



Essay

History Matters: The Institutionalization and Innovation Paradox in the Judiciary

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Abstract: The judiciary is a field lacking research in relation to its administration and innovation; however, different theoretical perspectives can be followed. This work reviews this trend while adding to it. An institutional perspective is presented, as is its explanatory potential. This perspective captures the context of the public sector; however, when analyzing its interpretation in terms of innovation, it is revealed to be doubly paradoxical. From the theoretical point of view, institutionalization focuses on the maintenance of processes, while innovation, gradually or abruptly, investigates their disruptions. Nevertheless, institutionalization can be observed as part of the sedimentation of innovation. Institutionalization is presented, in the context of innovation, as a selection mechanism that shapes such innovation. This paradox is presented under the review of organizational institutionalism vis-à-vis innovation and, for its unfolding, considers the adoption of innovation as an adaptation to the prevalent rationalized elements. This presentation is paralleled with the interpretation that innovation is limited by a structure that, sometimes rationalized, forms its trajectory. Considering the social function of the judiciary that is anchored in institutionalism, historical institutionalism is thus added, centrally placing the judiciary in the current institutional matrix and associating its path dependence with the dimensions of its innovation. Based on these outlines, propositions and a suggested agenda for future research are presented.



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1. Introduction

The institutional analysis of organizations in the public sector is essential for understanding their innovation (Cavalcante and Cunha 2017). Thus, with an extensive and notable repertoire related to institutionalization—one that is suitable for explaining normative influences (Tolbert and Zucker 1998)—the concepts thus derived are taken in accordance with innovation in the public sector. Institutionalization can be understood as a typification of actions that become habits (Tolbert and Zucker 1998), while, paradoxically, innovation in the public sector is related to the disruption of these habits (de Vries et al. 2016; Osborne and Brown 2013) through a process of sudden or gradual maturation.

Institutionalization is a distinctive feature of justice organizations when considered in terms of innovation (Guimarães et al. 2018). This is a paradox that can be explained by a retrospective examination of the judiciary and which collides with an exponent of institutionalization and with guidelines for innovation. This friction could be considered a reflection on the judiciary, which has remarkable potential for improving its system with cutting-edge technologies (Sourdin et al. 2020). Therefore, this essay focuses on outlining perspectives for innovation in the judiciary, particularly exploring the relationship between institutionalization and innovation, in order to unveil the paradox that, we propose, exists

in the judiciary and in turn to propose a research agenda. To this end, the case of the Brazilian justice system and its peculiarities is taken as context, although, considering the nature of the judiciary considered for this study, some generalizations are possible.

Indeed, innovation in the public sector demands an interpretation of its contexts (Djellal et al. 2013; Sørensen 2017), given that institutions are, formally or informally, a structural feature of society that involves groups of individuals, allowing them to predict interactions (Peters 2019). In the search for propositions in this autochthonous sense, and considering the relationship between the environment and the capacity for innovation in the public sector (Lewis et al. 2013), the judiciary emerges as the object of this study—explored, thus far, only in an incipient way (Baptista and Costa 2019). Thus, the innovation paradox gains ground, as innovation is observed to orient toward a maintenance of the status quo in this sector (Motta 2010).

Considering recent social outcry, and due to its relationship with the improvement of public services, of the promotion of citizenship and of confidence in the state, innovation in the public sector has begun to occupy the agenda of both public managers and academics (Isidro 2018). Thus, with a need for innovation in order to foster economic development (OCDE 2007, 2017), and with research gaps in the subject of the judiciary (Sousa and Guimarães 2014), these spaces have begun to be explored. For example, given the relevance of artificial intelligence as an innovation, and its ability to transform society and the public sector, the state has made its implementation an issue of public policy (Cóbe et al. 2020). In the Brazilian case, the judicial system is mobilizing several initiatives for the implementation of this technological tool, allowing one to observe any resulting increases in its effectiveness and quality (Salomão 2020).

Thus, as a brief explanation of the historical–institutional correlation for the Brazilian case, and because it is a notable innovation in its history, the reform of the Brazilian judicial system is presented (Chaves 2022) and institutionalized in a mature way. The Brazilian judicial system has, in an apparent paradox, formal unity and organizational fragmentation, making it unique in its combination of elements from several known models. At the same time that each court has broad administrative autonomy, its own national council (CNJ) has functions that can compete with them. Developments of these peculiarities may be something to consider in other justice systems (Chaves 2022). Furthermore, the application of AI in the Brazilian case is presented in terms not only of the innovative potential it offers for each justice system in the world and its growing application, but also its stage of institutionalization, as evidenced by resolution 332 of the CNJ.

