be contrasted against the terms of the New Public Management (NPM).

In the case of the judiciary power of Tucuman this protection attains 1,448,200 inhabitants¹ distributed in three judiciary centers called Capital, Concepción and Monteros. The Judiciary Power of Tucumán is exercised by the Supreme Court of Justice, who presides and represents it, the Criminal Chamber, Criminal Appeals Court; Civil and Commercial Court, Civil Documents and Locations, Civil and Family and Inheritance; Labor Appeals and Administrative Litigation; Correctional, Institutional, Criminal Enforcement, Contraventional, Juvenile; Common Civil and Commercial Judges; Contest and Company Judges, Collections and Acquisitions; Civil Documents and Locations, Civil Matters in Family and Inheritance and the Courts specialized in the Violence against Women, in Contentious Administrative, Labor, Peace, and by the Public Ministry (Ley n° 6238, 1991).

In the past, this Tribunal had implemented some improvements in its managerial system, for example the implementation of programs of judiciary management since 2009 in ten different fueros at full level with an ad hoc commission formed by judges and lawyers that at the same time were fulfilling jurisdictional functions. Having in mind that the development of judiciary management programs requires constant coordination and evaluation of the actions implemented, and with the particularities that each jurisdiction and office presents the Tribunal concluded that a team advocated strictly to this task would facilitate the whole process scaling up. As a result of that, in 2010 the Tribunal created and office whom exclusive purpose is the implementation of judiciary policies called Oficina de Gestion Judicial [Judiciary Management Office] (Acordada

¹ Data provided by census 2010.

n° 1116, 2010). Without a doubt, in the modernization journey of Tucuman's Judiciary Power this was a tipping point.

In the context of judiciary powers and by the time each modernization was introduced some of these modernizations were considered novelties, that is why according to the definition of innovation provided by Schumpeter (1934). Moreover, they had provincial impact complying with the definition of innovation provided by Perez-Breva in his book "Innovating" (Perez-Breva, 2016). Some examples of innovations includes the elaboration of a normative of how to use a new management software (2015), presentation of a project to by scanners and shredding machines for digitalization and destruction of files (2017), presentation of a proposal of electronical form of automated assessment, process and report of ECL (2018), related with the virtual box the promotion of meeting with stakeholders to train and empower them in the use of the system (2018). From 2019, they created a strategic plan goals associated to the impact measurement of each project, systematization of innovation management, and design of innovation indicators. Since 2017 the OJGT has participated in the National Quality Award for Public Sector Institution and has obtained two mentions — silver and gold. Moreover, it encourages teams from all judiciary dependences to participate in the award with two main goals

THE PARTS AND THE SYSTEM

Stafford Beer's Viable System Model (from now on VSM) in its full and more elaborated version (Beer, 1984, 1994, 1995a, 1995b), is used to model complex systems by defining the necessary and sufficient conditions for organizational viability and offers a systemic way to look at communities and institutions found in actual societies (Espejo, Reyes Alvarado, & Bonilla, 2016). This model provides a holistic framework that allows relating value creation, business processes and, organizational process, and also its local and global relations (Espejo et al., 2016). At the same time, VSM is an instrument that enables us to observe the structural context that frames communication among people, as they experience problematic situations (Espejo et al., 2016).

For this model 'viable systems are those capable of maintain a separate existence' (Espejo et al., 2016, p. 192) and have the capacity to create knowledge and solve problems. At this point we could argue that the OGJT is not a viable system, on the one hand it could not have a separate existence because since its creation it is let us say a 'support system' por the Provincial Tribunal, but at the same time they are fully capable of creating knowledge and solving problems, so having said that we are going to use the model to illustrate some relations that are hard to show using other models. In VSN the idea of hierarchy is replaced by 'structural recursion'. Espejo and Reyes (2016) mentioned that evolutionary changes are responsible for the complexity increase, functional differentiation and high connectivity in cells, and as result of this living systems emerge and are more complex each time, and at the same time cells do not lose their characteristics of self-organization and self-regulations. As a result of that there will be viable systems contained in other viable systems in a continuous chain.

