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# The Victim As a Client of the Penal System



Claudio González

**Abstract** This paper explores one of the most palpable managerial manifestations of contemporary criminal policy, we refer to the process of introducing the client-user paradigm in the penal system. To do this, we review the process of how the victim acquired prominence, reaching the point of being treated as the client of a service provider company (service and product criminal justice). We also observe the complex debate about what should be understood by “client” in public administration, and how that discussion impacts on criminal policy. To concretize that, we will focus on the Chilean reality, exposing our analysis on the called Models of Attention to Users of the criminal justice system, especially those implemented by the Public Ministry of Chile. Based on this observation, we conclude that this managerial manifestation corresponds to an ongoing process, which has a positive side related to improving access to “the justice service”. However, on the other hand, there could also be unwanted political and criminal consequences, such as the risk that many customer service policies become only a “symbolic or substitute” offer to resolve the criminal conflict. We conclude that the origin of this danger is that some of these measures are inspired to improve the image of the institutions of justice among the citizens, and not aimed at profound changes in the criminal justice system.

**Keywords** Criminal-policy · Client-user · Victims · Management · Managerialism

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## 1 Introduction

Historically, criminal law, criminal policy and criminology have focused on the undisputed protagonist of the criminal conflict, the offender. Establishing various procedural and criminal guarantees around the accused has been the axis of almost all liberal criminal law. However, in the last decades this state of affairs has mutated, thus, both the criminal sciences and the criminal legislation itself, have turned their gaze towards other actors in the criminal scene. The literature explains this change due to the increasing prominence of the victim in the criminal process. The disciplinary earthquake has been such that it has given rise to new criminological aspects, such as victimology (Bustos-Ramírez and Larrauri-Piojan 1993; Tamarit-Sumalla 2006; Cerezo-Domínguez 2010) and, to a lesser extent, victim-dogmatics (Cancio-Meliá 2001).

The truth is that the “rediscovery of the victim” is an uncomfortable and controversial issue for criminal policy. Undoubtedly, there are serious reasons to restrict the victim's participation in the formulation of criminal legislation (Shapiro 1997), especially because of its dangerous connection with the so-called “punitive populism” phenomenon (Díez-Ripollés 2004; Bottoms 1995; Garland 2001). However, despite the obvious problems generated by a hyper-valued victim in the configuration of criminal policy, the pro-victim discourse has ended up penetrating deeply into the current criminal system (Díez-Ripollés 2007).

In any event, beyond the privileged role of the victim in criminal policy, there is a set of areas where its consideration seems sensible. A first context corresponds to everything related to criminal mediation and restorative justice, notwithstanding criticism of its limited range of applicability to address the hard core of criminal law, its validity is incontestable (Highton et al. 1998). Another field, where the relevance of the victim also seems of importance, has to do with the protection and defense of their rights in criminal proceedings, of this type are the rights to be heard or even to take legal action if necessary, among others (Maier 1991).<sup>1</sup>

A third possible context, no longer comes from the purely criminal field but arises from certain organizational and managerial needs of the criminal system. This occurs

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<sup>1</sup>Victim status is normatively collected by the Chilean Criminal Procedure Code, the most relevant norms are art. 6th, which establishes protection for the victim, art. 12 that recognizes its quality as intervening in the criminal process. In addition, articles 108 and 109, referring to the procedural subjects, establish the essential rights of the victim (defined as the one offended by the crime), among others: :“a) Request protection measures against probable harassment, threats or attacks in against you or your family; b) File a complaint; c) Exercise against the accused actions aimed at prosecuting civil responsibilities arising from the punishable act; d) Be heard, if requested, by the prosecutor before the latter requests or resolves the suspension of the procedure or its early termination; e) Be heard, if requested, by the court before ruling on the temporary or final dismissal or other resolution that terminates the case; and f) Challenge the temporary or final dismissal or the acquittal, even if it had not intervened in the case process...”. (Writer’s translation and interpretation, from Spanish original) National Congress Library: <https://www.leychile.cl/Navegar?idNorma=176595&idParte=0>.

when the victim is conceptualized and treated as a mere client of the criminal system, with all the implications that this may produce. In other words, once the victim is installed in the criminal field, the victim has begun to colonize another point of change in modern criminal models, namely, the organizational dimension of the system.

This last point is related to one of the most relevant changes in contemporary criminal policy, which is the intense and massive incorporation of new management tools from the New Public Management, also known as managerialism. This transformation is not only having effects of an administrative nature but also has brought about changes in the configuration of the purposes of the criminal system.

Thus, one of the iconic transformations of the management model are the proposals about the customer concept that the so-called modern public management has developed. This client-user paradigm has been strongly driven by one of the most current management trends, the so-called Public Management for Results (PMR). This current synthetically proclaims that the ultimate goal of the company (institution or organization) is its results, in this way, it is possible to align the business model, the final product and the performance of the organization, which for this trend is none other than “Customer satisfaction”.<sup>2</sup>

Without a doubt, the transfer of managerial thinking that nests the client-user paradigm to the criminal system is not an easy task. First of all, because there is still a lot of debate within the public sector itself about the relevance of this organizational model, and second, because in our disciplinary context relevant questions arise such as: What do we understand as a client within the criminal system? Is it the same customer as user or as beneficiary? How is a client concept compatible with the classical structure of liberal criminal law? How do the concept of criminal efficiency with the client-user paradigm complement? Among others.

