

PERSPECTIVES ON
STATE COURT LEADERSHIP

GOVERNANCE: THE FINAL FRONTIER

*One in a series from the Executive Session
for State Court Leaders in the 21st Century*

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NCSC
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This is one in a series of papers that will be published as a result of the **Executive Session for State Court Leaders in the 21st Century**.

The Executive Sessions at the Harvard Kennedy School bring together individuals of independent standing who take joint responsibility for rethinking and improving society's responses to an issue.

Members of the Executive Session for State Court Leaders in the 21st Century over the course of three years sought to clarify the distinctive role of state court leaders in our democratic system of government and to develop and answer questions that the state courts will face in the foreseeable future. Themes addressed include principles for effective court governance, the tension between problem solving and decision making, the implications of social media for court legitimacy, how courts defend themselves from political attack, and the notion of chief justices as civic leaders. Many themes were developed by Session members into papers published in a series by the National Center for State Courts.

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INTRODUCTION

Harvard Law School Dean Roscoe Pound's famous 1906 speech, "The Causes of Popular Dissatisfaction with the Administration of Justice," launched an era in which court leaders and academic supporters sought to find a form of court organization that would produce public satisfaction as a matter of routine. Now, more than a century later, after countless examinations, re-examinations, development of various standards for court organization, and application of innovative private sector business practices, no agreed-upon model for effectively leading state courts has emerged even as judges and court administrators continue to explore the frontier of court governance.

This paper suggests that court leaders and their allies may have based reform efforts on incompatible organizational models, which has hindered progress in improving court governance. Too much attention and energy has been focused on finding ways to emulate in the court environment what appears to work in administering or governing executive branch agencies and private businesses. This paper argues that court leaders should instead consider what is called a "loosely coupled organization" model for governing courts and look to the processes and mechanisms that the leaders of those organizations use to achieve effective governance.

While not exhaustive, for the purposes of this paper, loosely coupled organizations are ones that share these among other characteristics. Such organizations provide significant services requiring extensive and specialized knowledge and complex decision-making. Their staff consists of highly trained professionals with extensive individual autonomy. Most decision-making is decentralized. Loosely coupled organizations exhibit a tension between institutional commitment and individual independence. There is also a dependence on external funding sources. Loosely coupled organizations reveal unpredictable alliances and connections and an unclear chain of command. Another common characteristic of such organizations is that they face constantly changing public expectations. Public universities and public health care institutions are prominent examples of loosely coupled organizations.

These attributes are relevant because they also describe the nature of state courts as organizations. While many judges may be unfamiliar with the concept of "loosely coupled organizations," they will recognize the associated organizational dynamics in their own work. The ambition of this paper is to highlight the insights and lessons court leaders can learn from examining the governance mechanisms that have been effectively applied in similar loosely coupled organizations.

This paper first explains in greater depth the nature and key characteristics of loosely coupled organizations. In doing so, it demonstrates how those characteristics are manifest in the state courts. Then, the paper turns to the potential practical payoff that can come from court leaders thinking of their courts as loosely coupled organizations. A proposal is made for adopting four governance mechanisms for effectively leading loosely coupled systems, with discussion of how court leaders can adapt those mechanisms to pursue new approaches to governance, and potentially turn popular dissatisfaction into satisfaction.

This paper is dedicated as much to raising new questions for court leaders to address as it is to providing immediate practical solutions to the problems courts are facing. By thinking about courts as loosely coupled organizations, fresh insights and possible new approaches to court governance may be gained.

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THE LOOSELY COUPLED ORGANIZATION

In the 1970s and 1980s, the concept of loosely coupled systems became prominent in the academic study of organizations. The concept was developed as an alternative to the prevailing focus on organizations as rational, hierarchically controlled entities. The earliest application of the concept was by Karl Weick in his studies of school systems. Over time, schools and other organizations adopted policies and practices based on insights from organizational scholars such as Weick. In 1976, he introduced the following concept in a highly influential article on educational organizations:

The basic premise here is that concepts such as loose coupling serve as sensitizing devices. They sensitize the observer to notice and question things that had previously been taken for granted. It is the intent of the program described here to develop a language for use in analyzing complex organizations, a language that may highlight features that have previously gone unnoticed.¹

