

The paradox of the reform of the Judiciary: clashes between the new public administration and the organizational culture of the “jeitinho”

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The objective of this paper is to analyze the reform of the Judiciary, considering aspects of its organizational culture on the basis of the perceptions of the civil servants in the Bahia State Courts of Justice. We begin by looking at the reform of the Brazilian State and of the Judiciary. We then look at aspects of Brazilian culture and their relationship with organizational culture. Using content analysis, we follow this by reviewing the data obtained through interviews with 37 civil servants. The paper ends with reflections regarding compatibilities and incompatibilities between the reform model adopted by the Judiciary and its organizational culture.

KEYWORDS: Judiciary; reform of the Judiciary; reform of the State; new public administration; Brazilian organizational culture.

O paradoxo da reforma do Judiciário: embates entre a nova gestão pública e a cultura organizacional do jeitinho

O objetivo deste trabalho é analisar a reforma do Judiciário, considerando-se aspectos de sua cultura organizacional, a partir das percepções dos servidores do Tribunal de Justiça do Estado da Bahia. Inicialmente, são abordadas a reforma do Estado brasileiro e a reforma do Poder Judiciário. Depois, são tratados aspectos da cultura brasileira e suas relações com a cultura organizacional. Em seguida, são discutidos e tratados com análise de conteúdo os dados obtidos por meio de entrevistas com 37

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servidores. O trabalho é encerrado com reflexões sobre compatibilidades e incompatibilidades entre o modelo de reforma adotado pelo Judiciário e sua cultura organizacional.

PALAVRAS-CHAVE: Poder Judiciário; reforma do Judiciário; reforma do Estado; nova gestão pública; cultura organizacional brasileira.

La paradoja de la reforma de la Judicatura: choques entre la nueva gestión pública y la cultura organizacional del “jeitinho”

El objetivo de este artículo es analizar la reforma de la Judicatura, considerándose aspectos de su cultura organizacional, a partir de percepciones de servidores públicos del Tribunal de Justicia del Estado de la Bahía. Inicialmente, son abordadas la reforma del Estado brasileño y la reforma del Poder Judicial. Después, son tratados aspectos de la cultura brasileña y sus relaciones con la cultura organizacional. Entonces, son discutidos y tratados con análisis de contenido los datos obtenidos mediante entrevistas con 37 servidores. El artículo es cerrado con reflexiones acerca de compatibilidades e incompatibilidades entre el modelo de reforma adoptado por la Judicatura y su cultura organizacional.

PALABRAS CLAVE: Poder Judicial; reforma de la Judicatura; reforma del Estado; nueva gestión pública; cultura organizacional brasileña.

1. Introduction

The Judiciary has been in the spotlight in the last few years because of political aspects, and also due to undergoing a reform process that commenced in 2004 upon the approval granted by Emenda Constitucional nº 45 [Constitutional Amendment No. 45]. This amendment has implemented a series of changes in the Judiciary, ranging from alterations in judicial procedures to changes in the very structure of this power, along with creation of the Conselho Nacional de Justiça (CNJ) [National Council of Justice].

The creation of the CNJ, has represented a veritable “administrative shock” in the Judiciary, given that, among the attributions of this organ, there are inspection of the work of judges and civil servants, and the modernization of the Judiciary (Sena, 2012; Nogueira, 2011). The CNJ began to represent an institutional space with aspirations of a more expeditious, more transparent Judiciary, guided by modern efficient administrative practices (Nalini, 2006).

The CNJ is conducting the reform process based on guidelines, such as strategic planning, control and technological modernization, which may be identified with managerialism, or with the so-called Nova Gestão Pública [New Public Management — NPM], which also formed the basis for the Plano Diretor da Reforma do Aparelho do Estado (PDRAE) [Master Plan for Reform of the State] in 1995.

Although the Judiciary Reform is in progress, which does not allow assessment of the effectiveness of its results, is in progress, it is possible to envisage its reach, as well as the resistance and difficulties it will face. Examining what occurred during the implementation of the PDRAE, which, despite having taken place in another instance — the Executive, it also

constituted a reform process in the public sector, based on the same managerialist principles. Thus, it is noteworthy that the implications and developments observed in the Executive reform cannot simply be transposed to possible implications and developments of the Judiciary Reform, for they are powers with different logics and cultures, but it is understood that it is possible to envisage some resemblances, given that it is subject to similar contexts of public sector bureaucratic structures and exposed to the same peculiarities of Brazilian culture.

Thus, authors, like Sano and Abrucio (2008), Fadul and Silva (2008), Martins (2005) and Rezende (2002), made criticisms of the reform model adopted, pointing out the need to match to each country's peculiarities, considering the particularities of the bureaucratic and administrative systems, and the possible lack of affinity with Brazilian culture. Concern with the cultural aspects is even more significant when it is considered that the New Public Management – NPM intended to break from traditional models of public service administration, and to introduce a new management culture based on standards developed for private organizations.

