

The concept of service co-production: proposal for application in the Brazilian Judiciary

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Abstract

Despite the relevance of judicial services for the operation of government and society as a whole, the provision of this service in Brazil has almost no received interest from public administration scholars. In this essay we discuss the judicial services based on the co-production concept, the management models and the mechanisms of user's participation. The purpose of this article is to encourage the co-production of judicial services in Brazil. The work shows how some judicial services are co-produced and how this process could be improved based on the role of judges and managers. Therefore, we offer a set of theoretical propositions to be tested empirically in future studies. We provide conceptual tools to assist researchers in the description, evaluation and prediction of different modes of co-production of judicial services. In addition, we reinforce with managers and members of the Judiciary the importance of strategically considering the experience and participation of users in the production and delivery of services.

Keywords: Judicial management. Public services. Judicial services. Co-production.

O conceito de coprodução de serviços: proposta de aplicação no Judiciário brasileiro

Resumo

Apesar da relevância dos serviços judiciários para o funcionamento do governo e da sociedade como um todo, a prestação desse tipo de serviço no Brasil praticamente não tem recebido interesse por parte de estudiosos da administração pública. Neste ensaio, discutimos os serviços judiciários com base no conceito de coprodução, nos modelos de gestão e nos mecanismos de participação de usuários e prestadores dos serviços. O objetivo do artigo é incentivar a coprodução dos serviços judiciários no Brasil. A pesquisa mostra como alguns serviços judiciários são coproduzidos e como esse processo poderia ser aprimorado com base no papel de juízes e gestores. Para tanto, oferecemos um conjunto de proposições teóricas a ser testado empiricamente em estudos futuros. Fornecemos ferramentas conceituais para auxiliar pesquisadores na descrição, avaliação e predição dos diferentes modos de coprodução de serviços judiciários. Além disso, reforçamos junto a gestores e membros do Judiciário a importância de considerar estrategicamente a experiência e a participação dos usuários na produção e na entrega dos serviços.

Palavras-chave: Administração da justiça. Serviços públicos. Serviços judiciários. Coprodução.

El concepto de coproducción de servicios: propuesta de aplicación en el Poder Judicial Brasileño

Resumen

A pesar de la relevancia de los servicios judiciales para el funcionamiento del gobierno y la sociedad como un todo, una prestación de este tipo de servicio no Brasil prácticamente no recibió interés por parte de los estudiosos de la administración pública. Discutimos no presente ensaio los servicios judiciales con base no concepto de coproducción, nos modelos de gestión y nos mecanismos de participación de usuarios y prestadores de servicios. El objetivo del artículo es incentivar la coproducción de servicios judiciales en Brasil. O trabalho muestra como algunos servicios judiciales son coproduzidos, y como esta coproducción está relacionada con el papel de juicios y gestores. Para tanto, se ha propuesto un conjunto de propuestas teóricas y se ha probado empíricamente en estudios futuros. El trabajo ofrece herramientas para los investigadores auxiliares en la descripción, la evaluación y la preimpresión de los diferentes modos de coproducción de los servicios judiciales. Además, los gestores y los miembros del sistema judicial están alertados de la importancia de considerar estratégicamente la experiencia y participación de los usuarios en la producción y entrega de los servicios.

Palabras clave: Administración de justicia. Servicios públicos. Servicios judiciales. Coproducción.

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INTRODUCTION

This essay focuses on public services, understood as those provided by the State, directly or indirectly, to meet the needs of the society. This includes private concessionaires or permit holders of certain types of services and third sector organizations that collaborate with the government (EVERS, 2005). The judicial services are a specific type of public service, provided directly or indirectly by individuals and organizations that are part of the Judiciary. Despite the relevance of judicial services to the functioning of the country as a whole, the provision of this type of service has hardly attracted interest among public administration scholars.

In this article, we discuss how judicial services are provided and the role of their users in the processes of production and delivery of such services. For this, we use the concept of co-production, in which the user is an inherent part of the production process of a certain service, so that the result of the service depends on a joint effort between producers and users (PARKS, BAKER, KISER et al., 1981). At the individual level, we emphasize the different mechanisms of user participation in the production and delivery of services (BOVAIRD, 2007). And at the organizational level, we emphasize the different modes or management models of the co-production of public services (OSBORNE and STROKOSCH, 2013).

Although the concept of co-production is easily understood in certain public services, such as education, health and social services, since the delivery of such services depends on the presence of the user, in the case of the judicial services its relevance is not so clear. This is because the justice system in general, and the judiciary in particular, are traditionally not perceived as public service providers, but as decision-making centers. And, therefore, they do not depend on the participation of users in the performance of their public functions, except in the case of some special users, such as lawyers, that we prefer to treat here as legal system operators. Thus, the Judiciary organizations treats the citizen user only as an input, i.e. a demand that must be answered.

The provision of judicial services represents a paradox for public managers, since, on the one hand, there is a need to increase the population's access to these services, but on the other, it is necessary to respond quickly and with quality to the enormous existing demand. The need to increase access to justice is one of the central elements of the process of democratization in contemporary societies (MOTTA, RUEDIGER and RICCIO, 2006). Thus, while part of society does not have access to judicial services, generally due to the costs involved, most Brazilian courts are congested, that is, the number of cases awaiting trial far exceeds the productive capacity of the courts (CNJ, 2016). We argue in this essay that the resolution of this paradox necessarily involves a change of attitude by judges and managers of the Brazilian Judiciary in relation to the users. We argue that users' participation in various types of judicial services should be extended beyond the operational level. To this end, the Judiciary actors responsible for designing and planning the delivery of services should create mechanisms that allow participation and, especially, the involvement of users in the strategic levels of decision making.

The change of attitude defended here can be observed in some services created recently that involve different modes of co-production, as it is the case of the special courts for small claims, and, mainly, the alternative mechanisms of resolution of conflicts, like the conciliation (SICA, 2006; Silva, 2018) and mediation (TEIXEIRA, RÊGO and ISIDRO-DA-SILVA, 2016) and judicial arbitration (SILVESTRE, CATARINO and ARAÚJO, 2016). On the other hand, it is difficult to imagine some of the judicial services provided under the concept of co-production, as in the case of ordinary proceedings. However, we argue that several services provided by the Judiciary could be co-produced, with the participation and involvement of users, and this could generate innovative services, which may at the same time increase citizens' access to the Judiciary and reduce congestion courts.