## 2 New Organizational Tools in Criminal Systems

As of today, there is profuse literature and international studies that account for the transformational phenomenon of the criminal system, this mutation would be taking place through organizational changes by introducing a broad spectrum of new management tools in the criminal system (Garland 2001; Simon 2012; Harcourt 2013; Harcourt 2007; Brandariz 2014; Vigour 2006). This literature, either of critical or descriptive approach to the phenomenon, whether of Anglo-Saxon origin (where it was initially developed), from continental Europe or from other contexts such as Latin America, agrees that this is a complex and current phenomenon, which is

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<sup>2</sup>An example of how this management model based on the results and the preeminence of the client over any other consideration is found in the idea of Osborne and Plastrik (1998, p. 226), they argue that the “user approach” can help reduce the bureaucracy, they indicate, “when public bodies become accountable to their clients, their behavior changes. It is an effective tool for change.” (Cornejo 2012, p. 3).

penetrating beyond the mere organizational dimension of the criminal system, materializing in the long run in political and criminal consequences of the first order (González 2018).<sup>3</sup>

One of the most suggestive theoretical approaches of contemporary criminology that addresses the organizational issue has been, without a doubt, the so-called actuarial paradigm. Historically, the works of Feeley and Simon were pioneers in delimiting this theme, especially in *The new penology* (1992) and in *Actuarial justice: The emerging of a new criminal law* (Simon and Feeley 1994). Thus they opened the way to what has been called *the new penology*, a critical tendency that would be characterized by describing a scenario where: (a). The collective or category of subjects is prioritized over the individuals over whom criminal power is exercised. (b). Individuals are understood as subjects that need to be managed, and (c). The rules of evaluation and decision are adapted to the technocratic forms of knowledge, focused on the idea of probability and risk.<sup>4</sup> However, it would be Harcourt (2007, p. 1) who defined punitive actuarialism as a tendency characterized by the use of statistical methods, instead of clinical ones, based on large databases, with the objective of determining the different levels of criminal action from one or more group features, for the purpose (1) of predicting (determining) past, present or future criminal conduct, and (2) of administering a criminal political solution.

However, we believe that the explanation via actuarial paradigm does not cover all the organizational-criminal phenomena, therefore, we believe that the perspective of the managerial analysis of the criminal system can offer better scientific performance. Perhaps the greatest flaw of actuarialism is that it focuses, which is certainly reasonable, almost exclusively in the control of the dangerous subject for the criminal system. But we set the new criminal political object in the emergence of the client-user paradigm, which is based on the idea that victims (and probably other users) have become one of the axes on which a large part of contemporary criminal policy.

Nevertheless, it is clear that the extreme implementation of the “service delivery model”, the executing arm of the client-user paradigm, can cause the empowerment

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<sup>3</sup>In the Spanish language context, analyzes in this line are still scarce. In Latin America, some reasons could be the late entry into the accusatory model and the low preponderance of organizational techniques in the justice system. The latter is the effect of the lack of a critical authors and regional literature in the field of administration and complex political processes covered by the national security model.

<sup>4</sup>The actuarial denomination derives from the way in which insurance companies act when they proceed to classify their insured in different groups according to the probability of risk assigned to them. The category development process continues until the moment that the costs of developing a new category outweigh the benefits expected from it. Typically, the categorization will not descend to the individual level (Ortiz de Urbina 2003, p. 49). If the empirical and theoretical development of actuarialism has an Anglo-Saxon wedge, in the opinion of some, a similar phenomenon would have occurred in the field of European continental criminal tradition through the German doctrine of criminal law oriented to efficacy / efficiency (oriented to the consequences), especially through the work of the Frankfurt school (Ortiz de Urbina 2003, p. 51). (Writer’s translation and interpretation, from spanish original).

of certain users and this in turn create a chain effect in order to increase punitive demands. That is, by a more remote way (to accommodate the criminal system to what the client wants: “the client is always right”), the same conclusions of actuarialism can be reached, that is, intense punitivism and massive criminal management of dangerous subjects.

Therefore, what is really “problematic” of this new phenomenon are not the organizational transformations in themselves, but, as indicated by the critical currents, that these are organizational reforms carried out by specifically managerial public policies. Understanding by these, those that essentially look at the efficiency and results of the criminal system, and that will not necessarily be positive for the organization in terms of quality of the justice system or in better safeguards of citizens’ rights. A very lucid reference to this point is found in Brandariz (2014), p. 120:

In sum, the managerial rationality of the NPM, imported from the operating modes of private entities of a business nature, has been introduced in recent decades in a field of public policies that at first seemed distant from that operational logic, such as the criminal and prison system. At this point the managerial logic has managed to overcome certain obstacles, derived from the particular sovereign and legal-constitutional position of the courts, the centrality of the fight against crime in the field of state policies, or the traditional refractoriness of public activity to cost control.<sup>5</sup> (writer’s translation and interpretation, from spanish original)

Some political-criminal consequences of this transformation are related to criminalization processes, with the speed that the incorporation of new management tools can contribute to criminal prosecution models or even with the way and priorities in which the criminal legislative agenda can be developed. However, not all consequences can be categorized as negative, in fact, there are a number of management elements that we could hardly refuse to be inserted into the criminal system. For example, the necessary introduction of organizational tools to handle and control the management of criminal institutions, the use of computer science in order to optimize the resources of the State, or to adapt the access to criminal justice via the improvement of its management, among others. In this last point, is probably incorporated the improvement of the models of attention to “clients” and users, and their satisfaction.

Regarding the Latin American context, organizational transformations to the criminal system have gone hand in hand with the criminal justice reforms of the last 30 years. What began as code changes and the demolition of the old criminal inquisitive model has resulted in modifications to the system’s own operability

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<sup>5</sup>Due to its extension, in this article we cannot refer in detail to this Organizational-Criminal Dilemma, that is, how to introduce technology and management without affecting criminal guarantees, and at the same time, how to incorporate them without becoming criminogenic catalysts. The same applies to the incorporation of the customer service model, how to add, for example, concepts such as customization or marketing without transforming the criminal system into a simple provider of “managerial” services without content. We will deal with these matters in successive work.



(Maier et al. 2000; Binder 2000; Duce 2009; Riego and Duce 2007; Vargas and Dezhazo 2005). Likewise, these changes initiated in the context of criminal justice quickly permeated the discipline, being visible today in other contexts, such as civil, labor, etc. (Valdivia 2006).