Nevertheless, despite all the transformations that are occurring in the Judiciary institution, academia has hardly touched the theme (Nogueira, 2011). Only more recently has the Judiciary been dealt with in research works in the public administration area, and these have focused on the analysis of goals and their achievement, or aspects more linked to administration, while the dimension of organizational culture has practically not been addressed.

Thus, the aim of this work is to analyze the steps in the Judiciary reform process, taking into consideration aspects of its organizational culture, based on the perceptions of civil servants in the Tribunal de Justiça do Estado da Bahia [Bahia State Courts of Justice].

The article is organized as described below. Initially, aspects referring to the Reform of the Brazilian State and the Reform of the Judiciary are addressed. Next, conceptual aspects of the organizational culture and its possible relations with Brazilian culture are covered. Following this, the methodological procedures, and analysis and discussion of the data are presented. The work is concluded with reflections about compatibilities, incompatibilities and possibilities of dialogue between the reform model adopted by the Judiciary and aspects of the organizational culture of this institution.

2. The New Public Management and the Reform of the Brazilian State

The reform process of the Brazilian State, begun in 1995, forms part of a world movement towards public sector improvement that arose in Great Britain in the last decades of the XX century, and extended to various countries, reaching Brazil and other Latin American countries in the 1990s (Marini, 2005; Paula, 2005).

With managerialist inspiration, the public administration reform programs proposed a universal project, applicable to any cultural context, and were implemented on almost all continents (Eikenberry and Kluver, 2004; Hope, 2001; Peters and Pierre, 1998; Hood, 1995). Although this reform movement was treated as universal by a great part of the literature,

several authors warned about the dangers of such simplification. (Marini, 2005; Jones, 2004; Pollitt and Bouckaert, 2002).

The New Public Management (NPM) has as its central axis the concepts of efficiency and productivity, and presupposed that, in order to attain these objectives, a change of mentality would be necessary in public administration to incorporate private administration values, like rationality, creativity and performance (Bresser-Pereira, 2009; Fadul and Silva, 2008; Abrucio, 1998).

According to Paula (2005), among the values of managerialism, values pertinent to private enterprise are found, such as: rationality, autonomy, enterprise, creativity, responsibility, productivity, efficiency and competitiveness. Thus, private enterprise values seem to be associated to values of the genesis of Anglo-Saxon culture, facilitating the implementation of managerialist reforms of the State in countries like England, the USA and Australia. The same could not be affirmed in relation to Latin culture.

In the case of Brazil, it is questionable whether the application, formulation and implementation of the reform process would adequately consider the context of the country's public environment. Lustosa da Costa (2008), within the set of peculiarities present in Brazilian public organizations, highlighted: personalism, despotism, clientelism, notaryism and authoritarianism. He asserted that this set of peculiarities is constituted of modes of being, thinking and proceeding that characterize the Brazilian institutions and the social and political relations in Brazil, conditioning the functioning of the State, the action and development of the public administration.

In this line, Matias-Pereira (2010) affirmed that every organization receives influence from the cultural context in which it is situated, and asserted that characteristics found in the culture of public organizations — which, in general, possess centralizing bureaucracies and rigid structures — tend to be reflected in the way their civil servants act and behave.

The difficulty in conforming to the rules, norms and procedures not necessarily suitable for the cultural peculiarities, or, as in the case of the Brazilian public administration, considering that the public environment possibly contains traits of patrimonialism and does not possess adequate material conditions to execute the stipulated tasks, opens the way to the emergence of formalism.

Formalism could thus be indicated as a type of undesirable effect, as it would be a survival strategy to deal with difficult rules and norms to be applied in the context, whether because the staff disagree or have difficulty fulfilling that which is determined by the rules and norms.

Formalism was highlighted by Guerreiro Ramos (1983) as a result of pressure from world society that, in a certain center-periphery relation, the peripheral society would be obliged to be receptive. In this way, formalism would not be a bizarre characteristic, but rather a strategy for survival in these peripheral societies, for the purpose of dealing with a “discrepancy between concrete conduct and the written norm”, aiming to overcome immobility with ambiguity (Guerreiro Ramos, 1983:252).

Thus, “the presence of formalism seems to confirm that the theoretical grounds for reform are not in perfect consonance with the Brazilian reality, and that, for this reason, the

real problems of the Brazilian State remain without an effective solution” (Andriolo, 2006:11) Therefore, the process of Brazilian State Reform, in not adequately considering our socio-cultural context, could not only have its scope reduced, but also cause dysfunctions or “undesirable effects” like formalism.

3. Reform of the Brazilian Judiciary

The process of organizational change, begun in public organizations with the Reform of the State, aimed to transform the traditional model of bureaucratic administration throughout the Brazilian State. However, the Reform of the State, begun with the creation of the Ministério da Administração Federal [Ministry of Federal Administration] and the Reform of the State, in 1995, became restricted to the Executive Power.

Sadek and Arantes (2001) stated that, in the context of the 1990s, with the Brazilian political agenda marked by constitutional reform proposals that would modify the relations of the State with the economy and the society, inclusion of the Judiciary issue on the agenda of discussions was foreseeable, as, while the Brazilian State was undergoing a process of institutional reform, the country was also passing through a re-democratization process. The 1988 Constitution broadened the political role of the Judiciary.