Those involved in the judicial branch may see similarities between that and loosely coupled organizations in which individuals and groups retain a high level of individual autonomy, such as tenured professors in a university system and independently elected or appointed judges within a state court system. Legitimate authority in a loosely coupled organization is derived as much from colleagues as from a formal source, such as a statute, by-law, or constitution.² In important respects, organizations such as courts resemble franchises in which local owners, like a licensed franchisee, must meet corporate quality standards while providing direct services locally. In the court context, an example is the use of case-specific time standards that are established by state court rule but must then be implemented operationally by local judges in individual cases.

Governing a loosely coupled organization requires a distinctive approach to leading. In the private sector, most company executives possess a high level of

control over the allocation of resources and assignment of personnel, allowing them to develop a clear set of operational goals within the organizational structure. Leaders of loosely coupled organizations can also adopt policies for governing, develop plans for the future, and wield the power of finances. However, most do so within what can be called “organized anarchies” (see Figure 1).

To set the stage for an analysis, this paper considers five of the core characteristics shared by loosely coupled organizations and describes how they are manifested in the state courts: (1) federated governance structure; (2) accountability versus autonomy; (3) unpredictable connections; (4) complex and knowledge extensive decision-making; and (5) competing demands of integration and specialization.

1. FEDERATED GOVERNANCE STRUCTURE

In loosely coupled organizations, individuals and groups retain high autonomy relative to the larger system. This often results in a federated governance structure where the extensively trained professionals providing the public service may create their own governance norms and feel unreasonably constrained by a central authority’s demand for administrative accountability. An individually based source of legitimacy—defined by Mark Moore and Sanjeev Khagram as a “license to operate”—and authority contributes to the federated nature of the organization and perpetuates an “us versus them” perception of governing.³

The tension between those doing the “real work” and those “governing” or leading is magnified in the judicial system through the multiple sources of professional legitimacy, such as individual judicial selection and the constitutional authority to apply the law. Like tenured professors who defend academic

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**FIGURE 1:
GOVERNANCE IN LOOSELY COUPLED ORGANIZATIONS**

Responsibility	Higher Education	Health Care	State Courts
<ul style="list-style-type: none"> • Institutional Leadership • Mission/Planning • Policy 	University President	Hospital President	Chief Justice
<ul style="list-style-type: none"> • Management • Finance • Administration 	Provost/Executive VP	Hospital Administrator	State Court Administrator
<ul style="list-style-type: none"> • Policy • Department/Jurisdiction Leadership 	Dean	Chief Medical Officer	Presiding Judge
<ul style="list-style-type: none"> • Management • Finance • Facilities 	Department Chair/ Associate Dean	Director, Clinical Services	Trial Court Administrator
<ul style="list-style-type: none"> • Independent Authority • Specialization (Experts) 	Tenured Faculty	Physicians	Judges
<ul style="list-style-type: none"> • Representative • Input/Direction • Advisory 	Board of Regents	Board of Trustees	Judicial Council
<ul style="list-style-type: none"> • Transitory • Performance/Outcome Focus 	Students/Alumnae	Patients	Lawyers/Parties
<ul style="list-style-type: none"> • Priorities • Accountability 	Executive Branch	Funding/Donors	Executive Branch

freedom in the classroom, judges, whether appointed or elected, vigorously protect their independence to “do justice.” For example, individual trial judges view uniform requirements for measuring time-to-trial or restrictions on the size of a jury voir dire panel as assaults on judicial independence. To many individual judges, “doing justice” is the only appropriate metric for measuring court performance or determining individual accountability.

2. ACCOUNTABILITY VERSUS AUTONOMY

Accountability and autonomy are competing values in loosely coupled organizations and, as such, potential sources of tension. University faculty have historically viewed performance evaluation as a threat to academic freedom and question the feasibility of accountability.⁴ Alternatively, Wellman suggests that the accountability movement represents an opportunity for leaders at the state or institutional level (for example, a local court) to craft different approaches to governance. Rather than trying to “beat back”

accountability efforts, leaders can take the opportunity to proactively define terms of accountability for fiscal matters and performance that preserve independence.⁵

Similarly, elected and appointed trial judges both aspire to provide justice in individual cases and preserve control of their calendars; at the same time, chief justices and presiding judges strive to ensure equal justice and the independence of the judicial branch, while balancing performance measurement and cost-benefit analysis. Increasing competition for public funds, coupled with increasing demands for court efficiency and productivity, have elevated the tensions between judicial accountability and individual autonomy. Managing these competing values has become more complicated, and tensions remain strong within the court system.