According to the cybernetic model for any viable model, there are five subsystems involved interacting in a necessary and sufficient manner called: ONE, TWO, THREE y THREE* FOUR and FIVE. For the purpose of this study we can identify two systems, one we called system A – Judiciary Power of Tucumán and system B – Judiciary Management Office

(OGJ). This work will be focus on system OGJ and is a very first attempt to identify the parts of VSM model. The main sources of research were the public information provided by the institution in its webpage, laws and regulations, and finally data collection from research performed with the institution from March 18th to 22nd 2019 using participatory observation (Hernández Sampieri, Fernández Collado, & Pilar Baptista Lucio, 2014).

THE ENVIRONMENT

The actual environment. As part of their modernization journey the OGJ has identified in their environment four main types of users: judiciary units (with direct impact and internal), institution related (with direct impact and external), non-judiciary units (with indirect impact and internal) and the citizens (with indirect impact and external to the institution) (see figure 1).



Figure 1. OGJ’s types of users according to impact and closeness. Source: (Relatorio PNC, 2019)

Note: Figure 1 shows the relations between the different user with the OGJ. They have established a matrix with two domains: impact and relation with the Judiciary Power of Tucuman. In the matrix the word *unidades* [units] appears twice, the one in grey are the jurisdictional office with direct impact on the citizens — called *ciudadanos* in the matrix — and the second are non-jurisdictional offices that work with the jurisdictional units itself.

In addition to that, when working to develop its strategic plan associated with its vision, OGJ had also identified other actors that are part of their environment. In the national sphere some of them include the Supreme Court of Tucumán, members of other Supreme Courts in Argentina, The Supreme Court, the National Ministry of Justice and Human Rights, The National Ministry of Modernization, The National Quality Award, National Direction for Processes Quality and Efficiency in Management, Universities and Schools of Law, Lawyers Council. Now when talking internationally the United Nations are identify as one mayor player since the definition of the ODS and in special number 16 that is intimated links to justice and strong institutions. Also, countries sharing frontiers with Argentina were defined as part of the

environment. And worldwide organizations working with protocols of open government and modernization.

SYSTEM ONE

OGJ primary activities (Espejo et al., 2016, p. 201) had slightly change since its creation. At first in 2010 there was only one activity subsystem called “deployment of judiciary public policies”. The activity includes the understanding of the requirements of the Provincial Tribunal and/or from other stakeholders and the deployment of them in the specific areas of the Judiciary Power, that may both jurisdictional and/or non-jurisdictional (Acordada n° 1116, 2010). In the last 5 years they have added training, diagnosis and design as main activities (Oficina de Gestión Judicial de Tucumán, 2018). The OGJ process map shows the interconnections of the main activities using the black box approach (see Figure 2). By its recursive nature and convergence in the current environment they are exposed to a constant exchange of information with the environment and with other subsystems.