Besides this expansion of political protagonism, one can also observe, as of the 1990s, an increase in the demands on the Judiciary. This increase in demand for judicial services, according to Nogueira (2011:4), “in having to be dealt with by the organizational structures in existence then, began to collaborate with the institutional and administrative crisis in which the Judiciary entered in the years following the promulgation of the CF [Federal Constitution] 1988”.

This crisis scenario is also understood as arising from procedural causes, such as an excessive number of appeals set forth in the law, an excess of public notary formalism, abundance of laws, and structural causes, like difficult access to justice by certain sectors of the population, an insufficient number of judges and civil servants, low index of computerization of the public notaries and courts. Besides this, the crisis of the Judiciary may be related to administrative aspects, such as a lack of planning, deficiencies in administrative control, and a lack of integration with other institutions linked to the Justice System (Nogueira, 2011; Vieira and Pinheiro, 2008; Renault, 2005).

Thus, at the beginning of the 1990s, the constitutional amendment proposal, Emenda Constitucional nº 45, began to be discussed in the National Congress with the aim of implementing the Judiciary Reform. In December 2004, this amendment was approved, and the changes it introduced represented an administrative shock in the Judiciary and promoted modifications in their judicial procedures, as well as in the power structure itself. Furthermore, it provided administrative mechanisms that sought greater efficiency and procedural expediency, ensured autonomy and independence of the judges, and broadened access of the population to justice (Sena, 2012). Among the principal determinations of this amendment,

the creation of the Conselho Nacional de Justiça (CNJ) [National Council of Justice] was outstanding.

The CNJ was installed in June 2005, vested with the competencies of controlling the administrative and financial activities of the courts and inspecting the fulfillment of the functional duties of the judges and civil servants in the justice area. Besides the inspection role, the CNJ would have the mission of “contributing so that the adjudication would be performed with morality, efficiency and effectiveness to the benefit of society”, and be viewed as “being an effective development of the Judiciary”.

Among the guidelines of the CNJ, one can highlight: (1) strategic planning, control and proposition of judiciary policies; (2) technological modernization of the Judiciary; (3) broadening of access to justice, pacification and social responsibility; and (4) guarantee of effective respect for public freedom and penal execution. With the aim of implementing these guidelines, as of 2009, the CNJ established annual goals for the Brazilian courts, with definition of indicators of efficiency, productivity and quality as a way of making the public service of justice more effective (Sena, 2012).

According to Nalini (2006), the CNJ began to serve as an institutional space of social aspirations of a more expeditious and transparent Judiciary, and its creation would be an impulse toward more modern, efficient administrative practices, as, until the creation of this organ, the Judiciary had not had a space for reflection to think about the future and about its insufficiency in meeting the demand of the population.

It is interesting to observe that the creation of the CNJ faced strong resistance from some sectors of the Judiciary, as it would represent an external control (Sadek, 2001). The resistance of sectors of the Judiciary can be attributed, among other factors, to the professional status itself and its valorization, which enjoys guaranteed autonomy and independence that is not necessarily in accordance with the predictability, standardization and need to achieve goals represented by the administrative shock intended by the Judiciary Reform.

The Judiciary can be identified as an organizational configuration of *professional bureaucracy* (Nogueira, 2011; Vieira and Pinheiro, 2008), in which the operational nucleus is formed of members that execute the work essential to the organization — the operators. These operators are trained specialists who have autonomy and control over their work, and their power is derived “from the fact that their work is not only more complex, requiring supervision by managers or standardized by analysts, but also because their services are characteristically in great demand” (Mintzberg, 1995:196).

In the case of the Judiciary, the judges, who possess technical capacity and autonomy in the exercise of their functions — application of the jurisdiction, represent “the professional operators”. The other justice civil servants (e.g. clerks, bailiffs, advisors and interns) constitute the support providers, formed of judicial notaries that assist the activity exercised by the judges (Vieira and Pinheiro, 2008). Thus, a great support structure is created for the operator who centralizes all the power, and demands that the judges also exercise the administrative functions.

Another point that deserves highlighting is that the culture itself of this Power favors the external aspects related to the political role of the Judiciary and treats the administration

as an internal aspect that receives less attention from the judges. The judges define the jurisdiction as their “core” activity, although they recognize that they also perform an “intermediate” activity that consists of administration of their workplace (Fontainha, 2006).

In this context, the Judiciary reform process, at the same time that it is aligned with the managerialist principles of efficiency and accountability of the Nova Gestão Pública, it is occurring in an institution with peculiarities, where aspects related to the administration, understood as an intermediate area, have historically been relegated to a secondary plane. Besides this, in a similar manner to that pointed out by Bergue (2008) in relation to administrative reform, in the Judiciary Reform, structures were observed that coexist with patrimonialist standards that are strongly compelled to orientation toward administrative behavior focused on achieving results. Thus “if, on the one hand, the Public Power preaches adoption of managerialist practices in public administration, on the other, the Judiciary presents an organizational configuration unfavorable to them” (Lima and Cruz, 2011).