For example, an attempt to require all courts to limit jurors to serving for “one day or one trial” may carry cost benefits for medium to large trial courts while creating challenges and limiting flexibility for small trial courts, creating a tension between the central office and the local courts. Chief Justice Wallace Jefferson and retired Judge Barbara Mundell describe this attempt to harmonize the competing goals of accountability and uniformity with local autonomy as tantamount to “herding lions.”⁶

Additionally, judges who trade the courtroom for the boardroom are marginalized in the eyes of their colleagues. Governance responsibilities may acquire a form of stigma when compared with the decision-making role of individual judges. An anecdote from Harvard University captures the resulting tension nicely:

When Alfred North Whitehead was told of [James Bryant] Conant’s appointment to the presidency of Harvard, he was reputed to have remarked, “But he is a chemist.” When his informant reminded him that an earlier president had been a chemist, Whitehead replied. “But Conant is a good chemist!” implying that it was a waste of a good scholar to weigh him down with the presidency of Harvard.⁷

Loosely coupled organizations have also been characterized as what can be called “church-state” organizations, where the service-driven professionals (i.e., the “church”) “provide the innovation to move the organization forward from a knowledge standpoint, and a centralized authority (i.e. the ‘state’) handles the business of the institution.”⁸ Some scholars have argued that this church-state dichotomy worked well in a less complex world where, traditionally, administrators and managers held relatively weak support roles and were able to thrive.⁹ As organizations became more complex and pressure to improve productivity from funders increased, the relationships between professionals and management (i.e., the church and state) grew more complicated, creating organizational tensions. The movement toward state funding of trial courts created a similar tension between trial court judges trying individual cases and state requirements for uniform reporting and accountability.

3. UNPREDICTABLE CONNECTIONS

The connections and alliances that exist between the individual (i.e., professionals) and the centralized executive (i.e., management) are unpredictable in loosely coupled organizations, especially compared with a tightly coupled hierarchical agency such as the executive branch of government or private industry division. Lines of authority may be unclear, misunderstood, or unrecognized, and the distribution of power may appear uneven.

An example from the academic field illustrates this dynamic:

A dean of a medical school works with department chairs who are often semi-autonomous scientists who control their own research funds; faculty physicians decisively shape the economics of their clinical practices; the cooperating hospitals function as autonomous units facing their own fiscal and political challenges.¹⁰

Commentators on court organization have described the judiciary as a “group of robed attorneys who office-share.” In other words, “no one is the boss of me.” The institutional tension between the state court

The complexity inherent in the nature of the courts as organization is its very purpose and constitutional function.

administrator and local trial court described by Jefferson and Mundell is similar to the tension between hospital administrators and physicians or between university presidents and deans—they share institutions and a need for some interaction, yet each level exerts its own independence.¹¹ Connections among and between the trial courts and the state administrative office, or factions within the local court such as proponents for individual versus master calendaring, are difficult relationships to identify and maintain. The proliferation of problem-solving courts has multiplied external connections through the need for greater coordination with outside partners and stakeholders such as prosecutors, law enforcement, federal funders, and social service providers.

The complexity inherent in the nature of the courts as organizations is its very purpose and constitutional function. Not only is the system designed to do justice in individual cases, but it is also the branch of government established to ensure the balance of power between the state and federal government and among the executive and legislative branches of government. This complex system of power and responsibility is distributed broadly not only within a state, but also across county and municipal governments, creating a web of relationships between and among various partners such as county commissioners, law enforcement agencies, schools, corrections, the media, the bar, and the public.