Thus, in order to offer managers of judicial organizations new ways to understand the challenges of the sector, this article has the main objective of encouraging the co-production of judicial services in Brazil. To this end, the following specific objectives were defined: (a) identify and describe the main judicial services provided in the country; (b) classify the judicial services on the basis of the management mode and the mechanisms for participation; (c) identify possibilities for increasing the participation and involvement of users in the design of services based on the profile of the judges and the work of the managers; and, finally, (d) to offer a set of theoretical propositions to be tested in future studies on the subject.

Writing an essay is not a simple task (BERTERO, 2011; BOEGA, MACEDO and SETTE, 2012), especially when one tries to question deeply rooted traditions, rules and institutions, as is the case with the *modus operandi* of the organizations that

form the Brazilian Justice System. Although an essay does not have all the necessary conditions to clarify and explain a certain social phenomenon (BOAVA, MACEDO and SETTE, 2012), it allows the logical transgression of the established understanding regarding this phenomenon. This transgression occurs through a “negative reflection”, which invites the reader to position itself in relation to the arguments developed (MENEGHETTI, 2011). Thus, an essay can be understood as a “critical text, which assumes a position” (BOAVA, MACEDO and SETTE, 2012, p. 2). In this sense, we hope that this essay will prompt readers to rethink the way in which justice services in general and judicial services in particular have traditionally been provided in Brazil.

The text is divided into four sections, in addition to this introduction. In the first section, the theoretical reference is presented, dealing with the co-production of public services; the objective is to indicate what is service co-production and what are the co-production modes and mechanisms described in the literature. The second section presents and classifies the main types of judicial services provided by the Brazilian Judiciary; the purpose is to explain what the judicial services are, how they are provided to the users and how they can be classified according to the concept of co-production. The third section discusses how the co-production of judicial services can be encouraged in the Brazilian Judiciary, offering a set of theoretical propositions regarding the roles of judges and judicial managers. The last section presents the final considerations.

CO-PRODUCTION OF PUBLIC SERVICES

Co-production is a phenomenon that has been explored by public administration scholars. Almost four decades after the initial proposition of the concept of co-production by Elionor Ostrom and colleagues at the University of Indiana, USA (OSTROM, PARKS, WHITAKER et al., 1978; PARKS, BAKER, KISER et al., 1981), the practical and academic interest on the subject has greatly increased. The original idea is innovative and relatively simple: the production of public services requires, in addition to consumption, citizen participation (OSTROM and OSTROM, 1977; OSTROM, PARKS, WHITAKER et al., 1978; PARKS, BAKER, KISER et al., 1981).

There are several concepts of co-production. Parks, Baker, Kiser et al. (1981), for example, define co-production as the work in which the user is inevitably part of the production process, the result of which is the result of a joint effort between producer and user. In the same sense, Brudney and England (1983) define co-production as the coordination of the simultaneous work between the service provider and the individuals (or organizations) considered as users. Edvardsson, Gustafsson, Kristensson et al. (2010) define co-production as the provision of a service with interaction between the client and the professional provider. Etgar (2008) understands the phenomenon as the effective participation of the consumer in the stages of providing a service. Bovaird (2007) understands that co-production is the provision of a service by combining regular and long-term efforts between professional service providers and users. Despite the differences between the concepts, they all suggest that co-production is a phenomenon that reinforces the ability of the citizen to play an active role in the production of public services (OSTROM, 1996; OSBOURNE and STROKOSCH, PESTOFF, 2006, 2014).

The co-production of public services is a concept that has roots in a movement that became known as the new public service (NSP), originally proposed by Denhardt and Denhardt (2003). The NSP is part of an even larger movement, widely recognized as a new public administration (NAP), which is characterized by being a normative model, formed by a set of approaches that defend a vision of the public sphere and its operation based on market principles. NSP theorists argue that public administration should be a co-producer of the public good with citizens and community. This idea is based on democratic and citizenship theories, community and civil society models, radical humanism and discourse theory (ABREU, HELOU and FIALHO, 2013). The NSP contests the dominant theories of public administration, seen as rational management models (DENHARDT, 2012), with several limitations, such as narrow and restrictive view of human reason, incomplete understanding of the process of knowledge acquisition, and theory disconnected from practice (ABREU, HELOU and FIALHO, 2013).

The main approaches in recent studies regarding the co-production of public services differ in relation to the level of analysis, which Pestoff (2014) understands as a distinction between collective and individual acts. At the collective level, co-production involves formal, organized and institutionalized activities carried out jointly by organizations and groups of individuals for the provision of certain public services (PESTOFF, 2014). In this approach, Osborne and Strokosch (2013) presents different co-production modes based on different models of public administration. At the individual level, co-production involves

spontaneous and specific (*ad hoc*) behaviors, results of interaction between users and service producers (BOVAIRD, 2007). In this second approach, Bovaird (2007) suggests a research agenda indicating the types of mechanisms to be adopted for a participate production and delivery of public services. Although the approaches have different focus and level of analysis, both are complementary to understand how co-production occurs in public services. In the following paragraphs, the two approaches are presented and discussed, and their main insights are combined into a theoretical proposal to analyze the judicial services.

Modes of co-production

The combination of ideas from public administration and service management theories allowed Osborne and Strokosch (2013) to develop a typology of organizational modes for the co-production of public services. Such typology is based on the processes of design, planning and delivery of services, as well as the potential for innovation in the service represented by the user's participation. Based on these aspects, three different ways of co-producing public services are offered, as can be seen in Box 1: (a) consumption co-production, (b) participatory co-production and (c) enhanced co-production.

Box 1

Modes of co-production of public services

Modes of co-production	Consumption co-production	Participatory co-production	Enhanced co-production
Condition	Inseparability of production and consumption during the service provision	Participatory mechanisms at the strategic level for planning and designing the service production	Combination of previous models to question the existing paradigm of service provision
Focus	Commitment of consumers in the production and delivery of the service to balance expectations and experiences	Consultations and participatory planning tools	New forms of public services
Level	Operational	Estrategic	Estrategic
Keyword	Recognition	Interaction	Knowledge
Result	User empowerment	User participation	User-led innovation

Source: Adapted from Osborne and Strokosch (2013).