In some countries the organizational transformations began in the specific management of their Courts, Appeals or Supreme,<sup>6</sup> but quickly extended to the offices and organization of the lower instance courts, such as guarantee, flagrancy or oral courts (Vargas 2014). As for the section of the criminal system where these changes were made, they initially had their first reception in the criminal justice system, but then they have become visible in other contexts, namely, the field of police organization, the scope of the organization of crime prevention activities, the prison system (outsourcing of services). In short, there is practically no area of the criminal system, which to a greater or lesser extent, has not been touched by this wave of organizational transformations.

This diversity of areas in the process of transformation is congruent with what international literature, especially Anglo-Saxon, mentions as aspects of the criminal system that have also changed in their own contexts, some of them are: the increase in public/private collaboration in matters of citizen security and the fight against crime; implementation of outsourcing models towards private security, and outsourcing of criminal defense and the prison field; the use of strategic plans in justice organizations; the tendency to standardize processes in the various agencies of the criminal system, among others.

If it were possible to summarize these changes in two great contexts, these would be: (a). The incorporation of novel management tools into the criminal justice system, which has resulted in new management models and, (b). The entry into the system of new professionals trained in the world of economics, engineering or administrative sciences, who have generally brought with them an important experience in the field of private management.

The client-user paradigm somehow emerges from both aspects, but in more detail we could connect it with six areas or indicators of the managerial model in the criminal system:

1. The orientation of the system towards service delivery models with the objective of increasing productivity.
2. In relation to the previous point, the tendency of certain agencies of the system to incorporate the customer-user service model from private services.

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<sup>6</sup>For example, Costa Rica, after the implementation of the Organic Law of the Judiciary Power, with the reforms of the Law of Judicial Reorganization (N°: 7728 of December 15, 1997) introduced a series of organizational reforms. The High Court was the first to experience the benefits of a better organization of the firm. The Constitutional Chamber served as a “guinea pig” to test case follow-up systems to implement support mechanisms to increase the production of judicial decisions (Rivera-Cira 2001).



3. The massive incorporation, to improve efficiency, of the use of performance and management indicators and, correspondingly, of the use of management control models.
4. The extended use of audits and external evaluations of the criminal justice system agencies.
5. The incorporation, especially at the police level, of large statistical bases and tools to measure the quality of service, such as ISO standards or similar.
6. The integration to the different criminal justice organizations of professionals trained in the areas of economics, engineering, administrative sciences.

Each of these six elements has contributed in one way or another to allow the subject to whom the criminal system is dedicated to have been reconfigured. It is no longer a criminal system that pivots on the idea of protection of the accused citizen against the power of the State, but it is a system with multiple missions, including that of satisfying various users of the justice system with different interests and most of the times contradictory interests.

### 3 The Emergence of the Client-User Paradigm in Criminal Policy

As we have said before, the “acclimatization” of management concepts from the private sector to the context of the public sector is quite controversial, a much more controversial situation in the context of criminal law due to the nature of the “service” provided, or rather, the social values at stake. In the case of the topic of the user in international literature there is no agreement, so it is possible to observe the use of concepts such as “customer”, “consumer”, “buyer”, “user”, “citizen” and some Anglo-Saxon terminologies such as “stakeholder” and “taxpayer” (Cornejo 2006; Alford 2002).<sup>7</sup> The truth is that in general the reflections made in the public

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<sup>7</sup>In principle, none of the RAE dictionary meanings of the word client is directly acceptable to characterize a service provided by an institution such as the Prosecutor’s Office. The only near meaning would be “*person who buys in a store, or who regularly uses the services of a professional or company*”. Etymologically it comes from the Latin *cliens, clientis*, who was the one under the protection or guardianship of another, whom he listened to, followed and obeyed. “*This sense has changed in modern Spanish: the merchant, the banker, the university professional do not see in the client someone who humbly obeys them, but a person who favors them because they pay for their merchandise or services. However, the ancient Latin denotation is still maintained today in political science, in whose framework are called clients the citizens who turn to politicians for favors, and clientelistic politics, which is based on that type of corrupt relationship, in which the politician lends favors - jobs, promotions, pensions - in exchange for votes.*” On the other hand, the word “user” has three possible meanings (1). That it uses something. (2). Said of a person: That has the right to use something foreign with a certain limitation. (3). Said of a person: That, by governmental concession or by another legitimate title, enjoys a use of water derived from public current. (DRAE 2018; <http://etimologias.dechile.net/?cliente>; <http://www.elcastellano.org/palabra/cliente>). (Writer’s translation and interpretation, from spanish original).

sector (Subirats 1994; Fiorentini 1990; Barzelay 1992, 1998) Chias (1995, pp. 32–34), tend to be quite critical of the use of the client concept, user or managed, preferring that of citizen.

For example, Barzelay (1992), argues not to recommend the use of the word client in the public sector, which in many situations “client” is more than pure rhetoric, since it is a concept that structures arguments to achieve objectives and lines of action. The author indicates that the use of the term client promotes a high level of confusion and pseudo-interpretations, since it invokes very diverse concepts such as user, beneficiary, fundraiser, co-producer and, citizen-owner.

If we assume the concept of customer-user as a consumer, it leads us to the idea of the interaction between the subject and the companies through the use of price markets. Even considering how debatable the consumer assimilation might seem, it could serve as an explanation for the introduction of the concept of “customer satisfaction”. On this, Cornejo (2006), citing Kelly (2005) and Moore (1998) points out:

“In the public sector, the ability to satisfy the user has important differences. Moore (1998) points out that the emphasis on public sector users presents the problem of identification. Obviously, the users of public bodies are citizens. While observing institutions oriented to the provision of services and benefits of citizens, it is possible to carry out the exercise of identification, segmentation and evaluation, however, public bodies also impose obligations on citizens based on the public interest and not the private interest of the obliged citizens. In this case, it is not possible to use the criteria of user satisfaction. This situation has been called the *dissatisfied consumer dilemma* in a market model for public administration. (Cornejo 2006, p. 7).” (writer’s translation and interpretation, from spanish original)

In summary, as indicated by Chias (1995, p. 33), citing Fiorentini (1990), the concept “citizen-client” is related to a citizen with a high discretionary and substitute power when choosing a service, in a context of free and competitive exchange. That is, a situation in which the citizen can choose between public and private options. But in the criminal sphere, said “high capacity for choice” is non-existent, simply because there is no market as in the private sphere, despite the economically focused efforts to give a market shape to something that clearly cannot have it.