In this manner, the reform process the Judiciary is undergoing proposes application of an administrative shock of managerialist inspiration (Sena, 2012), as it seeks to implement instruments utilized in the administration of private organizations, such as: strategic planning, efficiency indexes, accountability regarding results, control, etc. However, this reform process is taking place in a structure of *professional bureaucracy*, in which the judges, specialist operators have historically operated at the top of the rigid hierarchy of centralized power and where the administration, as an intermediate area, has not received much attention.

4. Organizational culture: conceptual aspects

The theme, organizational culture, has become ever more frequent in academic research since 1983, with publication of special editions about the subject in the magazines, *Administrative Science Quarterly* and *Organizational Dynamics* (Mascarenhas, 2002; Freitas, 1991).

According to Barbosa (1996), the concept of culture allows discussion about the symbolic dimension in organizations. The culture thus assumes an outstanding role in the study of organizations, as it influences the way of life, the standards and values of the people, who, in dedicating themselves to organizations, convey not only their technical knowledge, but also other aspects of their personalities.

The organizational culture may also be understood as the cultural universe formed of presuppositions, beliefs and values shared by the members of an organization, which is derived from a specific social environment, it being learnt by socialization processes that occur at the social and organizational level (Hofstede, 1991).

Schein (1986:12), whose concept of culture has become practically mainstream, also starts from this learning approach to culture, and defines it as “a model of basic shared presuppositions learnt by a group as a solution to their problems of adaptation and integration that works sufficiently well to be considered valid and taught to new members as the correct manner of proceeding, thinking and feeling in relation to the problems”.

For Schein (1986), the organizational culture comprises three levels: visible artifacts (layout, technology, the way people dress, public documents, etc.); norms and values (strategies, goals, philosophies) and basic presuppositions (ways people perceive, think and feel).

Schein's approach (1986), despite criticism from authors like Wright (1994), who considered this posture positivist as it treated culture as capable of being understood outside its context, already indicated the need to include anthropological aspects in the study of culture. Thus, culture lies in conceptual categories and mental models, which do not allow its understanding only by its superficial characteristics that do not cover holistic and systematic aspects.

The study of organizational culture has already been pointed out by various authors (Martin and Frost, 2001; Reed, 2007) as a field of power dispute among proponents of diverse theories, methodological and epistemological preferences. Alvesson (1995) thus relates the term, organizational culture to a conceptual "umbrella" that encompasses those interested in cultural and symbolic phenomena in organizations based on various perspectives.

Among the main controversies in this field, one may cite discussions about issues, such as: (1) possibility of administration or not of the organizational culture; (2) homogeneity or heterogeneity of the organizational culture; and (3) influence or not of the local cultural context in organizations.

The question of the possibility of administering the organizational culture or not is discussed in the typology devised by Smircich (1983), which categorized the research about organizational culture, and pointed out five themes that are grouped into two major research lines: the first addresses culture as a variable, as something that the organization has; and the second understands culture as a metaphor of organization, something that the organization is. The first line encompasses comparative studies (cross-cultural) and the studies about corporate culture. The second is viewed as spanning across themes of organizational cognition, organizational symbolism and unconscious processes.

Regarding the question of cultural homogeneity versus heterogeneity of the organizational context, Martin and Frost (2001) identified three perspectives for understanding culture: (1) integration, which presupposes that the organization as a whole possesses a single culture; (2) differentiation, which considers the differences among the subcultures within the organization; and (3) fragmentation, which understands that what exists in terms of organizational culture is values temporarily shared by various individuals in an organization, and the ambiguity is an inevitable aspect of this culture (Martin and Frost, 2001).

The influence of the local cultural context and its reach in the organization is another complex polemic that arises from studies about culture in organizations. For authors like Hofstede (1991) and Trompenaars (1994), the national culture prevails over the organizational.

In this sense, according to Mascarenhas (2002), various authors studies favor the constitutive elements of culture, such as values, beliefs and customs, and this systematization of culture based on its elements leads to identification of specific cultural traits, and permits differentiation of the interaction patterns of individuals in organizations in Brazil in relation to those in other countries. Thus, according to this author, one of the most important elements that mark the culture of an organization is the national culture.

In Brazil, most of the studies about the impact of traits of Brazilian culture on the administration of organizations were developed in the 1990s, based on the historical, cultural, social and economic formation of the country (Chu and Wood Jr., 2008). Despite the broad diversity of cultural traits that characterize the way organizations are managed, pointed out in these studies, Chu and Wood Jr. (2008) highlight some marked characteristics, such as the incorporation of studies conducted by renowned local anthropologists, economists and sociologists like Gilberto Freyre, Sergio Buarque de Holanda and Caio Prado Jr., and the attempt to portray the local organizational culture by means of analysis of remarkable *traits* of Brazilian culture.

These three questions presented about the field of organizational culture allow observation of the multiplicity of possible approaches to this study. It may be noted, however, that the context appears as a significant dimension in practically all the different currents observed, whether in the discussion about homogeneity or heterogeneity of the culture, or in the debate about the possibility of its administration or not. This fact reaffirms the importance of the question pointed out at the beginning of this article about the need to assess the model proposed for the Judiciary Reform and its compatibility with the cultural context of the organizations in Brazil.