The first mode of co-production, called consumption co-production, originates from NAP's theory of services, an approach that treats the user of public services as a client or consumer. The main condition of consumer co-production is the inseparability of production and consumption during the service provision, a condition that allows consumers to have visibility, even if restricted, in the service delivery process. Although this first mode of co-production does not recognize the active participation of users in the design of services, at least perceives the role of the consumer, which implies increasing users' power (OSBORNE and STROKOSCH, 2013).

The second mode of co-production, called participatory co-production, represents a step forward in relation to the role of the user in the production and delivery of public services. Unlike consumer co-production, user participation occurs not

only at the operational level, but also at the strategic level of the organization, where services are planned. The essential condition of participatory co-production is the existence of participatory mechanisms at the strategic level, such as opinion polls, public consultations, ombudsmen, among others. In this mode of co-production, the key word is interaction (OSBORNE and STROKOSCH, 2013).

The third mode of co-production, called enhanced co-production, integrates insights from the two previous modes to create a new model that, in addition to consumption and participation, enables the user to effectively contribute to the planning, production and delivery of services innovative publics. In other words, it does not only seek to give visibility and power to users, or even to make users participate in the design and planning of public services, more than that, improved co-production seeks to challenge the existing paradigm of production and provision of public services and transform the *status quo*, what Osborne and Strokosch (2013) call 'transformational change'. This change is based on the users' experience and occurs through their participation and guidance in all productive process (user-led innovation). Such transformative change has also been defined as total innovation (OSBORNE, CHEW and MCLAUGHLIN, 2008) or co-creation (e.g. PAYNE, STORBACKA and FROW, 2008; PRAHALAD and RAMASWAMY, 2004).

Co-production mechanisms

Unlike co-production modes, co-production mechanisms do not directly involve the organizational structure of service providers, since the focus is on users, volunteers and community groups that act as co-producers. In this approach, co-production is defined as the provision of public services through long and regular relationships between service providers and users, all of which contribute the resources necessary for the service to be properly provided (BOVAIRD, 2007).

The mechanisms involve the different possibilities of relationship between the professionals providing the services and the users, both individuals and the community. Based on case studies, Bovaird (2007) proposes a typology of possibilities of provision of public services emphasizing the relationship between professional providers and users. Box 2 illustrates the different mechanisms that result from the combination of roles of professionals and users in the production and delivery of services.

Box 2

Mechanisms of production and delivery of public services based on the relationship between professional providers and users

Production/delivery	Exclusive Producing Professionals	Co-production	Non-Productive Professionals
Exclusive delivery professionals	(1) Traditional provision: professionals produce and deliver services (passive users)	(4) Participation and involvement of users in the planning and/or design of services	—
Co-delivery	(2) Users share the delivery of services designed and designed by professionals	(5) Services are coproduced and co-delivered by professionals and users	(7) Users and professionals share the delivery of services not formally planned
Exclusive delivery users	(3) Users deliver professional-designed and planned services	(6) Users deliver co-produced services	(8) Traditional self-organized community production (passive professionals)

Source: Adapted from Bovaird (2007).

In the traditional provision of services (1) public administration professionals, usually middle-level bureaucrats and street level bureaucrats, plan, design and deliver services in an exclusive way. Users play a passive role, only receiving the services.

In the second mechanism (2), users only participate in the service delivering process, since production remains the exclusive task of professionals. In this case, Bovaird (2007) uses the concept of 'co-delivery', in which the service delivery process is shared between users and professionals. In the third mechanism (3), the users that have exclusivity in the delivery of services produced exclusively by public administration professionals. Thus, in these three mechanisms, the co-production does not occur, precisely because there is no participation of users in the production of the services provided, but only in the delivery of those services.

In the fourth participation mechanism (4), as shown in Box 2, users participate in the production of services, although they do not have an effective participation in the delivery process. In the fifth mechanism (5) what Bovaird (2007) calls 'total co-production', the public services are totally produced and delivered by users and professionals (co-production and co-delivery). And, in the sixth mechanism (6), users exclusively deliver services that have been co-produced by them, users, and by professionals. Thus, in these three mechanisms of participation, public services are produced according to the concept of co-production.

The seventh mechanism (7) consists of the co-delivery of services that were not formally planned and designed, that is, professionals participate in the delivery of services that were not produced by them. Finally, in the eighth mechanism (8), what Bovaird (2007) calls 'traditional community production', communities would be self-organized in providing services to their members. It is worth noting that the author does not mention a ninth possibility, which would be the exclusive delivery by professionals of services that were not produced by them. This is because no illustrative examples of this situation were identified in the context in which the classification was drawn up. Bovaird (2007) provides illustrative examples of each of the mechanisms presented, all of which relate to public services provided in the United Kingdom.

Although the examples used by Bovaird (2007) refer to a context quite different from the context in which public services are provided in Brazil, the combination of the two classifications - co-production modes and mechanisms - results in a powerful tool that can be used to classify the judicial services in Brazil. In the following section, the main judicial services are presented and classified according to the management model and the users' participation.

CO-PRODUCTION OF JUDICIAL SERVICES IN BRAZIL

The Judiciary is a part of the Public Administration, and its interaction with society, when deciding conflicts, represents one of the most important types of public services, which we call here judicial services. Resolving litigation is a constitutionally attributed function of the Judiciary, in which its members must act to serve public interests and are even borne by the State for this purpose (DI PIETRO, 2015). Some authors (MASAGÃO, 1968; MEIRELES, AZEVEDO, ALEIXO et al., 1996) understand differently, and, instead of considering the Judiciary as a service provider, maintain that the institution is much more a decision-making center, and that the authority of the judges withdraws from the judicial activity. We understand that, just as in health, education and security services, the Judiciary exists to meet a specific set of social demands in the form of public services - essential for the functioning of the country. In summary, we have no doubt that the Judiciary is an institution that provides services to society and, therefore, should be thought and managed as such.