Theoretical tensions, such as those of institutionalization and innovation, are relevant to organizational theories because they contemplate reality in a multifaceted way (Poole and Van de Ven 1989). Therefore, to the extent that the lack of explanation for the situation of innovation in the public sector is recognized (Djellal et al. 2013; Karo and Kattel 2015; Sørensen 2017), and the judiciary as part of it, the noted paradox arises as a tension that is potentially explanatory of its innovation. Thus, while praising the paradox as an expressive alternative for the increase and theoretical dynamism in the field of organizations (Clegg et al. 2020) the strategies used in this study were adapted to navigate between tensions. In this case, the paradox is presented as a proposition that challenges basic belief. That is, though innovation and institutionalization are apparently opposing forces, they can also be seen as embedded within one another. Thus, a theoretical revitalization is first proposed that, though it permeates concepts of innovation in services, understands the institutionalization process to be associated with innovation. It thus positions, as a central background, concepts of institutionalization in association with concepts of innovation in the public sector, the former to position arguments in favor of the proposed paradox and the latter reinforcing this need and evidencing its transposition. In this sense, the theoretical–methodological model of Castro and Guimarães (2019) is especially considered. These studies position the institutional environment as an important dimension of innovation in the judiciary and one which bears its context, as does the work of Meyer and Rowan (1977), which is adapted to include the concept of innovation

in the institutionalization process. This strategy, which was structured from the subsequent session, supports the historical approach.

Next, in order to analyze the paradox from the point of view of the evolution of the judiciary, a historical perspective is presented that welcomes, as an explanatory alternative for innovation in the judiciary, historical institutionalism and path dependence. Path dependence refers to a stability that is built over time and that is derived from efficient institutions that are capable of defining a predetermined structure and thus form a robust institutional matrix, changes to which are dependent upon this logic (North 1990). Thus, the historical dimension that builds the judicial environment is manifested by the perspective of historical institutionalism, as it assimilates, as its basis, all of the political and social heritage reflected in organizations (Guerreiro et al. 2006). History thus becomes a condition of law for innovation in organizations—in this case the judiciary. Historical institutionalism therefore permeates the strategy of mapping innovation from the point of view of the nature of the activities of the judiciary.

The scope of the study proposes an essay-type theoretical discussion, according to the next section, one which considers the nature of the judiciary and which seeks to define the paradox within the scope of its activities. Moreover, aspects of the Brazilian judiciary are presented as an example. These elements are taken up in the last section, which recapitulates the theoretical congruences and, in so doing, seeks to formulate propositions and a research agenda with which to guide the study. In doing this, the study seeks to establish the possibilities that derive from the association of institutional theory with innovation, especially considering the opportunity to do so through a historical perspective that allows us to observe the strong influence that history has in the trajectory of the judiciary.

2. Organizational Institutionalism and Innovation in Services as Perspectives for Innovation in the Public and Judiciary Sectors

Innovation has been theorized with a contextual focus on its application in the private sector, and efforts have been made in this regard. Schumpeter's (1997) seminal work, which originated at the beginning of the 20th century, presented "creative destruction" as a cyclical process of technological replacement that, guided by economic and competitive advantages, drove economic development. Among its numerous developments is the evolutionary theory of innovation (Nelson and Winter 1982), which, in Darwinian terms, equates (a) heredity and genes with the established routine in a set of sequential processes that are shaped by a learning that limits individual behaviors; (b) the principle of mutations to disruption—slow or fast—involved in innovation; and (c) mechanisms of selection to the environment—including institutional—that influence the survival or not of genes—maintained via heredity or mutants. The developments of this theory include the state as a supporting figure to the innovation system, which is still considered from a private perspective (Cavalcante and Cunha 2017). A conception that places the state as a protagonist has been a focus of the latter only in terms of the provision of its services from its organizations. This represents a prominent gap that is gradually unveiled by an approach of innovation in services (Moreira et al. 2020).

Therefore, a useful interpretation, especially when considering the new paradigm of public governance, is one based on the service vision. This logic, in which the service is dominant, is useful because it considers both technological and nontechnological aspects and also because it contemplates the citizen as a cocreator of innovation in the public sector (Desmarchelier et al. 2019). For the development of cocreation, learning is a central construct among the public services provided to citizens (Gallouj and Weinstein 1997). The slowness of judicial decisions and the inequality of access to the services provided consolidate weaknesses in the Brazilian Justice system, which in turn encourages it to innovate (Castro and Guimarães 2019). This phenomenon has been observed through network learning, highlighted in the context of the Brazilian judiciary since the creation of iJusLab—the Innovation Laboratory of the Federal Justice of São Paulo—the first of its kind for this purpose in the Brazilian judiciary (Lunardi and Clementino 2021).