5. Organizational culture and Brazilian culture

In the Brazilian academic production, various authors address the relation between national culture and organizational culture (Freitas, 1997; Caldas, 1997; Prates and Barros, 1997; Vergara, Moraes, and Palmeira, 1997; Junquilha, 2004).

Among the works that explore these relations among cultures (organizational and national), those by Freitas (1997) and Junquilha (2003) are noteworthy. These are outstanding not only for having identified traits of Brazilian culture based on the reading of authors of Brazilian social thinking, but mainly for having envisaged the importance of understanding their "manifestations" for the study of the organizational dynamic.

In this sense, an important contribution of the work of Freitas (1997) is the relationship of these Brazilian cultural traits with key characteristics that can be identified in the organizational universe. Thus, Freitas (1997) highlights five Brazilian traits that most clearly exert influences on the organizational universe: hierarchy, personalism, roguery, sensualism, and adventurism.

In the analysis and identification of the cultural traits, Freitas (1997) considered and cited the works of: (1) Sergio Buarque de Holanda, to deal with the traits of personalism and adventurism; (2) Gilberto Freyre, to address the traits of hierarchy and sensualism; and (3) Darcy Ribeiro, regarding sensualism.

The origins of the hierarchy trait are related to the patriarchal family, which served as a moral model for the relations based on the idea of normality of power, of respectability and unrestricted obedience. Thus, "the patriarchal family has provided us the great moral model, almost inflexible, which regulates the relations between those who govern and the governed,

defining the norms of domination, conferring centralization of power into the hands of those who govern and subordination to the governed” (Freitas, 1997:46).

Among the key characteristics of the hierarchy trait, Freitas (1997) highlights: (1) a tendency towards centralization of power within social groups; (2) distancing in the relations among different social groups; and (3) passivity and acceptance of lower social groups.

The personalism trait also has origins related to the patriarchal family, which constituted the relation as the basic unit of Brazilian society, whereas other societies, like the North American, are centered on the notion of the individual. In this sense, Freitas affirms that the basic unit based on the relation exceeds the social sphere and contaminates the political and juridical spheres.

Freitas (1997) points out three key characteristics of personalism: (1) a society based on personal relations; (2) the seeking of proximity and affection in the relations; and (3) paternalism as a moral and economic domain.

According to the first two characteristics, personalism implies valorization of the relational situation, which could favor collusion and exchange of favors. Thus, it is observed that often “the choice of persons who are going to exercise public functions is made according to criteria of personal relations and not of their capacities” (Freitas, 1997:48).

The trait of roguery has flexibility and adaptability as means of social circulation and rule-bending (*jeitinho*) as key characteristics. Sensualism is linked to the taste for the sensual and the exotic in social relations. These two traits are explained by Freitas (1997) as arising from the hierarchized structure of society, which, based on non-egalitarian treatment of individuals, enabled a mode of social navigation based on the relations (roguery) and by miscegenation and “in-lawism” (*cunhadismo*).

Adventurism is the last trait pointed out by Freitas (1997), and it is related with a lack of discipline, and aversion to methodical work. It is developed by means of the Holanda (2011) ideal types of adventurer and worker.

Junquillo (2003), in turn, due to research in a public institution, highlighted eight social practices inspired by the theoretical universe of Brazilian social thought, based on the works of authors like Guerreiro Ramos (1983), Faoro (1975), Ribeiro (1995), Holanda (2011) and Freyre (1994). They are: (1) good neighborliness, the practice in which an environment hardly favorable to co-operation leads the administrators to develop friendly relations to facilitate professional conviviality; (2) home/street syncretism, which shows the absence of distinction between private and public space; (3) cordial control, which illustrates the use of affective relations for control of subordinates, due to difficulty in applying impersonal rules; (4) temporizing, which refers to transience in day-to-day organizational life, giving rise to attitudes of accommodation, condescendence and avoidance of conflict; (5) “coconut planter” (*planta-dor de coco*), a practice linked to the difficulty of coping with planning in quotidian activities, situations of emergency reigning, “dealing with crises”, and the seeking of immediate results; (6) pretending (*faz-de-conta*), a practice that indicates two organizational spaces in which formal performance assessment is not favored, that is, it is not accustomed to measuring goals and performance, and what is of value is the informality; (7) big boss (*mandachuva*), which is related to practices that use authoritarianism and centralization of power, it is “those who can

give orders giving them, those obeying doing so with judgment”; and (8) overcoming (*dar a volta por cima*), which refers to the use of rule-bending as an indispensable resource to cope with the excess of norms and formal decrees.

Thus, the works of Freitas (1997) and Junquilha (2004), besides having the merit of pointing out contributions of Brazilian social thought to the study of organizational culture, identifying aspects of Brazilian culture that permeated the limits of the organizations, were also capable of pointing out in what way these “cultural traits” could develop into conduct and practices within organizations. In this work, we considered this conduct and the practices identified by these two authors as a basis to perform assessment of TJBA’s cultural aspects.