The truth is that in practice the term is used with some lightness, and neither the uses of international organizations as the OECD, nor the language used in organizations to spread the principle of the quality of service to the user, finish clearing up the doubts. In any case, the nomenclature that is preferred over others is that of “client-user”.

In sum; Is it acceptable to assume, in order to understand the word client or user, that the criminal system is a market and that the Prosecution conceptually is “a company”? Be that as it may, the word client is inevitably linked to the world and the vision of private business. Perhaps, the concept of client makes some sense in the field of the defense, as a legal benefit of being defended in a lawsuit, but not in the Office of the Prosecutor, which does not defend particular interests but social

interests through public criminal action, as mandated by law and the Constitution.<sup>8</sup> On the other hand, the concept of “beneficiary” is only understandable under a very broad conceptualization of “provision” of services, which obviously does not help to clarify this issue either.

As indicated earlier, perhaps all of the above could be understood as another expression of the prominence that the victims, in this case their empowerment as “consumers” of a product, have assumed in contemporary criminal systems. The truth is that the literature on this subject usually refers to the victims as a pressure group for the configuration of the criminal policy (Garland 2001). But in this case the relevance of the victims would already be given or encouraged by the institutions of the criminal system, through the customer orientation paradigm, without the need for external factors. Thus, the idea of consumer rights through the rights of the victim has been innocently introduced into the criminal system through the use of ambiguous and managerially symbolic language. This incrustation has occurred especially in the organizational dimension of the criminal justice system, and then moved to the substantive and procedural legal-criminal sphere, digging into specific punitive sections. It is, therefore, a way by which victims and other users, under the guise of the client-user idea, have ended up colonizing, without intending to, important sectors of political-criminal discourse.

A possible political-criminal hypothesis is that, under this conceptual arrangement, it really underlies the claim to build a favorable platform to facilitate the entry of various elements of the provision of private services, such as customer loyalty, the privatization of accessory services, customer service models, the “suggestion” to always listen to the customer or consumer, customer portfolios, concepts of complaint and claim management, market segmentation, or outsourcing of organizational operations that aim towards customer satisfaction such as call centers, among others.<sup>9</sup>

The foregoing, in principle, is perfectly subsumable in what is theoretically called the client paradigm in public management. This paradigm, among other things, accounts for the rhetorical power of the concept of client, by introducing the idea of learning in the organization, based on market (customer) requirements. In this way, customer preferences could play a fundamental role in defining the public good, and consequently be relevant in setting organizational objectives (Richards

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<sup>8</sup>Article 83.- *An autonomous, hierarchical body, with the name of Public Prosecutor's Office, will exclusively direct the investigation of the facts constituting the crime, those that determine the punishable participation and those that prove the innocence of the accused and, where appropriate, exercise public criminal action in the manner provided by law. Similarly, it will be up to it to adopt measures to protect victims and witnesses. In any case, it may exercise jurisdictional functions.*” (Political Constitution of the Republic of Chile). (writer’s translation and interpretation, from spanish original).

<sup>9</sup>A remote case of this is, for example, Law 20,861 referring to the Criminal Analysis Unit of the Chilean Prosecutor’s Office. This uses the concept of “criminal market,” a clearly managerial reference, which we interpret, linked to diversity and the segmentation of crimes. Nor are references to “client portfolio” concerning users of the criminal system infrequent.

1994). In short, we would not be so distant from a kind of clientelism, personalization or customization of criminal justice, which would be inextricably linked to the idea of productivity and efficiency. Both objectives could be organizationally stimulated and achieved through the search for what the client requires, and how criminal policy should behave.

#### **4 Materialization of the Client-User Paradigm in the Criminal System**

As previously indicated, the materialization of the client-user paradigm in the criminal system is mostly noticeable in the criminal justice system, the reason for this is because in that place a large number of interfaces between criminal institutions and citizens (customers-users) are generated. It is precisely at the stage of secondary criminalization (implementation of the criminal law) where it is possible to measure citizen satisfaction with criminal policy. Here it is also more obvious to observe the debates regarding cost-benefit feasibility, management modeling, reorganization, statistics, process management, etc., issues, than in the primary criminalization phase (definition of crimes) or in the tertiary criminalization phase (execution of sentences and post-trial periods), although it exists, its presence for now seems less intense.

However, within the criminal justice system, the client-user paradigm is most noticeable in the Prosecutor-Police tandem and in the way in which access to justice is managed in the Judiciary sphere. For the purposes of this article, we will focus on describing how a political-criminal culture focused on the client-user has been installed in the Chilean Public Ministry. Which does not mean that this process is not happening at the level of the police or the Judiciary power, in fact, this last institution is one of those that develops the most avant-garde policies in this regard.<sup>10</sup>

Undoubtedly, one of the factors that has prompted criminal institutions to introduce this new paradigm is the claim to improve their image in front public opinion and, especially, in front of their users. This fact is manifested in their strategic plans, in their stated objectives or even in their public accounts. Thus, for example, the Public Prosecutor's Strategic Plan for the years 2016–2022, establishes as objective “a better relationship and attention with our users”. This was reaffirmed in the public account of the year 2018, textually the National Prosecutor indicated:

Last year, we executed our second Annual Institutional Plan, based on the lines of work contained in our 2016-2022 Strategic Plan. In that context, today I can report that we reach one hundred percent compliance in the nine initiatives we prioritized for 2017. In this way:... 6.- We improve the Information System and the User Service System, with adjustments in the protocols of attention and the implementation of new features of the

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<sup>10</sup>A current study that addresses the organizational areas of the Judiciary in Chile can be seen at: [http://decs.pjud.cl/documentos/descargas/Estudio\\_Modelo\\_Orga\\_\\_nico\\_Final.pdf](http://decs.pjud.cl/documentos/descargas/Estudio_Modelo_Orga__nico_Final.pdf).