After the Federal Constitution of 1988 (BRASIL, 1988), the role of service provider has been increasingly reinforced in the Judiciary, mainly due to the dramatic increase in social demand for justice. The number of lawsuits awaiting trial in the Brazilian Judiciary is so great that if the new lawsuits were interrupted, it would still take almost three years for the judges to judge the current caseload, considering the current levels of productivity (CNJ, 2016). However, despite the increase in the demand for justice in the last three decades, what is more representative for the congestion of the Judiciary are the services demanded by the State and a small group of companies from the banking and telecommunications sectors (CNJ, 2012).

Another important aspect of this discussion is the increasing judicialization of conflicts in Brazil, especially the judicialization of public policies. This judicialization refers to a new statute of fundamental rights that provokes an amplification of the courts' intervention powers in the social, economic and political arenas, through the effective participation in the process of

formulation and/or implementation of public policies (MACIEL and KOERNER, 2002). Judicialization represents, on the one hand, an expansive movement in civil society, resulting in a democratizing impulse (VIANNA, 2013). But, on the other hand, it represents a widespread distrust of traditional representative institutions (FILGUEIRAS and MARONA, 2012). Regardless of what the phenomenon of judicialization represents, the fact is that it further increases the demand for judicial services in the country and, consequently, the overload of judges and courts.

Judicial services are a specific type of justice services, since the latter are broader, as they involve, in addition to services provided by the Judiciary, services provided by other organisations of the justice system, such as the Public Prosecutor's Office (MP), policies organizations and the prison system. Here, judicial services are understood as all those provided directly or indirectly by the various organisations of the Judiciary. It is a peculiarity of the judicial services that they can only be provided if provoked by the interested parties, since it is forbidden for judges to act *ex officio*. The relationship between the individual reached by the provision is not always voluntary, and coercive actions are common, as in the case of prisons. The cost of the judicial services is assumed in part by the litigants, through the payment of legal costs, and partly by the State itself. In some cases, the law guarantees gratuity for people who prove economic incapacity.

Another peculiarity of the judicial services is its strict link to the so-called due process, that is, a succession of procedures provided by law, which must be adopted prior to the resolution of the conflict, otherwise the acts will be invalidated later. The most well-known constitutional guarantees are the ample defense, the contradictory and the right to request review of decisions contrary to the interests of those affected, in the so-called judicial remedies (TUCCI, 1992). The linking of judicial provision to judicial proceedings may result in certain judicial services with a marked formalism, which in turn may reinforce the slowness of judicial provision, resulting in cases whose judgments may drag on for years or even decades.

The most judicial services are provided directly by judges. The judge is a public servant who has legal powers and prerogatives to interfere in fundamental aspects of the persons' life, the functioning of companies and State, freedom, property, secrecy, family matters, matters economic and trade relations, labor relations, elections and public policies (LOPES, 1984). Despite the importance of these professionals, the judicial services are not limited to the performance of judges. When an issue is submitted and appreciated by the Judiciary, it is necessary to involve, often by legal requirement, another's intervening actors, internal or external to the Judiciary. The Code of Civil Procedure (CPC), article 149, establishes that

[...] are considered as auxiliaries in the judicial services, in addition to others whose duties are determined by the rules of judicial organization, the clerk, the head of the secretariat, the bailiff, the expert, the depositary, the administrator, the interpreter, the translator, the mediator, the judicial conciliator, the partisan, the distributor, the accountant and the regulator of malfunctions (BRASIL, 2015).

In courts and in justice units, judges are supported by auxiliaries who perform tasks linked to the decision-making process (core activity). These auxiliaries normally work in cabinets, performing public service, prior analysis of cases and drafts of decisions, among other judicial activities supporting judges. In addition, judges also count on the support of auxiliaries who manage budgets and human and technological resources (main activity). As a general rule, the legal work is preferably carried out by public servants who have been admitted or appointed to a position in commission. Less complex services can be performed by outsourced agents and/or trainees (WAGNER JUNIOR, FREITAS JUNIOR, VALLIM et al., 2006).

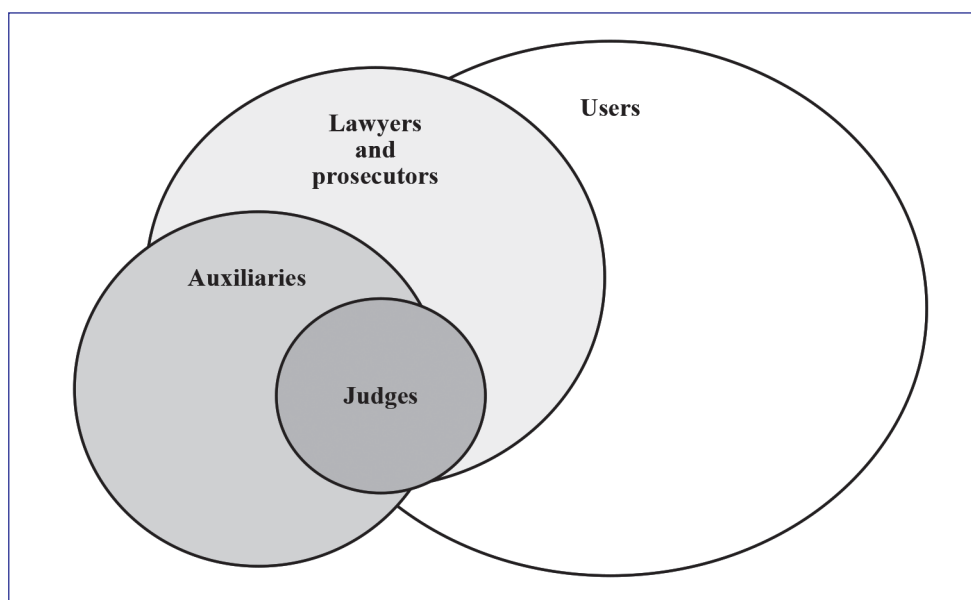
There are actors who do not necessarily integrate the courts, but nevertheless assist in the feasibility of the judicial services. Examples are the expert and the administrator, who may be appointed by judges to perform, for remuneration paid by the litigants, tasks related to the conflicts solution's, assuming the duty of impartiality (WAGNER JUNIOR, FREITAS JUNIOR, VALLIM et al., 2006). Two other key actors in the judicial services are members of the advocacy and prosecutors. Except for the small claims courts, the users can not usually seek or be reached by justice without the intervention of these two actors. Lawyers, also known as judiciary operators, carry out the so-called judicial post, representing the users before judges, presenting defenses, evidence and judicial remedies (LÔBO, 2000). Prosecutors have a dual function: the accusation of citizens who have committed irregularities and the enforcement of laws in judicial proceedings (MAZZILLI, 2007).

