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Administration of justice: an emerging research field

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Abstract

Purpose – The purpose of this paper is to discuss the concept of Administration of Justice as a research field and set out an agenda for future studies that could promote the production of scientific knowledge in this area.

Design/methodology/approach – This paper explores the idiosyncratic features, dimensions of analysis upon the Administration of Justice, states a research agenda and discusses the main challenges on this theme. This paper conceptualizes Administration of Justice as a research field and discusses related phenomena from institutional and economic perspectives on innovation, performance, governance and legitimacy.

Findings – As a research field, Administration of Justice is defined as a set of theoretical concepts, research methods and techniques, aiming to investigate the management processes associated with the use and articulation of resources, knowledge and institutions, at different levels of the justice system, and their influence on the provision of justice in a given social context. As social phenomena, four levels of analysis are proper to investigate the justice system: societal, inter-organizational, organizational and operational. Innovation, performance, governance and legitimacy are central themes of the Administration of Justice and present various gaps and research opportunities.

Research limitations/implications – The main implications is the proposal of an agenda for future studies on the Administration of Justice field, which is an important step in raising awareness of the issue.

Originality/value – Administration of Justice encompasses a growing interest among academics, justice practitioners and public managers regarding managerial and political practices carried out in the justice system. Although relevant, this subject has been scarcely studied by the management community. This paper invites community to adopt an organizational and institutional perspective to Administration of Justice, setting an agenda for future research.

Keywords Public administration, Administration of justice, System of justice

Paper type General review

1. Introduction

Administration of justice is a subject of high social and political importance, linked to the broader field of public administration, but it has hardly been studied, especially in Brazil. A



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well-administered justice system is a civilizing influence and contributes to social cohesion and to the country's social and economic development. In addition, such a system can foster social relations based on ethical and moral values and principles, which include respect for the laws and norms governing social and commercial relationships and recognition of the rights of social groups and individuals (Figure 1).

Although important, this issue has not received proper attention from the Brazilian scientific community that studies public administration. A search carried out on February 16, 2018, in the Directory of Research Groups of the National Council for Scientific and Technological Development (CNPq), using the keyword “*administration of justice*”, returned 15 active groups in Brazil, eight linked to the area of law, four to sociology, one to history, one to political science and one to administration. Another search carried out on the SPELL database, www.spell.org.br, on 16 February, 2018, using the keyword “*administration of justice*”, for dates between 2012 and 2017, retrieved only 15 articles. These results indicate that knowledge on the subject is not very fully developed.

The present situation indicates that administration of justice faces greater challenges than other topics that are already well-established in the literature, but it also offers numerous research opportunities. The purpose of this essay is *to discuss the concept of administration of justice as a research field and set out an agenda for future studies that could promote the production of scientific knowledge in this area.*

2. The justice system and the administration of justice

Justice is an abstract concept studied in different areas of knowledge including philosophy, law, economics and administration. It is not easy to define justice. According to Kelsen (2000, p. 1), “no other question has been the object of so much intensive thinking by the most illustrious thinkers from Plato to Kant; and yet, this question is today as unanswered as it ever was”. The act of doing justice implies making decisions on the freedom, and often on the life, of human beings. Therefore, at the broader societal level, administering justice involves maintaining the social structure in harmonious operation. As Rawls (1999, p. 3) expressed it, “Justice is the first virtue of social institutions [...] the basic structure of society, the way in which the major social institutions distribute fundamental rights and duties”.

The concept of system – a set of interdependent and recursive elements and subsystems – is important in understanding how justice organizations function, how legal processes are developed and how services of justice are provided. Resolving litigation and promoting social



Figure 1.
Administration of
justice

order involves the orchestrated functioning of various organizations, so that decisions made in one organization influence several others. One could argue that this is true for other social systems, such as economic organizations. However, the concept of system is very important for justice because of the recursive nature of interactions between organizations and the many procedures and resources that go through the various levels of justice.

In Brazil, the justice system comprises many organizations working in very different contexts, according to their constitutional roles and objectives. The judicial branch is the central subsystem, but the justice system also includes the Public Prosecutor's Office, the Public Defender's Office and administrative courts, as well as advocacy, police and prison organizations. In addition, other organizations contribute to the provision of justice services, with specific responsibilities, such as notaries, consumer protection organizations, professional associations and mediation and conciliation bodies. Most of these organizations, especially the courts, police and prisons, are highly institutionalized and legitimated in the sense that their existence and functioning are taken for granted. For this reason, when analyzing the justice system, the terms institution and organization often overlap.