For the courts, local trial court subcultures involving presiding judges, individual chambers, calendars, specialty dockets, and activities reflecting similar yet localized tensions are superimposed over this “state versus local” tension. These local relationships are often unpredictable or misunderstood. Individual judges can resist or resent a presiding judge’s attempt

to reduce facility costs by suggesting that judges share a courtroom or equalize the workload by changing the way calendar assignments are made. However, unpredictable connections and relationships can also be beneficial; a loosely coupled organization may be uniquely structured to survive changes in its environment, as evidenced by the increasing number of problem-solving courts. As a result, a loosely coupled organization can achieve a high degree of organizational flexibility, allowing it to quickly respond to external changes, such as the creation of specialty dockets to respond to the foreclosure crisis.

4. COMPLEX AND KNOWLEDGE EXTENSIVE DECISION-MAKING

Professionals in loosely coupled systems arrive in their positions having personally attained a high level of academic achievement applying complex concepts. Whether in medicine, academia, or the law, continued personal achievement is valued and rewarded. This individually based system of recognition and reward perpetuates the loosely coupled nature of the organization. The very nature of the law, medicine, or academia requires professionals to continually adapt and develop knowledge.

Judges, too, must constantly expand their knowledge to keep pace with legal, societal, and technological advancements. While the legislative and executive branches of government are charged primarily with the responsibility of developing and implementing public policy, the courts must apply and enforce that policy. This constantly changing professional environment, while mentally challenging and satisfying, can also be stressful and controversial. Appellate and federal courts review the decisions made by trial judges who must absorb new case law and procedure while making daily rulings in numerous cases. The pressure to make the right decision in the first instance contributes to a sense of individual rather than institutional responsibility, a consequence distinctive to the courts as a loosely coupled system.

With ever-increasing globalization, the complexity of applying various state and local laws is multiplied by the adoption of international treaties and contracts. Even the historic authority of state supreme courts to

regulate the practice of law is being challenged.¹² This increased complexity can contribute to an increased emphasis on specialization.

Within the judicial system, attempts to establish institutional goals and allocations of judicial resources based upon system workload needs are often met with opposition from trial court judges. Whether at the state or local level, the recent fiscal crisis has contributed to an increased tension between institutional goals and local priorities that impede integration. Attempts to develop an institutional vision are often met with charges of micromanagement, and innovation at the local level may not be adaptable to attempts within the broader system to enforce “one size fits all reform” across all courts and may be met with strong resistance. Jane Wellman observes that “no amount of exhortation about the importance of [the] ‘public interest’ will convince people that a call for better state governance is not really a call for ... micromanaging.”¹³ While there are some challenges to governing a loosely coupled organization, the loosely coupled nature of the judicial system gives it one of its strengths—the ability to adapt to change.

5. COMPETING DEMANDS OF INTEGRATION AND SPECIALIZATION

The fifth and final characteristic of loosely coupled organization considered here is that they are structured to support specialization and the development of expertise within individual autonomous work units. The changing nature of the law perpetuates specialization. Pressures to integrate these specialized work units, such as system-wide strategic planning or procedural uniformity, are weak in comparison to the emphasis on autonomy and local experimentation. The loosely coupled organization is less focused upon an integrated work product and instead supports delegated authority to local professionals and leaders.

The university offers an example of a loosely coupled organization with particular relevance to the courts. Individual professors are hired to work autonomously within the department setting. The departments represent independent work groups, each focused on their field of expertise. Most of the daily responsibilities and decisions are governed by department

policies and procedures. The department has its own governance structure and is supervised by a department chair and program directors, depending on the department’s needs. Each professor is recognized as an in-house expert within his or her respective field and is granted broad discretion to accomplish the department’s assigned objectives. However, each department also exists within a federated structure. The department’s objectives, as well as its overall mission and strategic plan, are tasks that are set by the university’s leadership who are charged with the governance of the organization along with other entities such as a board of regents, trustees, the university president, and the academic deans. The university president grants a significant amount of autonomy to the individual departments to accomplish the established mission, strategic plan, and objectives.