The users can be divided into plaintiffs, who seek the judiciary to satisfy their rights and interests, and defendants, who are reached by judicial decisions by interests of individuals such as debtors, or the state, as in the case of criminally convicted. The term 'users' encompass a large number of actors, such as citizens, groups of organized citizens, communities, companies, associations, foreigners, public bodies, etc. Thus, users are all actors who demand some kind of conflict resolution in the Judiciary.

Figure 1 illustrates the positions of the main actors involved in the provision of judicial services. The image shows the central role occupied by judges, since they define the content of the services provided, mainly through judicial decisions. Lawyers and prosecutors, as well as the auxiliaries, play important roles in the production and delivery of services, and are therefore represented with prominent positions. And finally, there are the users, actors for whom the Judiciary exists, but who in Brazil traditionally play a secondary role in the production and delivery of judicial services. Note in Figure 1 the tenuous relationship between judges and users, a situation that, in advance, makes the judicial services averse to proposals involving co-production mechanisms.

Figure 1

Positions among the main actors in the provision of judicial services



Source: Elaborated by the authors.

Direct and indirect judicial services

The legal services can be classified as direct and indirect. Direct judicial services are those executed directly by judges or its auxiliaries, that is, actors directly related to the jurisdictional provision, responsible for the final legal activity. The main direct judicial services are: a) resolution of the litigation by the ordinary procedure, in the different areas: civil, criminal, tax, electoral, military, family, work etc.; b) resolution of low complexity litigation or crimes of lesser potential injury, by special civil and criminal, state and federal courts; c) solving dispute through alternative dispute resolution mechanisms, such as mediation and arbitration, according to CNJ Resolution n. 125 (for review on the theme see MIRANDA and MALUF, 2013); d) information regarding individual and social rights, by television (Justice TV), radio (Justice Radio) and trial sessions (internet court proceedings), among other media; e) information about the progress of the judicial cases through Internet; f) social services named problem-solving courts in countries like the United States and Australia (for a review on the theme see BERMAN and FEINBLATT, 2001; WOLF, 2007); g) homologation of foreign judgments; h) payment of debts of the Public Treasury, through so-called '*precatórios*'; i) definition of the constitutionality of federal, state and municipal laws; j) definition of the legality of

public policies; k) administration of the Judiciary structure; l) internal security services; m) judicial control of the elections; and n) solution of labor union litigation.

Box 3 presents a classification of direct judicial services based on the following criteria: i) intention of the user to receive the service, may be voluntary, involuntary or coercive; ii) contact between the service provider and the user, may be presential or non-presential (non-presential can be by virtual); iii) intermediation actors in the production and delivery of services; iv) co-production mode, may be consumer, participatory or enhanced (OSBORNE and STROKOSCH, 2013); and v) co-production mechanism, may be: (1) production and delivery by professionals; (2) shared delivery; (3) production by professionals and delivery by users; (4) user participation in production; (5) total co-production; (6) co-production with delivery by users; (7) shared delivery of informal services; and (8) self-organized community production (BOVAIRD, 2007).

Box 3

Classification of direct judicial services

Direct judicial services	User intent	Contact with users	Intermediation	Mode of co-production	Mecanism
Settlement of litigation by ordinary procedure	Voluntary or coercitive	Presential	Lawyer, e/ou pubic defensor e/ou prosecutor	Consumer	(1)
Settlement of litigation via special procedure	Voluntary	Presential	Lawyer or without intermediation	Participatory	(2)
Alternative dispute resolution mechanisms	Voluntary	Presential	Mediator or conciliator	Enhanced	(5)
Social services	Voluntary or involuntary	Presential	Lawyer or without intermediation	Participatory	(2)
Information on individual rights	Voluntary	Non-presential	Laws	Consumer	(3)
Information on the progress of cases	Voluntary	Non-presential	Portal on the internet	Consumer	(3)
Homologation of foreign judgments	Voluntary	Presential	Lawyer	Consumer	(1)
Payment of debts of the Public Treasury (<i>precatórios</i>)	Voluntary	Presential	Lawyer	Consumer	(1)
Definition of constitutionality	Involuntary	Non-presential	Laws	Consumer	(1)
Judicialization of public policies	Voluntary or coercitive	Presential	Lawyer, e/ou pubic defensor e/ou prosecutor	Consumer	(7)
Judicial control of elections	Involuntary	Non-presential	Lawyer or without intermediation	Consumer	(1)
Settlement of labor union litigation	Voluntary	Non-presential	Lawyer or without intermediation	Consumer	(4)
Internal security services	Involuntary	Non-presential	Security and/or Police	Consumer	(1)
Administration of the judicial structure	Involuntary	Non-presential	Public managers	Consumer	(1)

Source: Elaborated by the authors.

The indirect judicial services are those executed by other public employees not directly linked to judges. These employees help and support the organization of judicial cases, creating working conditions for judges. The provision of direct judicial services often depends on the provision of indirect services. Examples of indirect judicial services are: (a) restriction of the rights and freedoms of individuals by prison or voluntary service; b) expropriation of assets in public or private auctions, carried out by auctioneer officers or valuation officers; c) administration or custody of assets seized by the administration of the Judiciary, through trustees, tutors, bankrupt administrators and public depository administrators; d) civil marriage; e) legal services carried out by civil registry offices, securities and documents; f) services related to the management of electronic legal proceedings, counting and numbering of physical judicial cases, hearings and sessions of judgment, disclosure and publication of judgments, dispatch of judges' orders and personal citations (communication of procedural acts); and g) organization of general elections, with registration of voters, candidacies and donations.