Based on the notion of the justice system, the concept of administration of justice involves different levels of analysis, each dealing with a specific type of issues, problems and challenges. Recognizing these levels is especially important in empirical terms, as it guides the researcher to articulate observations, inferences and conclusions appropriately. For the purposes of this essay, we highlight four levels of analysis in the justice system: societal, inter-organizational, organizational and operational.

The societal level is the broadest and involves the relationships between the executive, legislative and judicial branches of government and concerns about their limits and the requirements for balance between them. At the inter-organizational level, the analysis deals with the arena where negotiations and exchanges take place between justice organizations and between these and other public and private organizations. At the organizational level, the focus of interest is organizational processes and structures, which include the strategic behavior of organizations, their internal and external actions, policies, practices and resources. Finally, at the operational level, analysis focuses on the management of work teams and individuals and material and financial resources.

Considering the specificities of the justice system, and the fact that the term "*administration*" is associated with the functioning of formal social systems in general, we propose the following concept of the administration of justice as a research field: *a set of theoretical concepts and research methods and techniques, designed to investigate the management processes associated with the use and articulation of resources, knowledge and institutions, at different levels of the justice system and their influence on the provision of justice in a given social context.*

3. Theoretical lenses and the research agenda

The research in administration of justice uses theoretical frameworks from several fields of knowledge. We discuss below the application of the institutional and economic approaches to support research on this field. This delimitation is selective and focus on theoretical approaches traditionally used by the administration community and to meet the limits imposed by the size of this essay. These theoretical perspectives help explain phenomena that occur at different levels of analysis, from institutional and legal arrangements to the operational production of judicial cases.

Institutional theories in their different realms – sociological, economic and political – allow us to understand how justice organizations, and the organizational field formed by

them, become institutionalized over time and how this process of institutionalization brings stability and legitimacy to organizations and to the system as a whole. The institutional approach can be used to explain many of the innovations and institutional changes that occur in the justice system. It can also explain the causes of institutional isomorphism, a concept that holds that organizations that are part of the same field tend to become more homogeneous over time, as they experience similar pressures from their environment (DiMaggio and Powell, 1983; Scott, 1995). Institutional theory has been widely used in studies in Brazil (Guarido Filho and Machado-da-Silva, 2010) but has rarely been applied to justice organizations.

Economic theories are also relevant for studying the administration of justice, in particular agency theory, transaction costs and resource dependency theories and, at the strategic level, resource-based theory. These approaches are useful, for example, for research related to governance and performance of courts and other justice system organizations. Guimaraes *et al.* (2011); Akutsu and Guimaraes (2015), Gomes *et al.* (2016); Sousa and Guimaraes (2017) and Gomes *et al.* (2017) have all applied these theories in research into judicial administration.

To provide an agenda for future studies, we suggest that research efforts in the administration of justice should focus on four themes: *innovation, performance, governance and legitimacy*. *Innovation* in justice can be researched from multiple perspectives. Sousa and Guimaraes (2014) reviewed the state of the art of innovation and performance in judicial administration and identified three dimensions of innovation: organizational-managerial, which includes adoption and improvements in management planning, monitoring and control techniques; political-legal, which involves legal changes and procedures of judgement; and technological, mainly involving the use of new information and communication technologies. In addition, there is also institutional innovation, represented by divergent changes that alter the dominant institutional logic in a given organizational field (Battilana *et al.*, 2009). Therapeutic jurisprudence (Winick, 2010) and restorative justice (Menkel-Meadow, 2007) are examples of institutional innovation and represent new justice practices.

Among the different dimensions of innovation, the technological seems to be the most promising. In Brazil, interest in this issue has increased greatly, given the massive investment of Brazilian courts in the acquisition of new technologies, especially after the creation of the National Justice Council (*Conselho Nacional de Justiça* – CNJ) in 2005. In the past, the discussion was dominated by the impact of the adoption of new technologies in justice organizations, especially the introduction of electronic judicial process, creation of online systems, the use of computers by judges and employees and the creation of internet portals. Currently, interest focuses more on the impact of technology on the work of professionals and courts (Wallace, 2017), for example, the use of artificial intelligence in judicial decisions and the use of online dispute resolution mechanisms (ODR).

The essential framework for the development of studies of judicial *performance* in Brazil was provided by the creation of the CNJ and the strengthening of the Justice-in-Numbers database, which, since 2004, has provided a relevant increase in the knowledge about the functioning of the courts. The main emphasis of the studies on this theme has been the measurement of efficiency and the comparison of courts, to identify best practices used by courts. Although this descriptive approach has supported knowledge claims about the justice system in general and about the judiciary in particular, it restricts the analysis to the internal functioning of organizations and does not explain why certain courts perform better than others.