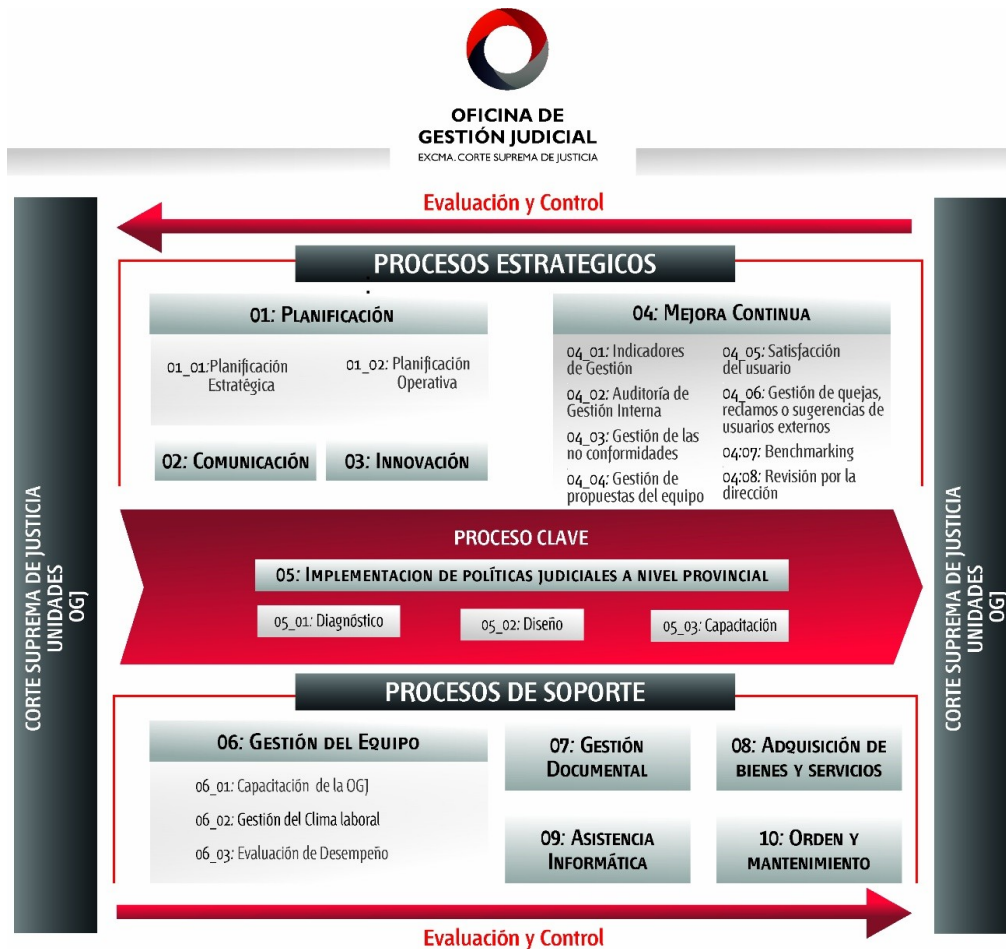


Figure 2. OGJ Process Map V4. Source: (Oficina de Gestión Judicial de Tucumán, 2019)

SYSTEM ONE interacts with the actual environment while at the same time SYSTEM FOUR interacts with FUTURE ENVIRONMENT.

SYSTEM TWO

SYSTEM TWO is an any oscillatory system that allows coordination between the various 'SISTEM ONE' in place through a direct interaction and several communication mechanisms. Some of these mechanisms involve daily huddles, weekly meetings and shared spaces to exchange the advances in tactic and/or strategic plans. Apart from that, the OGJ has put in place a communication process that connects SYSTEM ONE with the actual environment.

SYSTEM THREE*

SYSTEM THREE*'s purpose is to sporadically and directly monitor activities in SYSTEM ONE. For SYSTEM THREE* OGJ has identified four main processes called: internal auditing, user's satisfaction, non-compliance managements and management review. All of these processes are performed once a year.

SYSTEM THREE

System THREE represents the controls to regulate all SYSTEM ONEs in place using rules that allow to assign resources and assign responsibilities. The OGJ has identified two main process as part to their strategic planning called Strategic Planning and Tactic Planning (see figure 1), these corresponds to the interface between SYSTEM ONE and SYSTEM THREE and are responsible for generation information to coordinate the efforts to maintain the system viable now. And at the same time this system is constitutes an interface between SYSTEM FOUR (future environments) and SYSTEM FIVE.

SYSTEM FOUR

This system is all about governance and the executive management and its response to the future environment. The OGJ has define two main processes related to this system called: benchmarking and gathering information from the outside — specially trends and threads — and how they process this and use it to adapt and remain viable.

SYSTEM FIVE

Without policies all of this would not be possible. So, for SYSTEM FIVE OGJ has defined a matrix of policies relating strategic topics they need to address with specific policies and sponsors (within the organization). Aligned with that the OGJ have published their core values and a normative on how to achieve quality standards and goals for the whole State regarding justice management. Looking back to the creation of the OGJ, values had not change, policies are more accurate and had broader scope.

The New Public Management

When comparing the new public management (NPM) predicaments with approach OGJ has is terms of creation and exchange of data and information one may said that they are taking all NPM good practices in their system. The outcomes of all of they activities are public and are part of their transparency policies. In addition to that they are not only audit by members of the Supreme Court of Tucuman by they are also audit for third parties as The National Quality

Award organizers. In addition to that some of their current policies encourages other institutions to adopt open government practices themselves and digitalized they activities.

Conclusion and next steps

In conclusion OGJ is a viable system that allows other systems to become viable in terms of adaptation and generation and exchange of information and knowledge. Further research must be conducted to determine the relations within the system OGJ and the Judiciary Power of Tucuman State. In addition to that a complete version of the VSM should include different periods of time to show changes if any, to robust the findings related to the capacity of innovation of the institution.

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