Box 4 presents a classification of indirect judicial services based on the same criteria presented previously used to classify the direct services (see Box 3). It is worth mentioning that the list of judicial services presented in the tables, direct and indirect, is not intended to be exhaustive, although it brings the main services provided in the judicial units of the various segments of the Judiciary in Brazil.

Box 4

Classification of indirect judicial services

Indirect judicial services	User intent	Contact with users	Intermediation	Mode of co-production	Mecanism
Restriction of rights and freedoms	Coercitive	Presential	Lawyer and/or police	Consumer	(2)
Expropriation of property	Coercitive	Presential	Lawyer, and/or auctioneer and/or Police	Consumer	(1)
Administration of seized products	Involuntary	Presential	Justice assistants	Consumer	(1)
Civil wedding	Voluntary	Presential	Squire	Consumer	(2)
Organization of elections	Involuntary	Non-presential	Justice servants	Consumer	(1)
Notary services	Voluntary	Presential	Registration officer	Consumer	(1)
Cartorary services	Voluntary	Non-presential	Justice servants	Consumer	(1)

Source: Elaborated by the authors.

In some judicial services, users act voluntarily, that is, they deliberately seek the provision of the service, as in special courts, alternative dispute resolution mechanisms and information on rights and progress of proceedings, among others. In this way, it can be said that such services are co-produced. In other services, the users act involuntary, that is, the provision of the service is independent of their provocation or will. Examples are the internal security services of the courts and the administration of the judicial structure. Finally, some services are provided in a coercive way, that is, contrary to the will of the users, as in the case of ordinary processes that involve, for example, sentences of freedom restriction.

The relationship between providers and users, the contact can be presential or non-presential. In some cases, non-presential contact may be through virtual means. Often, this contact between provider and user is mediated by a third actor, an operator of the Law, usually lawyers and/or public defenders. Judges are not required to personally serve the users, but may do so in some cases, such as custody or interrogation hearing (see CNJ resolution n. 213); or when they deem it necessary to demarcate the dispute. The relationship between judges and users is usually mediated by lawyers, prosecutors and servants. When necessary, users seek the help judges' auxiliaries to clear questions, request documents and certificates, among other things.

The relationship between users and lawyers generally occurs through presential meetings, in hearings and in judgment sessions. The intensity of this relationship will depend on several factors, such as the contract between them, the type of judicial case and the economic condition of the user. The presential relationship between judges and auxiliaries is reinforced by the fact that they share the same place of work. Judges, auxiliaries, lawyers and prosecutors are formally related through the judicial process (CNJ, 2013). Even so, it is expected that the judges will receive lawyers and prosecutors, so they can discuss and debate their views on what will be decided. However, the volume of administrative processes and activities often limits the number of presential meetings between judges and lawyers.

The relationship between the actors in the justice system, including lawyers and users, have undergone significant changes recently, largely due to the adoption of new technologies in courts and in judicial units, such as the information and communication technology adoption (CNJ, 2010). The electronic case is present in all segments of the Brazilian Judiciary, at different levels and scales of use. It is hoped that soon this movement of virtualization of Justice will be consolidated, with the complete elimination of physical cases (CNJ, 2010).

It is hoped that the judicial services will be predominantly impersonal, above all because of the importance to ensure that the solutions respect technical criteria of hermeneutics. The Code of Civil Procedure (CPC) and the Organic Law of the Judiciary (LOMAN) require impartiality from judges and their auxiliaries. However, impersonality does not mean total withdrawal from users, lawyers or prosecutors, but the requirement that judges declare themselves unable to consider issues when faced with friends, enemies or relatives, that is, when there is some kind of personal interest in conflict resolution.

Legal services co-produced

A co-produced legal service occurs when users participate effectively in the processes of production and delivery of the service. Among the direct and indirect judicial services presented in the previous section, only three of them can be understood based on the concept of co-production: a) the solution of litigation through special case; b) alternative dispute resolution mechanisms; and c) social services. In other types of service, although there may be some kind of co-production or co-delivery (BOVAIRD, 2007), the participation of users in the production is almost non-existent. One explanation for this is the fact that the Judiciary is a system traditionally closed to social participation, characterized by a professional bureaucratic structure (Mintzberg, 2008) in which services are designed and planned internally by judges and court managers.

Innovations in the Brazilian Judiciary that allowed some participation of users in the production and delivery of services appeared after the 1988 Federal Constitution. An important innovation was the creation of the 'special courts'. Also called Special Courts of Small Claims, the special courts were created by Law n. 9099, September 26, 1995. The special court brought a set of new principles that sought to minimize the procedural structure based on the formalism, hierarchy and rituals of the Judiciary (CHIMENTI, 2005). The purpose of the special courts was to facilitate access to justice by citizens, making the Judiciary faster and more effective. The special courts allowed for the first time the direct participation of the user in the production and delivery of services. Such participation is possible because the services provided in special courts, different from what happens in the 'common courts', do not require intermediaries. However, despite being a milestone in the new position of the Brazilian Judiciary, the special courts do not represent a new paradigm in the provision of judicial services, since they do not significantly alter the way services are produced. Therefore, such services would be classified, according to Osborne and Strokosch (2013), in the mode of participative co-production.

Another innovation in the co-production of judicial services, both in Brazil and in other countries, is the alternative dispute resolution mechanisms, such as conciliation, mediation and arbitration. These mechanisms are increasingly used in the Brazilian Judiciary and seek to prevent disputes in society from being judicialized, so that users can resolve their disputes through an intermediary dialogue. The aim is helping to reach an agreement without the ordinary legal case, which is generally costly, time-consuming and of high psychological cost to those involved. The use of these mechanisms is especially important in the Brazilian Judiciary because of the high congestion that the courts present since they can prevent new lawsuits from being filed.

Reconciliation and judicial mediation are innovations of the Judiciary that involve co-production and are aimed at improving the results of judicial services provided to society (RÊGO, TEIXEIRA and ISIDRO-DA-SILVA, 2016; TEIXEIRA, RÊGO and ISIDRO-DA-SILVA, 2016). These mechanisms consist of hearings in which the litigants, before an officially appointed conciliator or mediator, are encouraged to agree on their disputes, seeking the best solution for all parties involved without a judicial process. The conciliator and mediator have to stimulate communication between the litigants and thereby collaborate to reach an agreement. However, the parties involved are solely responsible for resolving the conflict (CNJ, 2014). Resolutions of the CNJ orient the formation of conciliators and mediators for the service and indicate the need for adequate infrastructure so that the services are provided in the best possible way (SILVA, 2012).