"My Prosecutor Office" portal, among other advances.<sup>11</sup> (writer's translation and interpretation, from Spanish original)

But the general factor of this process has been the reforms of the State, or it can be said that this general factor is the general plan of modernization of the State of Chile. These reforms initiated since the beginning of democratic governments have tended to a systematic effort to improve the quality of service and user care in public administration. Thus, for example, Supreme Decree No. 680 of 1990, of the Ministry of Interior, approved instructions for the establishment of Information Offices for the public user in the State Administration. Later these offices would evolve into the so-called OIRS (Information, Claim and Suggestions Offices), over time, all of the above, was enhanced with the emphasis placed on the simplification and elimination of procedures taking advantage of the emergence of the technologies of the information and communication (TIC), becoming part of the digital government agenda. (Cornejo 2012).

Although today we can clearly see that the last two strategic plans of the Prosecutor's Office the former (2010–2015), and the one currently in force (2016–2022), highlight the importance of the user within the Public Ministry's plans, the truth is that this was already embedded in the early organizational stages of the Chilean criminal procedure reform and especially in this institution. Although the concept or word "customer" is used less and less regularly, the management aspect of the model persists.

One of the first fully managerial documents where the client-user paradigm is embodied in the Prosecutor's Office, does not emanate from the implementation of a specific model of customer service, but due to the "organizational experiment" of installing the Balanced Scorecard (BSC) in the Public Ministry of Chile.

The Balanced Scorecard or *Cuadro de Mando Equilibrado (CMI)*, as it is also known in Spanish, is inserted into what is called the management control area, and broadly consists of "in the use of a comprehensive performance measure to control and readjust the strategy. In addition to the financial perspective, it incorporates that of the client, that of internal operations and that of innovation and learning"<sup>12</sup> (Durán-Pich 2010, p. 436). To implement this model its creators (Kaplan and Norton 2004, 2013),<sup>13</sup> designed a series of indicators in four areas: (1). Financial perspective; (2). Customer perspective; (3). Perspective of internal operations and (4). Perspective of learning and innovation. In this way, by connecting and linking the indicators of one area with those of the others, it is possible to determine the results

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<sup>11</sup> [http://www.fiscaliadechile.cl/Fiscalia/Cuenta\\_Publica\\_Fiscal\\_Nacional\\_2018.pdf](http://www.fiscaliadechile.cl/Fiscalia/Cuenta_Publica_Fiscal_Nacional_2018.pdf).

<sup>12</sup> Writer's translation and interpretation, from Spanish original.

<sup>13</sup> The origin of this line of scientific management was the product of an article by Robert S. Kaplan and David P. Norton published in the Harvard Business Review in 1992. In this work, it is related their experience related to a project at Nolan Institute on "measurement of results of the companies of the future". Subsequently, given the success of this publication and its successive expansion, they decided to launch a book called *The Balance Scorecard* (1996) and to this day it is almost a working manual for many types of organizations, both private and public.

of the organization and see how value is being created towards the future (Durán-Pich 2010, p. 441).

At present, the BSC is applied in multiple areas of the public sector,<sup>14</sup> and at international level there are several criminal justice institutions (prosecutor offices, courts or police) where it is increasingly common to observe it. In the case of the Chilean Public Prosecutor's Office, this institution launched, in the first decade of this century, a pilot program called: "Implementing directive guidelines for the Prosecutor's Office, with correlated indicators under the Balanced Scorecard methodology"<sup>15</sup> (Lillo and Godoy 2006). In this report, the authors, both officials of the Management, Evaluation and Control Unit of the National Prosecutor's Office at that time, discuss the vision, advantages and methodology necessary to apply the BSC in a Prosecutor's Office. According to this document, the orientation that this scorecard should have is towards the user and with results adjusted to the law. In this study, the organizational "positioning" that the institution intends towards direct users is evident, and the inconvenience of not proceeding in this way would be that these users would foreseeably not cooperate in clarifying the criminal acts.

In much more specific terms, this report establishes that the advantages for the Public Prosecutor's Office of applying the BSC would be: "1) .- It allows communicating to all the organization's officials the issues that are important for a regional prosecutor's office (mission, vision, objectives by area) 2) .- It helps to internalize a work culture based on superior objectives, therefore it generates teamwork. 3) .- Balances public management between immediate action and the preparation of the future. 4).- It allows a systemic and comprehensive analysis of the indicators defined by the institution."<sup>16</sup> (Lillo and Godoy 2006, p. 4).

Beyond the managerial rhetoric used in this document, the relevant aspect is that through this methodology the Chilean Prosecutor's Office, even today, with certain nuances, establishes its evaluation band and management indicators. The authors themselves conclude: "We can point out that this management control model is applicable to a public institution whose mission is criminal prosecution, since it is a powerful and modern methodological tool to design and control the objectives in each of the areas of the organization"(Lillo and Godoy 2006, p. 14). Evidently, the use of the BSC provided an explicitly managerial tool for the Prosecutor's Office. This is relevant for our work two reasons: first, it makes clear the customer-user orientation philosophy in this type of organizations,<sup>17</sup> and second, it is a document

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<sup>14</sup>Another of the public sectors where this phenomenon is also observed is in the field of public health. A study on the applicability of the BSC in 57 hospitals of high complexity in Chile verified the improvement of their management, at least in costs, goal monitoring and process standardization. (Leyton et al. 2015).