A state bar association is another example of a loosely coupled organization in the legal context:

The state bar association oversees the legal profession, worrying about a broad mission that ranges from lawyers’ obligations to society (access to justice), the economics of practice, ethical standards to the profession and the public’s trust and confidence in the court system. Members vary widely in their motivations for membership, participation and expectations. Actions that favor one segment, such as support for sole practitioners, may irritate other constituencies. The work takes place via committees, led by other volunteer lawyers, supported by a central staff that are supervised by an independent bar executive whose authority/legitimacy is based upon statute or court rule.¹⁴

The operational and funding success of drug courts and other problem-solving courts perpetuated the call to “specialize” additional court operations, including veterans’ courts, mental health courts, unified family courts, teen courts, and business courts. Specialized dockets or courts require specialized judges and specialized services, which enhance historical tensions between case types and judges who are fighting for scarce resources or priority. Judges,

like their tenured professor counterparts in academia, may become more focused on retaining support for their specialty court at the risk of systemic coherence or funding, which can create misunderstanding and conflict across the organization.

GOVERNING AND LEADING A LOOSELY COUPLED ORGANIZATION

Having made the case for why state courts can be regarded as loosely coupled organizations and outlined some of the core characteristics of those organizations, we now turn attention to the resulting implications for state court leaders. While loosely coupled organizations offer a great deal of autonomy and flexibility to their component work units, they also require direction and oversight. A centralized executive team such as a chief justice/state court administrator or presiding judge/trial court administrator still provides the vision, mission, and strategic goals for the organization. Managing such a widely spread, loosely connected, and complex organization requires the development of governance mechanisms that are more creative than those applied in traditional hierarchical or corporate organizational structures. For example, leaders in loosely coupled organizations rely heavily on acquiring legitimacy and developing trust between the central office and the autonomous work units. Independent departments are often unwilling to accept strategic plans or mandated tasks from a leader who has not established a positive rapport with the departments and demonstrated commitment to the organization—both overall and to the units individually. The autonomous work units must be convinced that plans and policies, as well as communication, from the central administrator are relevant, well-considered, and not restrictive to their own leadership or independence.

The loosely coupled leadership mechanisms identified in this paper can assist court leaders in successfully leading and governing state courts. These mechanisms provide the necessary “means” for setting system direction for continuous improvement

in operations while acknowledging the independence and professional competence of individual judges.

It should be noted that these “mechanisms” are not mutually exclusive; each is an essential component to effectively governing the unique court environment. For example, a judicial council may be the vehicle for establishing a **leadership mechanism** while also serving as the **process mechanism**. A forum of presiding judges may possess the authority required for an effective **process mechanism** while also functioning as a court’s **communication mechanism**. An executive committee working with a presiding judge in a trial court can serve as an effective **fairness mechanism**.

The remainder of this paper describes four governance mechanisms at some length and suggests ways in which they can be implemented and structured in the context of the state courts. These four governance mechanisms are:

- Leadership Mechanism: The importance of legitimacy
- Process Mechanism: Protecting and guiding
- Fairness Mechanism: Collaborative decisionmaking
- Communication Mechanism: The importance of the inner branch

LEADERSHIP MECHANISM: THE IMPORTANCE OF LEGITIMACY

Effective governing in a loosely coupled system requires that the leadership legitimacy be universally recognized by the various component parts—in the case of state courts, by the trial and intermediate appellate courts. Judges begin their careers as lawyers in a system based upon precedent and authority. However, in a loosely coupled system, leadership, while authority-based, may be ignored if not accompanied by recognized experience, expertise, and respect.

Each state, as well as the District of Columbia and Puerto Rico, has constitutionally created an independent judicial branch. In most states, either the court of last resort (15 states) or the chief justice of the court of last resort (36 states) is designated head of the judicial branch of government. In Utah, a judicial council is designated head of the judicial branch. Moreover, a variety of leadership models exist across the state judiciaries, including judicial councils, judicial conferences, policy advisory committees, administrative conferences, conferences of chief judges, boards of directors, administrative boards, and direction from the supreme court chief justice. Various state constitutions, statutes, and court rules provide that the chief justice or chief judge serve as the “head” of the state court system. Selection may be based on seniority, public election, rotation, or court election for a varying length of time.¹⁵ Regardless of the chosen leadership model or selection process for leaders governing the state court system, the judicial branch must adopt a leadership mechanism that is recognized as its legitimate voice in order to work effectively with its counterparts.