Finally, another example of innovation in the Brazilian judiciary, which also involves co-production mechanisms, is called social services. There are several terms used to describe the social services provided by the Judiciary, such as 'therapeutic justice' and 'restorative justice'. This social service provided by judges and courts is usual in many countries, such as United States, Canada and Australia, where they are called 'problem-solving courts'. Such innovation alters and expands the traditional role of judges and courts. In the provision of social services, the Judiciary seeks to act directly in solving specific social problems related to, for example, drugs, child abuse, reintegration of ex-prisoners into society, prostitution, among others. Such problems are often not faced by the executive branch, either by omission or lack of capacity. The provision of social services by judges and courts involves co-production and co-delivery since the actions and strategies to be implemented are defined both by individuals and communities. It also involves a new professional attitude on the part of the judges, named by some authors of 'social activism' (RUDES and PORTILLO, 2012; WOLF, 2007; BERMAN and FEINBLATT, 2001; GOMES, GUIMARAES and SOUZA, 2016).

Those presented innovations are important to discuss the concepts of co-production in the Brazilian Judiciary; however, we understand that they represent only the beginning of a new era. What needs to be done is to enable the construction of new judicial services based on co-production. Of course, it is difficult to imagine the main judicial services being coproduced and/or co-delivery in the Judiciary, such as, for example, the resolution of disputes through ordinary procedure. This is a task that, by law, lies exclusively with the judges, so that it makes no sense to imagine judges sharing them analyzes, reflections and decisions. However, the format of several other judicial services could be changed to be provided on the basis of the concept of co-production. Although there are several difficulties related to this challenge, two essential points need to be emphasized. The first is the role of the judges and the relationship of those professionals with the users in the provision of services; and the second is the role of court managers. In the following section, these two points are discussed in order to pursue ways to increase the co-production of judicial services in Brazil. As a result of this discussion, a set of propositions are offered to be tested in future studies.

HOW TO INCREASE CO-PRODUCTION IN JUDICIAL SERVICES?

An important aspect to be observed for increasing the participation of users in the provision of judicial services is the profile of the judges and the social role that they represent in the community. Judges are responsible for a large part of court performance and the essence of judicial service provision (GOMES and GUIMARAES, 2013). While there are other important actors in the production and delivery of judicial services, it is judges who make the decisions that define the content of most services. Although many judges do not recognize their role as a service provider, the judicial system relies on work of these professionals.

Judges can only decide conflicts if provoked by users or their legal representatives (lawyers, public defenders or prosecutors), so that the understandings adopted by the judges are not usually created directly by them but are born of confrontation between theses presented by plaintiffs and defendants. Thus, judgments result from the analysis done by the prosecution and the defense and of the testimonies and evidence presented by the parties involved in the legal proceedings (SALGADO, 2006). Even with these caveats, the judge has a considerable impact on the way that the legal services are provided. Obviously, the way a judge acts depends on your professional profile.

Gomes, Guimaraes and Souza (2016) investigated Brazilian state judges and elaborated a typology based on the relationship between the social role perceived by these professionals and their motivations. Four profiles were identified: a) social activist; b) service provider; c) judicial interpreter; and d) defender of the *status quo*. Judges classified in the first profile, social activists, are motivated by the possibility of doing social justice, and the values most shared in the work involve the search for a more just and egalitarian society. This is the only one of the four profiles with the potential to create innovative user-oriented services, as defined by Osborne and Strokosch (2013). The second profile, service provider, consists of judges who seek to provide the judicial services with efficiency and quality, and the greatest motivation is to be socially useful. Although committed to the provision of judicial services, thus representing some potential for co-production, the judge classified in this second profile tends to focus on improving existing services, considering the user as a client, usually as a passive receiver of the service.

The third profile, social interpreter, is represented by judges who act in a restricted way in the application of the law. The performance of these judges is oriented by legal formalism, and the main motivation is career growth. Finally, in the fourth profile, called defender of the *status quo*, are the oldest career judges, already established in professional terms, and who may therefore tend to be unprepared for significant changes in the role represented. Judges of this latter profile seek mainly stability and social recognition (GOMES, GUIMARAES and SOUZA, 2016). In summary, the first two profiles represent potential for changes in the provision of judicial services based on user participation, and the other two profiles act with a narrow focus on normative and political aspects of the profession, with little or no consideration for the provision of services and the role of the users, considered as passive actors, who only receive and comply with the services provided, or use the results of the services according to the law.

This classification of the judges' social role can help understand how these professionals perceive the provision of the judicial services. Even considering the Judiciary an institution usually designated as averse to change and innovation, the profile of each judge can be an important indicator of how they perceive the role of the user in services. Each profile tends to perceive the user in a different way, from a passive role to an effective role, with the capacity to strategically influence the services provided, either through incremental improvements or paradigmatic changes. Thus, it is reasonable to assume that the type of profile has a significant influence on the way the judicial services will be provided. In other words, the way judges perceive and conduct their work is likely to have a major impact on the role of users in the production and delivery of judicial services. This consideration allows us to formulate a first theoretical proposition.

Proposition 1: The role of the user in the production and delivery of judicial services depends on the profile of the judge.

The four profiles presented represent a fundamental differentiation in terms of the judge's professional role. The so-called social activist and service provider profiles are those that have a predominantly focus on solving social problems. On the other hand, the other two profiles, judicial interpreter and defender of the *status quo*, have a predominant career focus. This is an essential difference in the way that judges exercise their professional role, as discussed above. Thus, two other theoretical propositions suggest that the four judge's profiles have a direct influence on the role that the user will play in the production and delivery of the judicial services.

Proposition 2: Judges who prioritize the resolution of social problems tend to reinforce the participatory role of the user in the production and delivery of judicial services.

Proposition 3: Judges who prioritize strict law enforcement tend to reinforce the passive role of the user in the production and delivery of judicial services.