<sup>15</sup>Its use has varied over time, but for example, the Public Prosecutor's Strategic Plan (2010–2015) assumes this language. In the Lillo and Godoy Report (2006) it is understood as a client; "Those direct users, that is, those who participate basically as intervenors in an illicit".

<sup>16</sup>Writer's translation and interpretation, from Spanish original.

<sup>17</sup>The Strategic Plan of the Public Prosecutor's Office –SPPP– (2010–2015, pp. 13 and 34), refers to the citizen user of a prosecution service in the following terms: "Customers, Users and / or



that comes from one of the most important institutions of the criminal system; The institution itself is also a faithful reflection of the administrative criminology set in motion.

As previously stated, over time this paradigm materialized in a model that tends especially towards the evaluation that clients-users-beneficiaries make of the criminal justice system. In order to implement this evaluation model, two organizational tools are currently used, both supervised by the Victim and Witness Attention Division (VWAD). The consecration of these tools is observed in the strategic objectives of the Public Prosecutor's Strategic Plan (PPSP) corresponding to the years 2009–2015 and in the 2016–2022 Strategic Plan. The specific objective indicates: “to improve the perception and satisfaction of the users, through the implementation and consolidation of a model oriented to a timely attention and that generates channels of reciprocal communication between the institution and its users, specifically, the victims and witnesses.”

1. The first tool is the so-called OPS Model (Orientation, Protection and Support). “This general model of user care of the Chilean Prosecutor's Office allows the generation of specialized lines of intervention with specific procedures in all the regional prosecutors of the country, for those victims who, due to their condition, nature of the crime, or other situation, require a specialized care and protection, as is the case of victims of domestic violence, minors victims of sexual crimes and complex protection cases. (Public Account VWAD, 2014)”. It is not up to us at this point to assess whether this model is effective and efficient, or if it only constitutes a political-criminal substitute. It is enough for now to mention it as another example of the user orientation of this organization.<sup>18</sup>
2. A second tool is the so-called IUSS model or Information and User Service System. As can be assumed, this model does not originate from the Prosecutor's Office or from public institutions in general. It comes from business quality management practices, which seek to increase competitiveness and meet customer expectations. Consequence of the fact that quality is a strategic factor of the company, ISO 9001/2000 quality standards have been developed, which have also been implemented in the prosecution offices and the police. They imply that

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Beneficiaries are defined as the group of people, organizations or entities that receive or use the goods and / or services provided by an Institution. Likewise, each Service and / or Strategic Product defined by the agency must be associated with a Client, User and / or Beneficiary.” On page 34 it is established that within this nomenclature would be included: complainant, victim, witness, police, auxiliary agencies and the community in general (they are called a priority segment), in the secondary segment we have: superior courts, oral trial courts and guarantee courts, complainant lawyer, public criminal defenders and private defenders and other public bodies.

<sup>18</sup>As with most instruments that seek user satisfaction, this was evaluated by an external company, which concludes that the implementation of this model is satisfactory. In one of its points, it states verbatim “The confidence that the interviewed users have in the Prosecutor's Office stands out, 78.4% of them expressed a favorable disposition to return to declare in the Prosecutor's Office, and 80.4% were favorable to recommend other people to attend to give a statement.” (DAVT Cuenta Pública 2014, p. 3).



the product must be measured with different instruments, such as external audits, always seeking customer satisfaction (Pérez 2004). In concrete terms, the UISS of the Prosecutor's Office tries to cover three areas:

- 2.1. A telephone service area, through an outsourced call center model, which offers, among other services, the information of the cause and its progress. This service is also evaluated, and according to the last evaluation, “71.1% of the respondents managed to solve their requirement by calling the call center of the Prosecutor’s Office. . .” (DAVT 2014).
- 2.2. A second area refers to face-to-face attention. The evaluation carried out in 2014 by an external audit company<sup>19</sup> once again described this program as very satisfactory. This study of the evaluation of the Public Ministry service (2014), specifically assessed the SIAU-face-to-face model, and among its main points we highlight: “The reasons given to satisfactorily evaluate the SIAU Model correspond to the good care delivered (57%), the speed of attention (23%), the clear information provided (22%), the good service provided (21%), the delivery of response or solution to the problem (13%) and the speed of the solution (12%), among other things”.
- 2.3. The third area of the SIAU Model corresponds to the virtual attention space, which consists of a project that addresses the attention through the Prosecutor’s Office website, in what is called “Mi fiscalía en línea” (“My online prosecutor’s office”). The model began operating in 2013 and has served to meet the requests that, under the Transparency Law are made to the institution.

Finally, it is important to add that all the architecture that consolidates the User Service Models and the evaluation of user satisfaction in Chile, is indirectly driven by Law 19,553 of 1998. This regulation transformed the structure of the remuneration of Chilean public employees, because before this regulation the wages were fixed, independent of the performance of the officials. The reform includes an “incentive for modernization” composed of three elements: a base component, an increase in institutional performance and an instrument for collective performance. (Cornejo 2012, p. 6).

Institutional performance is granted in relation to the efficient and effective execution by the Services of the Management Improvement Programs. These programs establish specific objectives to be met each year, whose degree of compliance is measured by management indicators or other instruments. Thus, the goals and their indicators must be linked to the definitions of institutional mission, strategic objectives and relevant products of each service. This management improvement

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<sup>19</sup>The external auditing company that performs this evaluation is one that deals with market research. We refer to GFK-ADIMARK. <http://www.adimark.cl/es/clientes.asp> This evaluation refers to one of the CGI (institutional management commitments) between the Prosecutor's Office and the Ministry of Finance within the respective institutional strengthening plan.

program is enforceable by signing a performance agreement between the Ministry of Finance and the respective service or institution.