The leader must also support governance mechanisms that are inclusive and designed for broad-based input. In the state court structure, as with any loosely coupled system, the leader’s legitimacy flows as much from its members as from the enabling authority. The way that the leader assigns roles or provides opportunities for input will either enhance or diminish legitimacy. Ideally, the leadership mechanism for the state courts should consist of a mix of experienced and newer members of the bench who have gained the respect of their colleagues, thereby increasing confidence in the decision-making structure. The process for assembling the “council” should reflect the federated nature of the system—a mixture of appointment and election based upon geography and/or jurisdiction. Setting predetermined terms provides for multiple entries into the leadership circle, further enhancing the legitimacy of the group. Once assembled, the group’s roles and responsibilities must be defined and shared among all members of the bench.

Most organizational studies of state courts focus on the jurisdictional structure (unified, federated, or decentralized) rather than the relationships (couplings or connections) among the various judges, courts, administrators, and stakeholders. Viewing the judicial system as loosely coupled provides an alternative and objective way to organize and analyze court governance structure and leadership requirements. For example, even though decentralized in both structure and budget, the judiciary in the State of Washington collectively agreed to support the creation of a Board for Judicial Administration. The Board is composed of representatives from each of the four court levels and is co-chaired by the chief justice and an elected member of the trial courts. Using the legitimate rule-making of the Supreme Court, the Board of Judicial Administration (the Board) was created to “speak for the judiciary,” taking positions on legislative proposals and developing common priorities for the court system. Recognizing the legacy of local autonomy in Washington state, the original court rule provided that action by the Board be based upon “unanimity,” but after several years of shared history and the trust that developed, the rule was amended to provide for a structured majority rule (at least one vote from each level of court).

Utah’s Judicial Council, created by Utah’s Constitution, consists of representation from various courts levels and is recognized as one of the most legitimately accepted judicial governance structures among the states. Other states have chosen to bypass central judicial councils in favor of supporting the chief justice through specialized standing committees (budget, ethics, etc.) or task forces. Even in states with strong chief justice models, judicial leaders have recognized the need to create some leadership mechanism for acknowledging the voices of local judges. Whether based upon the historical practice of a strong chief justice model or an institutionalized entity, a leadership mechanism must be regarded as having legitimacy. Leadership legitimacy of the judicial branch must be recognized—first by the members of the branch itself—in order to be recognized as equal by the executive and legislative counterparts.

PROCESS MECHANISM: PROTECTING AND GUIDING

Scholars of loosely coupled organizations, such as Karl Weick, counsel administrators to be more attentive to the “glue” (processes) that connects loosely coupled systems than to the structures: “Since channels are unpredictable, administrators must get out of the office and spend lots of time one-on-one both to remind people of a common vision and assist them in applying that vision to their own activities.”¹⁶ Other scholars, such as Andrew Boynton and Robert Zmud, suggest that leaders in loosely coupled systems try “to simultaneously provide centralized direction and coordination while recognizing the value of increased discretion.”¹⁷

For court leaders, developing a “process” to plan and guide the system in this vein is as important as the actual plan. Hirschhorn, another leading thinker in the study of loosely coupled organizations, suggests that the planning processes deployed in loosely coupled organizations must fit the characteristics of the system they lead.¹⁸ Based upon his experiences, Hirschhorn suggests that planning consists of two elements: protecting the system and guiding the system. *Protecting* the system requires mechanisms that monitor events and trends to prevent crisis and excessive fragmentation. *Guiding* the system requires building a planning process rather than a specific plan.¹⁹ Some scholars suggest that “small strategic” steps may produce more effective organizational change than wholesale dramatic reform—an approach that Hirschhorn labels the “campaign approach to change.”²⁰