6. Methodological procedures

According to the typology presented by Vieira (2004), this work had a cross-section with a longitudinal perspective, in which the data were collected at a given moment, but with the intention of retrieving data and information from past periods that could aid understanding of cultural and symbolic aspects of the civil servants in the Tribunal de Justiça do Estado da Bahia [Bahia State Court of Justice].

In this sense, the theoretical-methodological perspective adopted in this work, which considers the concept of organizational culture, based on the understanding of the social-organizational world as a relationship pattern with symbolic significance created by a process of human interaction, implies adoption of a symbolic perspective in the treatment and analysis of data.

The data that form the work *corpus* are of a qualitative nature and were obtained by means of individual semi-structured interviews. 37 interviews were conducted in the period February to July, 2013, the total recording time amounting to 16 hours.

The selection of the research subjects occurred among the civil servants participating in the Programa de Capacitação do Judiciário [Judiciary Capacitation Program], utilizing the criterion of accessibility. This capacitation program was offered to all the civil servants of the Tribunal de Justiça do Estado da Bahia between 2011 and 2013, participation being on a voluntary basis, and divided into 28 groups of approximately 40 students each.

In the period February to July 2013, at the beginning of every class of the Capacitation Program, the research was mentioned, and those interested were requested to note their e-mails on a list for subsequent contact list for subsequent contact. It is important to report at this juncture that there was great willingness on the part of the civil servants to participate in the research. In the selection process of the research subjects, the civil servants’ urge to be heard and have their opinions and impressions on record, became very clear.

The interviews were based on a questionnaire that had been pre-tested, and they were conducted considering the formal methodological recommendations for preparation, recording and transcription, following the specific procedural rules for this type of interview. The

set of interview questions was devised considering topics of the theoretical referential and other works about culture, like that of Santos (2005) and Rocha (1994). Thus, topics were explored, such as: vision of the public sector and the Judiciary; positive and negative aspects of working in the Judiciary; work routines, and peer and boss-subordinate relations; values, beliefs, myths and rituals of the civil servants of the TJ Bahia; the presence of cultural aspects, like cordiality, personalism, the adventurer ethic and its possible spin-offs for the work of the civil servants; perception of change with the creation of the CNJ and the implementation of a new administrative model.

In relation to the treatment of the data, given their qualitative and subjective nature, it was opted to treat them utilizing analysis of content (Bardin, 1977) by means of a hybrid grid with categories defined *a priori* based on the theoretical referential and with categories that emerged from the data and were incorporated during the the analysis process. Thus, in the process of definition of categories, it was sought to consider: (1) categories that would reveal the perceptions of the civil servants about the elements of the TJBA organizational culture; (2) categories that could identify values related to managerialism and the reform model proposed for the Judiciary; and, finally, (3) categories that would identify traits of Brazilian culture.

As the initial analyses indicated a high degree of interlacing of the codes and categories, it was opted to start from categories related with the elements of the organizational culture (organization of the work; work norms and procedures; hierarchy and work team; beliefs and values), and, within these categories, codes were created to identify aspects more attuned to the managerialist values (planning, rationality, efficiency, productivity, performance, strengthening of civil society) and codes more related to traits of Brazilian culture (cordiality, the adventurer ethic, (rule-bending) *jeitinho*, personalism, patrimonialism and regionalism).

7. Analysis and discussion of the data

In this section an analysis is performed and there is discussion of the data, seeking similarities and differences among elements of the TJBA organizational culture, identified through the perception of its employees, the principles of managerialism that served as the basis for the Reform of the Brazilian State and traits of Brazilian culture.

Within the scope of this article, two of the categories observed in the research conducted with the TJBA are presented: *Work norms and procedures* and *Hierarchy and work team*.

In the category, *Work norms and procedures*, the normative aspects of the TJBA were assessed, as well as the procedures and strategies utilized by the civil servants and judges in performing their functions. And, in the category, *Hierarchy and work team*, there was assessment of the hierarchical relations, the distribution of power and the interpersonal relations between civil servants and judges in the TJBA.

Regarding the *Work norms and procedures*, the comments of the civil servants indicate a situation of ambiguity, as at the same time that the institution is aimed at enforcement of the law, a strict written norm, the procedures referring to the internal processing of the legal cases are not strict. In fact, they are not standardized and are often unknown by the civil servants

themselves. The formality of the institution goes side by side with the informality of the day-to-day “survival” of the civil servant.

The comment made by interviewee no. 22 illustrates the lack of information of the civil servants regarding the procedures they should follow, and relates this aspect to a scenario of general disorganization in the TJBA. The situation of disorganization is reminiscent of the lack of discipline and aversion to methodical work stated by Freitas (1997) in the adventurer trait, based on the ideal type of Holanda (2011), as well as of the practice of Junquilha’s (2003) coconut planter.