However, studies on innovation in services propose that its theoretical advance should occur considering (a) the result and not the process of its development, (b) that the service is truly new and not an offshoot of an existing service, and (c) that the economic value must be created or not for the interested party(s) (Gustafsson et al. 2020). Recognizing the integration of the citizen as cocreator and the recent academic exploration of the provision of services by judicial organizations, institutional analysis emerges as an explanatory mechanism for its innovation, especially when considering the difficulty pointed out by Gustafsson et al. (2020) in separating conception (outcome) from innovation development (the new service development process and the application of design principles and methodologies). Thus, the processes of creation and dissemination, considering the creation of value for the interested parties, are indicated as necessary for the advancement of the theorization of the subject (Gustafsson et al. 2020).

In this sense of searching for theoretical gaps, Moreira et al. (2020) highlight the potential of studies that consider the founding themes of innovation unfolded in the peculiarities and traditionalism present in the public sector. An outstanding article indicated by this study as establishing a founding theme is one offered by Gallouj and Weinstein (1997). The authors' perspective considers the service as an arrangement of characteristics and competencies which belong to both the client and the provider. However, this theorization does not consider the characteristics of the sector—which influence innovation and need to be unraveled for it (de Vries et al. 2016).

Institutional theory, especially organizational institutionalism, represents studies that contribute to the development of innovation, especially in the public sector. In addition to the contextualization of the sector, inherent to innovation, institutional theory contemplates institutional change as a means by which to explain institutions beyond the logic of efficiency (North 1990)—thus expanding the vision of innovation theory, which has efficiency at its core. There are three main sets of problems that institutional analysis explores: (a) How can institutional change be described? Would it be a genuinely more evolutionary process (small and gradual incremental changes over time) or a revolutionary process (crises that mark major institutional rearrangements)? (b) The mechanisms that explain institutional changes need to be detailed and explored in this sense by the dependence, diffusion and interference of institutions in action. (c) The way in which ideas and interests act differently in institutional change must be investigated (Campbell 2004).

As a central element of public administration, and therefore also of the judiciary, institutions are potentially observable through the institutionalization perspective as shapers of the behavior of political, social and economic actors (North 1990). Institutionalization and its consequences offer relevant perspectives for the analysis of innovation in the public sector, especially because it considers the search for the legitimacy of organizations “both a source of inertia but also a justification for particular forms and practices” (Selznick 1996, p. 273).

However, dynamism and social clamor (Denhardt 2012; Sandel 2020) pose unprecedented challenges to the legitimacy of public organizations (de Vries et al. 2018), allowing them to conduct a paradoxical institutionalization of innovation in the public sector (Hjelmar 2021). In other words, public organizations are oriented toward innovation (de Vries et al. 2018) but consider a limited range of structures, strategies and processes (DiMaggio and Powell 1983). In this sense, the institutionalization process is inserted into the context of innovation as a selection mechanism that shapes innovation, as pointed out by Nelson and Winter (1982).

The seminal contribution of Meyer and Rowan (1977) brings institutionalization closer to organizational theory, raising a paradoxical view that accords with the substance of this essay. Assuming a lack of organizational theory in describing the conditions originating from a rationalized formal structure, the authors propose constructs by interpreting institutionalized organizations as those that, by acquiring legitimacy, survive. In this sense, this starts from the natural social modernization that implies the prevalence of rationalized institutional elements—myths—in communion with the complexity of the network of

social organization and change, so that a formal organizational structure is elaborated and adopted (Meyer and Rowan 1977).

Therefore, the institutionalization of a formal organizational structure is conditional on an adaptation to the existing institutional myths, in parallel with the efficiency of an organization designed to legitimize and perpetuate itself (Meyer and Rowan 1977). Thus, institutionalization is linked to innovation in the public sector, as the latter links innovation to the improvement or implementation of organizational processes, products, procedures, policies or systems in its services (de Vries et al. 2016; Osborne and Brown 2013). To evaluate the stages of institutionalization, Tolbert and Zucker (1998) have presented their comparative dimensions: (a) pre-institutional, (b) semi-institutional, and (c) total institutionalization. The processes begin as habituations in step (a), are objectified in step (b) and are sedimented in step (c). The impetus for innovation is based on imitation in step (a), gains a normative aspect in step (b) and takes on a regulatory aspect in step (c). In this sense, it can be suggested that the maturity stage of institutionalization influences organizations to adopt an innovation.