The process for identifying common performance indicators such as workloads, case weights, time standards, public opinion surveys, and staffing metrics can also create a perspective for seeing the relationship between the “parts” and encourage sharing best and emerging practices across boundaries. Common goals are highlighted through explanations of how funds are allocated, how funding and productivity are related, and who is accountable for expenditure of public funds. Some judges may resent or fear publication about performance, but over time, performance data can reinforce the system’s ability to govern itself and help counter attempts by the other branches

of government to erode its independence. The National Center for State Courts’ *CourTools*, an online resource for appellate and trial court performance measures, provides examples of performance mechanisms.²¹ Determining which functions can best be performed by a central authority and which by local offices promotes collaboration based upon collective judgment.²² A mechanism for promoting “collective judgment” provides for “equal influence, information and participation.” Much like customer service businesses (e.g., Nordstrom), the best service also requires customer-based decision making. In other words, mechanisms and processes should delegate authority to local professionals who are closest to the relevant customer or decision—trial court judges to parties, presiding judges to assignments, and trial court administrators to budgets and employee relations.

When the State of Minnesota adopted state funding for the courts, the composition and the role of Minnesota’s judicial council, a group which plays a key role in the governance of Minnesota’s courts, changed. Now, various presiding judges who are elected by their local peers from each of the administrative districts are members of the judicial council along with member appointments made by the chief justice. One of the judicial council’s responsibilities is to establish the process and priorities for making budget decisions. The legitimacy of the judicial council and the acceptance for critical funding decisions are enhanced by the change in composition. Minnesota’s actions illustrate an effective use of the process mechanism.

FAIRNESS MECHANISM: COLLABORATIVE DECISION MAKING

Unanticipated or abrupt changes in the environment may require that decisions not always be entirely collegial or democratic. Trust is the political capital a loosely coupled system uses to manage crisis and make timely decisions, and fairness is the rate of exchange. Political capital is amassed over time by using inclusive processes for collaborative decision-making based upon objective information to ensure the decision

is made in the interest of the system as a whole. In loosely coupled systems, individuals may more easily agree on shared values while disagreeing on how to achieve them—what researchers James Thompson and Arthur Tuden label “judgment...decision-making strategy.”²³ Regardless of the specific structure, a fairness mechanism for governing the judicial system provides for reaffirmation of shared values.

A sense of fairness may be achieved by building coalitions around issues with broad-based participation. Committees, task forces, forums, and shareholder participation are essential governance mechanisms to produce a genuine consensus in any structure, but particularly in a loosely coupled organization. As argued by Jefferson and Mundell, “one size does not fit all,” but all must provide justice.²⁴

The recent budget crisis provides several examples of how a fairness mechanism can provide the necessary structure for making critical, yet unpopular, decisions. Where judges and court executives at the state and local level recognized the legitimacy of the process for making budget reductions, the courts experienced less friction and animosity among and between court leaders, individual judges, and court executives. Professionals in loosely coupled systems value the transparency of the process as well as the effectiveness of a framework for making decisions.

Collaborative decision-making is essential to an effective fairness mechanism. Attempts to govern the judicial system have vacillated between models that either enable or enforce. Recognizing the loosely coupled nature of the judicial system, however, endorses the “delegation/enabling” (or “franchise”) model, in which courts have the delegated authority to make certain decisions locally. For example, the judicial council or supreme court can adopt time standards for case types but still allow each jurisdiction to determine the case management practices that best fit its mix of cases and resources. This model is similar to McDonald’s Corporation, which determines the ingredients of a Big Mac (lettuce, two all-beef patties, special sauce, cheese, pickles, and onions, on a sesame seed bun) but allows the local franchise to choose

where to buy the lettuce, cheese, or pickles as long as the quality meets the corporate standards. Effectively governing the judicial system requires that the governance body identify which decisions can and should be made by the local court and which by the state administrative office. Delegation of the authority to implement collectively adopted standards (time, workload, equipment acquisition, personnel, etc.) enable courts in a loosely coupled judicial system to effectively operate while supporting the broader commitment to providing equal justice.

COMMUNICATION MECHANISM: THE IMPORTANCE OF THE INNER BRANCH

Today’s world of instant communication provides loosely coupled systems with a sword and a shield. Once, monthly newsletters were mailed to each courthouse and posted on a bulletin board. Now judges expect regular communiqués from the central administration on a variety of issues, from the legislature’s latest bills to the governor’s most recent initiative.

