
Book Review

By Gar Yein Ng^a

Trial Courts as Organizations by Brian Ostrom, Charles W. Ostrom, Jr, Roger A. Hanson & Matthew Kleiman, Temple University Press, Philadelphia 2007, 194 pages, rrp £30, isbn: 1592136303

The authors of this book set out to “elevate awareness of courts as organizations” [p.146]. Even though it may seem fairly obvious to many readers that courts are “organizations,” courts have been neglected in research compared to the legislature and executives of many democratic countries. This research gap may be attributable to two myths. First, while the legitimacy of legislatures and executives is based on democratic principles, many view courts as institutions of justice and liberty and therefore not subject to the same rules of political accountability. Second, the gap may result from the fact that courts are seen as conservative, difficult to change, and therefore not really worth the bother. This book debunks both myths.

The authors undertake this effort with very little reference to a legal framework. While such an approach is rare in research concerning the courts, it can be very effective in assisting the reader to realize that courts are organizations rather than simply institutions of justice. The authors do help ensure that the reader does not forget the role of the courts. Nonetheless, the authors start the book by referring to law as the basis for such research. There is recognition that courts must administer justice effectively in order to maintain judicial independence and separation of powers. Whilst the arguments put forward here are overly simplified, and the connection between organizational autonomy and judicial independence could be more clearly outlined, the options are clear to the judges and the courts: start managing courts efficiently or lose the autonomy to manage themselves and their courts, thereby putting judicial independence and separation of powers at risk.

This book establishes a method for measuring the culture of courts, in particular, the way in which things are done, and whether the way in which things are done affect the performance of the courts. A set of tools and vocabulary is created to assess the culture of the courts and to create tools for change management. This they do in six parts.

The first part of the book sets out a theoretical framework for measuring the culture of courts. The authors describe in great detail the methodology used in the research, including the number of courts involved, and they highlight the similarities and differences that justify their choices. A theoretical framework is applied to the courts based on research into cultural typologies in the private sector. The authors map out previous research which suggests that organizational norms, values and relationships matter more than the organization’s goals and performance. From this structure, the authors create cultural typologies that focus on a scale of sociability or solidarity: hierarchical, networked, community or autonomous cultures.

The second part of the research examines five courts’ working areas within the cultural framework created in the first part. The working areas include such topics as case management styles, judge-staff relations, change management, leadership, and internal organization. Each court involved in the study was asked to fill in questionnaires on how the handled issues related to the various working areas. From the data, the authors created graphic displays of the results. For those readers not used to reading and interpreting statistical data, these graphic displays are very revealing. For those readers who prefer to read and interpret statistical data for themselves, there is a wealth of data available in the text itself and in the appendices.

For the fourth part of the research, the researchers deepen the data from the original questionnaires by taking interviews with judges and court managers. The authors use the results of the questionnaires to elaborate on the culture types by describing in more detail how things are done in the five working areas. They then suggest that certain cultural archetypes have easily identifiable features and characteristics that impact the way work gets done. However, the research also reveals that no one culture type dominates the five working areas.

The fifth part of the research examines whether judicial culture affects the performance of courts. The authors rely upon the Trial Court Performance Standards (TCPS) created by the National Center for State Courts. Relying on data from the TCPS, the authors hypothesize that judicial culture does affect judicial performance in terms of timeliness. They also look at whether access to justice, fairness and managerial effectiveness are affected by court culture. To do this, they interview attorneys on the theory that they are in the best position to assess whether judicial culture affects performance.

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The last part of the research examines how courts might respond to the research. For this, court officials were asked to fill out yet more questionnaires. The authors hypothesize that courts wish to change their culture (contrary to the popular myth of conservatism), and that the preferences will vary across the five work areas. In the book, when the researchers were analysing the data, they found out that the courts actually wanted to do things in a similar way (i.e., to have a similar cultural kite), but found that because of the way change takes place, or other policy considerations, that they couldn't get to that position.

The book concludes by summarizing the main conclusions from the research. They do not offer a single solution to court problems, and indeed suggest that there may be no one solution given the differing nature of each court organization. They draw attention to the fact that courts, like all other public organizations, have multiple and often competing goals. The authors go on to offer suggestions for improvement based on the cultural assessment and measurement instrument.

For such a thin volume, there is a concentrated amount of information. Every step of research is clearly outlined, and it is easy for the reader to get lost in the detail. Given the newness of the language, and the creation of new evaluative tools it is not easy to grasp the vocabulary immediately, and one may have to struggle to get used to it, while being fully aware of the implications of the results. The book has a very easy structure, and the language is easy to follow although it can be technical and intense. Even though the book is directed at students of policy making and public administration, students of political science and law will be amazed by some of the results. The authors suggest that even they are surprised by the results of their own research. The book may lead to different approaches to and may also lead to a change in the way in which lawyers and courts interact in the future.

In this field of judicial and court administration, there has never been research like this conducted so successfully. The authors describe courts as organizations rather than as simply institutions of justice within the separation of powers. In addition, the book paves the way for further research to be done in this field and opens the door for more ideas on how to improve court administration.