In the case of the Public Prosecutor's Office, this is regulated by Law No. 20,240 of 2008 that "It perfects the system of incentives for the performance of prosecutors and public prosecutor officials." Without going into further details of the law, it states:<sup>20</sup>

Article 4.- The institutional management bond will be granted in relation to the execution of an Institutional Management Commitment. The fulfillment of the Institutional Management Commitment of the previous year, will entitle the officials indicated in the first paragraph of Article 2, to a 10.7% bonus, provided that the institution has reached a degree of compliance equal to or greater than 90 % of annual management goals to which it has committed. If said degree of compliance is equal to or greater than 75% and less than 90%, the percentage this bonus will be 5.35%. Any compliance below 75% will not entitle officials to any bonus.<sup>21</sup>  
(writer's translation and interpretation, from spanish original)

The way in which this is made operational is that the Prosecutor's Office annually agrees to certain commitments to comply with the Ministry of Finance, and through external audits the fulfillment of said goals is validated.<sup>22</sup> One of these goals corresponds to the field of "user satisfaction", which to date has been validated with 100% of the objectives met. Therefore, user satisfaction not only has criminal political consequences that we have described, but it is directly related to the remuneration component that public employees (civil servants) of the Prosecutor's Office finally receive. This incentive is called an "institutional bond".

## 5 Conclusions

1. As an object of study: The criminal political analysis to be made about the insertion of the client-user paradigm or any of the managerial transformations cannot be based on the idea of all or nothing. At least in the case of Latin American criminal justice, they are complex changes, because we are facing a delicate criminological context and therefore, the risk of such organizational changes becoming criminogenic factors is high.
2. Models and evaluations with content: The need for modern justice is a reality in Latin America, thus, the relationship of the subjects with the organization does not only have to do with issues of good management, but with the very foundations of a democratic state. This requires that evaluations, especially those carried out by external auditing companies, be carried out considering the greatest

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<sup>20</sup><https://www.leychile.cl/Navegar?idNorma=268531>.

<sup>21</sup>The performance agreement report is available at: [http://www.fiscaliadechile.cl/Fiscalia/images/home/decreto\\_refrenda\\_informe\\_cumplimiento\\_CGI\\_2017.pdf](http://www.fiscaliadechile.cl/Fiscalia/images/home/decreto_refrenda_informe_cumplimiento_CGI_2017.pdf).

<sup>22</sup>The auditing company that is currently evaluating the agreement is: <http://grupopanal.cl>.

- possible number of dimensions, not only those related to “superficial bureaucratic upgrades” (Vicher 2009).
3. Management by Results (MbR): It is clear that the penetration of managerialism in this field is led by the MbR, but after that, it is possible that politically and criminally underlies a mercantile or marketing idea of the justice system (Garland 2001). For this reason, their transfer must be done in a studied and thoughtful way, the criminal system is complex and errors in their public policies have a cost and damage, most of them irreparable. Badly extrapolated concepts can end up building punitive realities, so you cannot use keywords uncritically when setting up the criminal system.
  4. User satisfaction cannot be the ultimate goal of the criminal system: Criminal organizations should undoubtedly consider the concept of “user orientation”, but not regard this as their criminal political ethos. Institutions, in a context as sensitive as the criminal system, cannot leave much of their mission delivered to what the legitimate subjective perceptions of citizens require. The truth is that these institutions should tend to behave in a technical way and that their organizational behavior is as close as possible to criminal rationality.

## References

- Alford J (2002) Defining the client in the public sector: a social-exchange perspective. *Public Admin Rev* 62(3):337–346
- Barzelay M (1992) *Gestión pública estratégica: Concepto, análisis y experiencias*. El caso IPIA. Instituto de estudios fiscales, Madrid
- Barzelay M (1998) *Atravesando la burocracia*. Fondo de Cultura Económica, México
- Binder AM (2000) *Ideas y materiales para la reforma de la justicia penal*. Buenos Aires, Editorial Ad-Hoc
- Bottoms A (1995) The philosophy and politics of punishment and sentencing. In: Clarkson C, Morgan R (eds) *The politics of sentencing reform*. Clarendon, Oxford
- Brandariz J (2014) *El Gobierno de la penalidad. La complejidad de la política criminal contemporánea*. Dykinson, España
- Bustos-Ramírez J, Larrauri-Piojan E (1993) *Victimología presente y futuro. Hacia un sistema de penas alternativas*. Ed, PPU, Barcelona
- Cancio-Meliá M (2001) *Conducta de la víctima e imputación objetiva en Derecho penal*. J. M. Bosh Editor, Barcelona
- Cerezo-Domínguez AI (2010) *El protagonismo de las víctimas en la elaboración de las leyes penales*. Tirant lo Blach, Valencia (España)
- Chías J (1995) *Marketing Público. Por un gobierno y una administración al servicio del público*. McGraw-Hill, España
- Cornejo M (2006) *Coordinación de iniciativas de atención al usuario en la administración pública chilena*. Documento de trabajo N° 5. Instituto de Asuntos Públicos (INAP), Santiago
- Cornejo M (2012) *Calidad de servicio y atención al usuario: la experiencia del Servicio de Registro Civil e Identificación de Chile*. XII Congreso internacional del CLAD sobre reforma del Estado y de la administración Pública, Cartagena, Colombia, 30 oct. – 2 nov, 2012