As for the role of managers, perhaps the main obstacle to the creation of co-produced services is the rigidity of the structure of the Judiciary. The difficulty inherent in public organizations to innovate can be verified in several sectors, but in the Judiciary such difficulty appears to be even greater. The Judiciary uses formal procedures defined in laws that are difficult to change. This ends up making the production and provision of judicial services an ingrained process, with little or no participation of users and intermediaries in the strategic design of services, which inhibits the possibility of the emergence of innovative services, based on the concept of co-production.

Nonetheless, managers working in the Judiciary could prioritize the creation of innovative services based on experience, participation and guidance of users. The experience of users refers to the experience accumulated in previously received judicial services. Participation involves active involvement in the discussions about the delivery of services; and the orientation refers to the possibility that users directly orient the formulators of the judicial services in strategic way, and not only operational. A designing and planning processes of the services which Osborne and Strokosch (2013) call 'user-led innovation'. Thus, as a basis for this premise, a fourth proposition can be offered.

Proposition 4: The creation of innovative judicial services depends on the experience, participation and collaboration of users.

According to the phenomenon known in the literature as 'hollowing out the State' (RHODES, 1994; MILWARD and PROVAN, 2000), public service organizations have lost much of their individual capacity, and the efficiency, effectiveness, and sustainability of these organizations depend on other organizations and individuals operating in the public, private, and third sectors. In this context, public service organizations have become part of a complex system of service, in which success and achievement of objectives depends on negotiations and relationships within that system (MILWARD and PROVAN, 2000). The relationships that organizations need to establish involve other public organizations, policymakers, public service users, citizens, as well as several other stakeholders (OSBORNE, RADNOR, KINDER et al., 2015).

Based on the theory of services (e.g. GRONROOS, 2007), organizations that provide public services are embedded in networks of intergovernmental relations. Such networks are necessary, however, insufficient. These organizations are understood in a broader perspective, producers that operate in complex systems of services, that involves joint efforts of different organizations (OSBORNE, RADNOR, KINDER et al., 2014). In this sense, since the provision of judicial services in Brazil usually involves a large set of organizations, these services can be understood as the result of the operationalization of a very complex system. The Judiciary itself represents a complex system with different segments, specialties and instances. It is even more complex if we observe that many of the direct judicial services, and especially the indirect ones, are produced through the interaction between the organizations of the Judiciary and other external organizations, such Public Defender, law enforcement agencies, civil society organizations, class associations, among others. Thus, because of the complexity of the context in which judicial services are produced and delivered, managers need to be aware of the way services are managed. Based on this need, another proposition is suggested.

Proposition 5: Judicial services are provided by systems and not by individual organizations, and therefore must be managed as such.

Sustainability is an important concept in the management of judicial services by courts. Associated with the premise that services are provided in a system context, formed by several organizations, sustainability means that the production and delivery of judicial services should be based on perennial, long-term relationships (OSBORNE, RADNOR, KINDER et al., 2014). Such relationships, as discussed, involve the judiciary organizations themselves, other public organizations, third sector organizations, and the private sector. For the construction of perennial relationships, it is necessary to represent constantly the several organizations involved in the justice system in the processes of strategic planning, definition of goals and objectives, among others. Thus, these processes must be built in the courts with the active participation of key actors, internal and external to the judicial units.

In Brazil, the management of judicial services has primarily emphasized the internal efficiency of the courts. This is largely due to the work carried out by the CNJ, which established a series of targets to be met by the courts, with the aim of reversing the dramatic situation in terms of delays and congestion. The Justice in Numbers report, published by the CNJ (2016), is an

example of how the judicial management focuses on court efficiency. While internal efficiency is an important component of the management of judicial services, it is not sufficient for services to be co-produced and delivered in a sustainable manner. In addition to efficiency, it is necessary that courts also seek effectiveness, that is, the access and participation of users. In this sense, a sixth proposition is offered.

Proposition 6: Sustainable courts in the provision of judicial services depend on internal efficiency and effectiveness.

If courts want to be effective in providing judicial services, in addition to being efficient internally, it is essential be prepared to innovate in the processes of planning, designing and delivering the judicial services. And one of the important conditions for innovation is precisely the participation and involvement of users. Thus, courts must develop judicial services that, in some way, rely on the experience and knowledge of legal users and operators. This experience can bring managers a different point of view, with elements that point to the emergence of innovative services. In other words, the effectiveness of judicial services depends on a virtuous circle involving the participation of users, the use of their experiences and the design and delivery of innovative services. A seventh proposition is offered.

Proposition 7: Sustainable courts in the provision of judicial services depend on innovation to achieve effectiveness.

In order to enable the creation of innovative judicial services, the main requirement is the participation and guidance of users in the design and delivery of those services, which means that the key element of any process is co-production. As discussed throughout the text, the concept of co-production consists of the idea that the user is an inherent part of the production process, so that the result of the service depends on a joint effort between producers and users (PARKS, BAKER, KISER et al., 1981). Based on the concept of co-production, a final proposition is offered, culminating in the central point of this essay, which suggests co-production as the main source for courts and other judicial service providers to innovative public services.

Proposition 8: Co-production is the main source of innovation and effectiveness in judicial services.

FINAL CONSIDERATIONS

The conceptual work presented in this essay proposes powerful theoretical tools to assist researchers in the description, classification, explanation and evaluation of different forms of co-production of public services. It also assists in the possibility of making predictions about the impacts of these forms of co-production in the planning and provision of public services in general and judicial services in particular. The work is also relevant because it offers a set of theoretical propositions regarding factors that influence the co-production of judicial services, which is an effort to establish a consistent agenda for future studies on the subject.

In addition to the theoretical contributions, this essay offers to policymakers and public service managers a new way of understanding and addressing the challenges that different co-production modes and mechanisms represent for public organizations and their implications for design, planning and delivering of those public services. The co-production of the judicial services can be an important mechanism for coping with chronic problems of the Brazilian Judiciary. The participation of users in the design of judicial services can generate information relevant to create policies aimed at reducing litigation, which could lead to an increase in speed of judicial proceedings, a reduction of congestion in courts and an increase in confidence in the judiciary.

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