A mechanism for communicating within the system (intra-branch communication) and with counterparts across the system (inter-branch communication) is essential to an efficiently governed judicial system. The more information various actors have, the more they will understand the cohesion of the system and be supportive and connected to its needs. The recent financial difficulties demonstrate the havoc that occurs when a loosely coupled system experience such situations; individual units adopt a fortress mentality to secure their share of the scarce resources without

Today’s world of instant communication provides loosely coupled systems with a sword and a shield.

regard to the consequences or impact on other parts of the system or for the system as a whole. Communication mechanisms will not prevent such financial balkanization, but they may aid in deterring further erosion of the branch in its response.

Chief justices have proven their success as intra-branch communicators by convening and hosting workshops on sentencing, foster care, foreclosure, and information sharing. Mechanisms for including local judges in this process leverage the influence and legitimacy of the judicial system. Office space, chamber staff, and parking allocation can be just as important as salary increases, upcoming campaigns, or a court's record on appeal. Recognizing the federated nature of courts as loosely coupled organizations, effective judicial leaders should consider adapting governance mechanisms for their individual courts. Executive committees, departments, and special task forces provide energetic judges with ways to participate in leading, rather than opposing, the organization. Judicial leaders can limit balkanization by giving members of the branch a voice through communication.

While intra-branch communication is an essential mechanism for the effective operation of the third branch of government, the “independent branch of government” argument is not the sole solution. The judiciary must also engage its partners from other branches of governments, whether through formal testimony, meetings between local judges and legislators, State of the Judiciary addresses, or programs to bring policymakers from the legislative and executive branches into the courts. Collaborative, cross-branch problem solving with legislators and cabinet members can identify innovative solutions that work for each branch.

In order to build a common identity in a loosely coupled system, the leader must provide an ongoing sense of history, recognize common heroes and heroines, and cultivate a legacy of achievement through ceremonies and affirmation.²⁵ By emphasizing individual contribution, the presiding judge can develop “logic of confidence and good faith.”²⁶ Public and private affirmation testifies to the shared value of “doing justice.”

CONCLUSION

To state that an organization or system is “loosely coupled” is only the beginning of the discussion.²⁷ Loose coupling recognizes the numerous dimensions and complexities of organizations populated with semi-autonomous professionals such as judges, where the governance structure is not only vertical (the judicial system) but also horizontal (trial courts). The judicial system is a complex organization composed of multiple moving parts similar to a university or a hospital. By embracing the practices of governance mechanisms that have proven effective in administering similar loosely coupled organizations, the state courts can achieve a governance structure that is more consistent with its complexity and its ultimate goal—to administer justice and achieve public satisfaction. It can also improve the relationship to the other branches. If the judiciary is to assume its co-equal role with the executive and legislative branches of government, it should study and adopt governance mechanisms that are compatible with its loosely coupled environment.

Lessons gleaned from understanding the mechanisms for governing loosely coupled organizations can be combined with other innovative ideas about how courts should be governed.

Lessons gleaned from understanding the mechanisms for governing loosely coupled organizations can be combined with other innovative ideas about how courts should be governed. The “Court Governance Principles” put forward by Christine Durham and Dan Becker also provide an excellent framework for court leaders to critique existing court organization models and consider what courts as institutions need to do internally to govern.²⁸ These principles offer the “what” of court governance. The resulting insights can be further developed by considering the institutional

mechanisms or the “how” for court governance discussed in this paper. The time is ripe for ideas to compete and be refined into a new understanding of how courts can indeed turn the dissatisfaction identified by Dean Pound into a satisfied public and establish inter-branch relations that strengthen government as a whole.

George Washington said “the true administration of justice is the firmest pillar of good government.”²⁹ Today, we would refine this statement and say that the prompt and effective administration of justice contributes to judicial independence to the degree that it provides the “means” to foster and meet the expectations of the citizens it serves. This “license to operate”³⁰—legitimacy—is purchased through the effective governance and leadership of the state courts. Thinking of courts as loosely coupled organizations points the way forward more certainly than can any governance model derived from the executive branch or private business. Potentially, such a new governance model will allow court leaders to effectively ameliorate today’s causes of popular dissatisfaction with the courts.

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