- DAVT, Cuenta Pública (2014) Cuenta pública de división de atención a víctimas y testigos de la fiscalía de Chile. [http://www.fiscalia-dechile.cl/Fiscalia/quienes/docu/division\\_atencion\\_victimas\\_testigos.pdf](http://www.fiscalia-dechile.cl/Fiscalia/quienes/docu/division_atencion_victimas_testigos.pdf)
- Díez-Ripollés JL (2004) El nuevo modelo penal de la seguridad ciudadana. *Revista Electrónica de Ciencia Penal y Criminología*:06–03
- Díez-Ripollés JL (2007) La política criminal en el encrucijada. BdeF, Buenos Aires
- Duce M (2009) Reformas a la justicia criminal en América Latina: una visión panorámica y comparada acerca de su gestación, contenidos, resultados y desafíos. In: Dammert L (ed) *Crimen e Inseguridad, Políticas, Temas y Problemas en las Américas*. Flacso Chile-Catalonia, Santiago de Chile, pp 189–224
- Durán-Pich A (2010) El canon del management. Los libros clave. Deusto editorial, Barcelona
- Feeley M, Simon J (1992) The new penology. Notes on the emerging strategy of corrections and implications. *Criminology* 30(4):449–473
- Fiorentini G (1990) *Amministrazione Pubblica e cittadino: le relazioni di scambio*. Editoriale Giuridiche Economiche, Roma
- Garland D (2001) La cultura del control. Crimen y orden social en la sociedad contemporánea. Gedisa editorial, Barcelona
- González C (2018) Gestión, gerencialismo y sistema penal. Editorial BdeF, Buenos Aires
- Harcourt BE (2007) *Against prediction*. University of Chicago Press, Chicago
- Harcourt BE (2013) Política criminal y gestión de riesgos. Editorial Ad-Hoc, Buenos Aires
- Highton E, Alvarez G, Gregorio C (1998) Resolución alternativa de disputas y sistema penal. La mediación penal y los programas víctima-victimario. Editorial Ad-Hoc, Buenos Aires
- Kaplan R, Norton D (2004) Cómo medir el rendimiento en la empresa. En *Harvard Business Review*. Deusto, España
- Kaplan R, Norton D (2013) El cuadro de mando integral/balanced scorecard. Gestión, Barcelona. 2000
- Kelly J (2005) The dilemma of unsatisfied customer in a market model of public administration. *Public Admin Rev* 65(1):76–84
- Leyton C, Huerta P, Paúl I (2015) Cuadro de mando en salud. *Salud Pública Mex* 57:234–241
- Lillo S, Godoy M (2006) Implementar un cuadro de mando para una fiscalía con indicadores correlacionados bajo la metodología balanced scorecard. Documento recuperado desde: [http://www.cejamericas.org/index.php/biblioteca/biblioteca-virtual/doc\\_view/3171-implementar-un-cuadro-de-mando-para-una-fiscal%C3%ADa-con-indicadores-correlacionados-bajo-la-metodolog%C3%ADa-balanced-scorecard.html](http://www.cejamericas.org/index.php/biblioteca/biblioteca-virtual/doc_view/3171-implementar-un-cuadro-de-mando-para-una-fiscal%C3%ADa-con-indicadores-correlacionados-bajo-la-metodolog%C3%ADa-balanced-scorecard.html)
- Maier JBJ (1991) Las víctimas y el sistema penal. *Revista Jueces Para la Democracia*:31–52
- Maier JBJ, Ambos K, Woischnik J (2000) Las reformas procesales penales en América Latina. Editorial Ad-Hoc, Buenos Aires
- Moore M (1998) *Gestión Estratégica y Creación de Valor en el Sector Público*. Ed, Paidós, Madrid
- Osborne DY, Plastrik P (1998) “La Reducción de la Burocracia”, Ed. PAIDOS, Madrid, España
- Ortiz de Urbina I (2003) Derecho penal orientado a las consecuencias y ciencias sociales: El análisis económico de la política criminal. Tesis doctoral. Universidad Complutense de Madrid, Madrid
- Pérez JA (2004) Gestión por procesos. Cómo utilizar ISO 9001:2000 para mejorar la gestión de la organización, Agencia Española para la Calidad, ESIC Editorial, Madrid
- Richards S (1994) El paradigma del cliente en la gestión pública. *Gestión y Análisis de las Políticas Públicas GAPP* 1:5–16
- Riego CR, Duce M (2007) *Manual de derecho procesal penal*. Editorial jurídica, Santiago de Chile
- Rivera-Cira T (2001) Nuevas tendencias y organización judicial en Costa Rica. In: Fuentes A (ed) *Reforma Judicial en América Latina: Una tarea inconclusa*. Institute of Latin American Studies, London. Recuperado de: <http://www.oas.org/jurídico/spanish/publi2.html>
- Shapiro B (1997) Victims and vengeance. Why the victims’s rights amendment is a bad idea. *The Nation* 264:11–19
- Simon J (2012) *Gobernar a través del delito*. Gedisa, Barcelona

- Simon J, Feeley M (1994) Actuarial justice: The emerging new criminal law. In: Nelken D (ed) *The futures of criminology*. Sage, London, pp 173–201
- Subirats J (1994) *Análisis de políticas públicas y eficacia de la administración*. Ministerio para las Administraciones Públicas, Madrid
- Tamarit-Sumalla JM (2006) La victimología: cuestiones conceptuales y metodológicas. In: Baca, Echeburúa, Tamarit (eds) *Manual de Victimología*. Tirant lo Blanch, Valencia, pp 17–50
- Valdivia C (2006) La reforma judicial como política pública. ¿qué podemos aprender del proceso de reforma procesal penal? In: Silva J, García J, Leturia F (eds) *Justicia civil y comercial, una reforma pendiente, bases para el diseño de la reforma procesal civil*, 1st edn. Universidad de Talca, Chile, pp 183–218, [www.puc.cl](http://www.puc.cl)
- Vargas J (2014) Herramientas para el diseño de despachos judiciales. In: Huachaca D (ed) *La reforma procesal penal, cuestiones fundamentales*. Ara Editores, Lima
- Vargas J, Dezhazo P (2005) *Evaluación de La Reforma Judicial en América Latina*. CSIS, Center for Strategic and International Studies CEJA, Washington
- Vicher D (2009) Reflexiones sobre las reformas neogerenciales ¿hacia una nueva reforma administrativa? *Revista Chilena de Administración Pública* (13):53–85
- Vigour C (2006) Justice: l'introduction d'une rationalité managériale comme euphémisation des enjeux politiques. In: *Droit et société*, N°, 6364. Editions Juridiques Associées, Paris