The excessive focus on the internal management of justice organizations to understand and explain performance is a simplistic strategy that ends up generating a distorted view of how and why things happen. It is time to redirect attention to the effects that other social systems can have on justice. For example, it would be desirable that new studies on judicial performance should triangulate data from the justice system with data relating to health, education, safety, demography, economy and labor. The combination of different databases makes it possible to develop explanatory and predictive research models, consistent with the complexity of social reality.

Another option for developing studies on judicial performance is to undertake comparative research between Brazilian justice organizations and justice organizations in other countries. This type of study is scarce in Brazil, so that there are no references to evaluate the evolution of judicial performance in Brazil in relation to performance of other judicial systems. We believe that it is impossible to understand the social structures that shape the operation of a complex organization, like justice organizations, without understanding the functioning of similar organizations in other countries (Chandler, 2014). To understand whether an organization is particularly efficient, fair and accountable, it is necessary to compare it with organizations in other countries.

Governance is the least investigated of the research themes proposed in this essay. Because the concept is very broad and there is interdependence with other subjects, there are many possibilities for research. Akutsu and Guimaraes (2015) suggest that judicial governance includes the following constructs: accountability, access to justice, independence, resources and structure, governance practices, institutional environment and performance. These constructs may form separate research proposals and be researched as part of governance studies.

The great challenge related to judicial governance is to solve the paradoxical problem of the Brazilian judiciary: how to increase access to justice services and, at the same time, meet the demand for these services. That is, how to decongest the courts, increase speed in judicial cases and provide a quality service, while still meeting the additional demand that such improvements will stimulate. It may be more important to understand demand and manage workloads than to improve performance. It may be better to adopt new ways of serving justice or avoid disputes becoming court cases. Future studies could investigate how these issues are embedded in the governance models currently adopted in justice organizations in Brazil.

Finally, *legitimacy* of justice organizations is an important avenue for future research. As Guarido *et al.* (2018, p. 2) argue, justice organizations are nested “by the legal order, but also by the influence of moral and cultural structures of society, which makes them responsive to normative and cognitive aspects of the social context”. Justice organizations are continuously subject to social judgments, whether they are proper, desirable and correct in accordance with the beliefs, values and practices accepted by a broad public (Suchman, 1995, Zelditch, 2001).

The legitimacy of justice organizations is related to authority and a sense of obedience and trust (Friedman, 2016). It is conditioned by procedural, jurisdictional and axiological aspects (Guarido Filho, Luz and Silveira, 2018). Although valid in other national contexts, this is especially true of Brazil, where recent events have shed light on justice organizations and opened a debate about the appropriateness and desirability of practices, decisions and representatives. Future studies could investigate the core objects that are related to organizational legitimacy, the contentious nature of legitimization processes and the discursive efforts advanced by various parties and the influence of the alignment between

4. Concluding remarks and challenges

The administration of justice is an emerging field, because its theoretical framework – objectives, themes, concepts, paradigms and theory – is still being developed. Some general questions that indicate the identity of the administration of justice as a field of research are: Is there a theory of administration of justice? How could such a theory be built/adapted in the Brazilian context? How can theories and concepts from different areas of knowledge be reconciled to advance in the development of theory? And, how could the administration of justice be institutionalized as an area knowledge within public administration field? As [Guimaraes et al. \(2011\)](#) observe, the administration of justice is too important for the society to remain without systematic research into it.

The constitution of a scientific community in this area is an initial challenge. As already noted, there is only one research group dedicated to research in administration of justice in the Brazilian scientific community of administration. Postgraduate programs in this area should stimulate demand and create conditions for receiving and training masters and doctors in the subject. Postgraduate researchers working in the area of public administration could redirect efforts to administration of justice, by submitting projects on this theme to agencies promoting research, teaching and innovation.

These strategies and actions would extend intellectual and technological production, resulting in improvements in the strategies and techniques of administration of the justice system and creating a kind of virtuous cycle. With initiatives like these, Brazil could develop improved capacity for research into the administration of justice over the next decade. As there are already relatively well-developed areas in economics and sociology dedicated to the study of justice, this could also be the case in administration. Administration is an applied area, and research into administration of justice could contribute to both the consolidation of knowledge and the improvement of management practices in justice organizations. These are some of the challenges to be overcome.

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