The court is very disorganized in everything, in all aspects. If a registered letter is sent, it disappears. If a legal suit is sent, it vanishes. There is no information for the civil servant. One does not know whether to divide the case into 100, 200 or 300 pages, as they keep on being sent to the site. I have to keep on reading the Diário Oficial [Official Gazette] looking for norms. There are no training/study programs for us. So, it’s disorganized, very disorganized. [E22]

The absence of standards in the procedures was in evidence innumerable times in the civil servants’ comments in relation to periods, opening hours, a party’s access to documents, stages in the processing of documents in the public notary office, etc.

Among those responsible for the variation in the procedures, it was possible to identify the judges who, in the final instance, are responsible for the judicial districts (*comarcas*), and the difficulty itself faced by of the civil servants in fulfilling the procedures, whether due to lack of knowledge, lack of structure, or disagreement with or resistance to them.

A judge has an extremely important role in the judicial district, as he/she performs special work that cannot be substituted, along the lines of a professional bureaucracy. The civil servants and all the processes of the judicial district act as support for the judge’s activities, which determine the organization of the procedures and the pace of work itself. This situation bears resemblances to the description of the patriarchal family, organized around the sugar mill owner (*senhor de engenho*), and reminds one of the traits of hierarchy and personalism mentioned by Freitas (1997) and the and the big boss (*mandachuva*) practice of Junquilha (2003). of Junquilha (2003).

The judges have the prerogative of practically defining the pace of work of their own convenience in the court district in the court district of their own convenience. This power of the judge to organize the public thing can also be associated to patrimonialist practices, given that the judge may submit it to his/her own particular will.

It can be observed that there exists a series of situations that contribute to the norms, rules and procedures not being followed in the ambit of the Tribunal de Justiça do Estado da Bahia, such as a lack of resources, court disorganization, and and a lack of standards due to the definition of the procedures being the judge’s responsibility. Thus, a scenario can be perceived in which the norms are not strict.

The situation exposed helps to create in the civil servant a certain disbelief in relation to the norms, which they often view as obstacles to delivering the service to the citizen.

Therefore, the civil servant often adopts a posture of breaking the rules and norms – the rule-bending (*jeitinho*) – in order to in order to in order to attempt to deal with certain situations. The rule-bending (*jeitinho*), in turn may be associated to the traits of personalism and roguery described by Freitas (1997) and to the practice of of overcoming (*dar a volta por cima*), pointed pointed out by Junquillo (2003)

The comment by interviewee no. 32 illustrates a situation often cited by the interviewees, who affirm that the Brazilian *jeitinho*, understood as breaking or bending the rules, is a common procedure in the TJBA, and that it occurs with the aim of dealing with a situation to the benefit of the citizen. Thus, the civil servant uses this resource due to previous non-fulfillment by the TJBA, due to not possessing the minimal conditions necessary for the work, such as an adequate period or provision of sufficient resources. This Brazilian, rule-bending is not utilized to the advantage of the civil servant and sometimes seems to have an altruistic connotation.

A crying mother arrives bringing a child custody case that has priority over other such cases, but there are 20 of these and all have priority. This mother has come here in tears [...] and you are going to dispatch. You are disparaging the others? If you think like an accountant, you are. But no, you want to help someone who came begging for help, a mother weeping. It's a parent who wants to bury a child who has no birth certificate... And what do you do? You really end up moving her to the head of the queue. It's the reality. It'd be hypocrisy if I said... Everybody knows that the case down at the bottom of the pile comes up to the top. It's not to gain anything. I'm an honest person. I don't receive even one real. [E32]

Besides situations in which the breaking of norms and rules by civil servants is observed, diverse situations could also be observed in which established norms and rules are broken by the court itself. Regarding the disobedience of norms and rules, a range of situations was highlighted by the interviewees in which the TJBA does not dispense to the civil servant the treatment compatible with that determined by the law or the norm defined by the court itself. Most of these situations are linked to allocation of civil servants to functions outside their original position, for which they had undergone a competitive entrance examination, or to working hours or remuneration hours or remuneration diverging from that defined by norms.

A situation quite often remarked on by the interviewees was the issue of substitution, which is the procedure to make a civil servant responsible for fulfillment of the functions related to another position that has become vacant in the judicial district. In these situations, besides the civil servant's original function, he/she accumulates the vacant one. According to the norm, substitution must respect the educational requirements of each position. Thus, a civil servant who occupies a mid-level position cannot replace the incumbent of a higher level. The norm also makes provision for a salary increase for the civil servant who is substituting. However, these conditions are not followed by the court.

Therefore, analysis of the category, *Work norms and procedures*, allowed perception of the aspects of *adventurism*, *personalism*, *hierarchy*, *roguery*, *playing big boss playing*, *overcoming* and the *coconut planter* in the dynamics of the *Tribunal de Justiça*. Aspects related with managerialism, such as planning, efficiency and rationality were not in evidence.

On the other hand, in the analysis of the category, *Hierarchy and work team*, it was possible to observe that the Judiciary is organized as an institution with a strict hierarchy, which Hofstede (1991) uses to refer to great distance from power between the base (civil servants) and the top (judges), where a change of position can practically only occur by means of another competitive entrance exam. This strict hierarchy can be observed in the organization of courts of justice at justice at federal state level, as in the case of the TJBA.

