Systemic Modelling of Courts in Knowledge Creation: Tao of Judges Transmuting Cases into Social Legal Fabric

This is probably the first time an author attempts at conceptualising the Courts from a complex, systemic perspective. Besides this, the author explains the Tao of the judicial process as one of generating legal knowledge.

Introduction

Singapore is world renowned for its orderliness beneath which is a highly Singaporean proactive style in coping with complexity – her airline SIA (Singapore Airlines) is probably global best practice. Though once under British rule, it is under the Singapore’s Asian style of management that she is fast becoming globally one of the leading nations. Airlines like ports are orderly operations with a high degree of complexity. In this article, the author explores a major contributor to orderliness found in Singapore – her legal system.

Within every legal system is embedded legal knowledge. Legal knowledge is defined here as decisions, rules, rulings and principles necessary for illuminating the uncertainty in the law. Uncertainties may potentially lead to less than orderly situations.

Holland unveils how a potentially chaotic situation may lie hidden beneath orderliness. Insights into how hidden disorderliness is transformed into order are illustrated through using the legal system in Singapore as a case study. Of how an unseen, latent state of subtle chaos (or uncertainty) may embed what may seem so orderly. And it is the courts that resolve potentially, chaotic situations. In the process the judges are generating new knowledge and in the process enabling organisations to cope with societal complexity.

From a systemic perspective, courts in Singapore may be akin to the role of the weaver. Through legal decision making, judges transmute from cases a well woven social fabric. Using the language of complexity science, judges enable “order to emerge out of chaos”. Traditionally, courts – whether in Eastern or Western cultures – are primarily government-funded, independent institutions with a well-defined role of producing justice. Economically, the assumption is that the public as a whole desires as a good, “justice”. Yet courts ought to be explored too in their roles as knowledge creating organisations.

By their creations, courts are deemed knowing organisations. Courts as organisations are involved in sense making, knowledge creating and exhibiting through their judgments, rational processes in decision making (see Table 1-1, p 15). Courts are institutions vested by the relevant governmental authorities to be all knowing. That is provided the case is within their jurisdiction. For courts are ultimate institutions, the very last resort for people and organisations to resolve any differences of what is the law. As for what is right or wrong about anyone’s knowledge of the law as applied to a particular situation, the judges are the final arbiters.

Weaving of Social Fabric

Here we introduce a new conceptualisation of courts, one that is from a systemic perspective: organisations weaving patterns of “social fabric”. Courts across many different cultures and societies are involved in evolving webs or nests of rules. Such fabrics are essential for ensuring the orderly functioning of any modern society. Yet within every society, there exists an inherent complexity. A complexity generated through technology-facilitated, multi-layered, multitudes of interactions. An intriguingly popular theme is of our societies becoming increasingly “out of control”. In the sense that: as a society becomes ever more complex, our organisation evolves to be more akin towards the biological in nature.

If so, this logically suggests one interesting insight: the stronger presence of courts in any society is but a reflection of such an evolutionary transformation. Thus an omnipresence of order inducing institutions – for example, the courts are required to facilitate societal transformation.

Is our society becoming then ever more “out of control” (in Kelly’s sense)? That we are becoming more complex? Thus this compelling need for our society to grow to be ever more adaptive This makes it even more necessary that we explore the roles of the courts within our picture of such a complex, adaptive society.

Order Out of Chaos

How do courts ensure order emerges out
of chaos? They do so primarily by their resolving legal uncertainties. In the very process of providing certainty the judges acting in parallel are simultaneously generating new legal insights and knowledge. The process is incremental and on a case-by-case basis. For this reason, processes in adjudications by the judges are of a central interest. Yet this research is something yet to be undertaken. Classical concepts of knowledge creation are rarely if indeed ever applied to the courts. There can be no denial of new legal knowledge creations through deep, reflective thinking by the judges.

For Singapore, we envision the courts nested as an organic part of the very fabric of our society. An institution that regularly and systematically engenders, using the language of complexity science, “order from chaos”: how rules of law ought to be applied in sets of facts. Now rules as applied by the courts to cases constitutes for the community of practitioners, new legal knowledge. Why? Is there a necessity to go to the courts if there is absolute certainty on the law? Clearly, it is only logical that parties head to the courts when there is uncertainty.

**Courts as Adaptive Systems**

Adapting on McElroy, in our conceptual modeling, the roles of law firms and rules enforcing entities are that of “detectors” and “effectors” (see Figure 1). Lawyers may detect an uncertainty in the law that may potentially be chaotic if left unresolved in a given situation. They may on such detection, advice clients to seek a court’s decision on the matter. Why? So as had aforesaid for “order to emerge out of chaos”. Equally attractive as a metaphor from complexity science is one of “attractors”. Judges presiding over cases are generating “attractors”: principles, rules, legal concepts; ratio decidendi that bind people together. One powerful attractor that binds people together is the concept of justice: seeking just rules. Courts are institutional manifestations of such “attractors”.

In so doing, the courts may bring forth new legal knowledge. It may be an emerging, new legal interpretation by the courts; perspectives by judges that may impact on their businesses. Firms operating within the relevant legal domain or environment must adapt to emergence of such a new ruling. Prior to such a new legal rule, there is in the language of complexity science, a state of chaos. Clearly, with unsettled “chaos”, a lot more energies (in Chinese, “chi”) are expended by organisations taking precautions inside the legal environment. So far, none or very few academics had attempted to frame the creation of new legal knowledge in the context of complexity science.

**Knowledge Creation by Judges**

Next, using classical knowledge concepts, we reframe the process of new knowledge creation by judges. Polanyi’s major contribution lies in emphasising the tacit dimension of knowledge. Consistent with such an approach we view legal knowledge from two dimensions: what remain implicit (corresponding to tacit) and the expressive. On this basis, Nonaka and Takeuchi drew the dynamics of Japanese innovation as flowing from explicit, combination, explicit, internationalisation, tacit, socialisation, tacit, externalisation and back to explicit. The clear divide is in knowledge being both explicit as well as tacit. We adapt...
such an approach for our conceptual modeling. Figure 2 reflects our conceptualisation.

The lower left quadrant reflects the first dynamic in the thinking processes: rendering the “expressive” into “implicit”. In the second upper right quadrant is the second dynamic of rendering the “implicit” back again into the “expressive”. The conceptual model may be applied to court cases. The goal is to illustrate how the model may yield insights to the legal thinking and judicial decision processes without reference to specific details of these cases. In this way, judicial processes may be contextualised as being part of processes knowledge emergence: judges are transmuting the cases like a weaver into a social fabric. Such weaving of social fabric engenders orderliness which Singapore is globally so well known for.

**Tao of Transmutation**

This process or Tao of transmutation may yet be represented by a 5,000 years old Chinese symbol of evolving change: Tai-Chi (see Figure 3). In ancient China Taoists having observed nature found the world to be always changing. They depict this creative change by a highly abstract circular symbol, contrasting the black with the white.

Moreover, in the black is always present, a dot of white and correspondingly, in the white the black. The symbol is never static but always evolving: just like the courts always having to make new judicial decisions. Here we parallel our earlier, “explicit → implicit” and “implicit → explicit” modeling of the judicial process with this Tai Chi symbol of Tao.

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**Notes**

1. For the full version, see C T Foo, Ch 9, Societal Legal Fabric for Engendering Order Out Of Chaos": Systemic Modelling of Courts in Singapore (Eds.) Tait A and Richardson KA, Complexity and Knowledge Management (Information Age Publishing: North Carolina).