In this hierarchization of the Judiciary, the judge is perceived by the civil servants as wielding great power, which extrapolates the questions of professional bureaucracy. The judges are viewed, at some moments, as almost untouchable, able to do whatever they want, including determining the attributions and responsibilities of the civil servants, strictly top-down, ignoring their presence. The big boss social practice of big shot, described by Junquilha (2003) as “those who can give orders, do so. Those who who obey have judgment”, can be clearly identified, as well as the traits of hierarchy and personalism pointed out by Freitas (1997).

It's an imposition. I substituted for various years, and, if you complain to your immediate superior, who, in this case, is the judge, he/she has nothing to do, and will turn to you and say: “you will stay put”. It's a manner, even even an authoritarian position (coronelista) of the court. “I give the orders, and you have to carry them out, or take your things and get out”. [E32]

In this scenario, where the orders and excesses of the judges are not always regarded by the institution, leading the civil servants to feel unprotected, the creation of the CNJ is viewed as positive by the civil servants, in the sense that their action is understood as limiting and inspecting the judges. The interviewees also pointed out that the CNJ, as an agent of transformation, is making it viable to improve working conditions. Interviewee no. 25 commented about this inspection role of the CNJ.

In the court today, the best thing is the Conselho Nacional de Justiça, the CNJ, because, before, the judges' actions were unbridled, and nothing happened to them. [...] Today, everyone knows that there is a superior, that they have to be accountable to a superior. [E25]

With further regard to the ambit of changes represented by the CNJ, some interviewees identified, in the definition of guidelines and goals for the judicial districts by this Council, an indication that the results from the judicial districts will be accompanied, and, thus, the good civil servants will be able to have their performance recognized, which which does not yet occur in the TJBA. Interviewee no. 30 commented in this regard, leading to an association with the practice of pretending (Junquilha, 2003).

The public civil servant in the Judiciary here in Bahia has ended up being punished by our efficiency. Because like this, if you get five, it's good. Five come back tomorrow. If you get 10, 10 come back tomorrow. If you get 100, 150 come back tomorrow. It turns out that when you

produce, everything comes to you. It's the opposite of private enterprise where you are rewarded for efficiency. In the Judiciary and in the public power you're punished for your efficiency. Here your colleagues throw everything at you. [E30]

The remarks of the interviewees about the CNJ, in which they valorize the action of this Council in the definition of guidelines and goals and in the accompaniment of the activity of the judges, can be related with managerialist values, like planning and accountability. On the other hand, the idea of identification of the practices of the private sector as synonymous with efficiency and performance, and representing a model for the public institutions, can be found at the very base of managerialism.

In the analysis of the category, *Hierarchy and work team*, it was possible to identify aspects related with *hierarchy*, *personalism*, *playing big boss* and *pretending*. Also, aspects related with managerialist values were verified, such as planning, accountability, efficiency and performance.

8. Concluding remarks

The aim of this work was to assess the compatibility of the managerialist model adopted in the reform process of the Judiciary, exemplified in this study by the TJBA with its organizational culture. The work had the preoccupation of reaffirming that there exists an indissociable relation between organizational culture and Brazilian culture, which, in turn, gives rise to questioning regarding the supposed universality of theories, such as that serving as the basis for the reform process of the Brazilian State. This occurs, as, if there exists a relation and a dialogue between national and organizational culture, the reform model, based on the New Public Management, cannot be treated as “the only path”, and the deviations in its implementation as resistance and backwardness.

Thus, the adoption of this path in the Reform of the Brazilian State would bring, as a type of “undesirable effect”, the emergence of formalism. This formalism, or rule-bending (*jeitinho*), despite its adverse nature, would, according to Guerreiro Ramos (1983), be more of a strategy of the employees of an organization for implementation of a model, rules and norms that do not match its reality than a simple resistance to observance of these norms. In this sense, the words of the TJBA civil servants are evidence of the rule-bending as a strategy of survival in the face of the inadequate working conditions.

These observations allow one to state that the context found in the TJBA, which, in part, reflects the context of the Judiciary in Brazil, presents a series of peculiarities, such as *professional bureaucracy*, remnants of *patrimonialism*, strong aspects of *personalism*, besides a work ethic close to that of adventurism, which in no way resembles the reality of the Anglo-Saxon countries on which the managerialist model for reform of the State was based.

Considering these aspects, one may infer that the “administration shock” intended by the Judiciary Reform needs to consider the cultural aspects of the institution in which it was

implemented in order to attain the expected success. This takes place, as, at the same time that the civil servants have a positive vision of the CNJ, depositing in this organ the possibility of combating patrimonialist and patriarchal practices, the rational and impersonal model of reform does not consider values profoundly rooted in the civil servants, such as affectivity and the relational aspects of personalism.

Opening space to future broadening of this research, as proposed by Darcy Ribeiro and Celso Furtado, one cannot ignore that it is necessary to start from knowledge of Brazil for the development of paths and solutions for the country's ills, when the perceptions of these authors will be able to perform an important role in the resumption of this debate.

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