Institutions are arrangements of “cognitive-cultural, normative and regulatory elements that, together with associated activities and resources, provide stability and meaning to social life” (Scott 2014, p. 56). These elements, considered key in innovation (Vermeulen et al. 2007), consolidate, each in their own ways and sometimes in conflicting ways, a structure of institutional analysis. Institutional analysis considers institutional work, which seeks to understand how actors interact and influence institutions (Hampel et al. 2017).

Institutional work is linked to the understanding of institutional logic, as it contributes to the understanding of the role of actors in shaping institutions. In addition, institutional work is also articulated from the perspective of intersectoral partnerships because it considers that, between different sectors, the actors probably have very distant objectives, resources, capacities and time perspectives and that, when aligned, these build the identity of a coherent partnership. Therefore, considering the interaction between institutions and materiality, institutional work has explanatory potential in organizational studies (Hampel et al. 2017). In addition, institutional work is a relevant research gap in relation to innovation and in the context of institutional entrepreneurship (de Mattos Zarpelon et al. 2019).

There are three pillars of innovation, the regulatory, normative and cultural–cognitive pillars. The regulatory pillar comprises the processes aimed at creating and maintaining rules to influence future behaviors considering, when appropriate, the prediction of sanctions and rewards. The normative pillar addresses these expectations based on the socially diffused morality of what is right and wrong. The cultural–cognitive pillar considers the shared conceptions of social reality associated with the molds of meanings of logics and beliefs (Scott 2008).

In this search for legitimacy, although innovation is not seen as naturally intrinsic to the public sector (Lima and Vargas 2012), the adaptive dimension of institutionalization pointed out by Meyer and Rowan (1977) is present. To bring the citizen to the center of the discussion about the public sector, Mulgan (2007) states that innovation contemplates implanted and useful ideas to create public value. Regarding the characterization of innovation in the public sector, Walker (2006, 2014) contributes to a typology of innovation and the antecedents that are relevant to its implementation.

Innovation in the public sector can be divided into three categories: (a) innovation in products and services, which seeks to meet new demands that impact the technical system of the organization; (b) processes, which affect the relationships of the organization's members and which are focused on the procedural structure and the roles performed; and (c) auxiliaries, which are based on fruitful relationships that are dependent on external actors, whether they are other public or private organizations or even citizens (Walker 2006). However, timely analysis of the antecedents—which are intertwined with meaning—can be attributed to institutionalization both in relation to the conditions and results of innovation

(Tolbert and Zucker 1998). These antecedents can be classified as drivers or barriers according to their four types: (a) environmental, related to the external context; (b) organizational, contemplating culture and structure; (c) those related to the innovation itself, related to its applicability; and (d) individual antecedents, which concern the predisposition of each individual in relation to innovation (Walker 2014).

Innovation in the public sector can be seen as the process of creating new ideas and their implementation for the benefit of society (Bason 2018), ideas that demand a new public service of sufficient intensity to question the legitimacy of the public administration itself, which ideally centers on ethical relationships and obligations, and is able to focus on a public agenda that connects professionals to citizens (Denhardt 2012). This generalized misalignment between administration and politics is also observed in Brazil, whose administration focuses on instrumental aspects of rational management that, abdicating the sociopolitical dimension, compromise democracy (de Paula 2005).

With this dichotomy between administration and politics and the growing dynamism of social demands (Denhardt 2012), the judiciary stands out for its sociopolitical and legal role of protecting minorities and individual freedom as a counter-majoritarian force, as well as for meeting the democratic precepts of respect for the majority, established by the respective constitutions (Sadek 2010). In addition, its varied and specialized activities and the objectivity required in the conduct of its decisions (Pekkanen and Niemi 2012) make it complex and, therefore, a challenge to its innovation (Sousa and Guimarães 2014). This sphere of the legal framework of the public sector—central to the judiciary—is highlighted by Lapuente and Suzuki (2020) who have reported that training in law negatively influences pro-innovation attitudes in 21 European countries.

Several ways of innovating can be applied to the judiciary, among which, in Brazil since the 2000s, there has been a greater implementation of new technologies seeking speed, simplification and expanding access to justice (Gomes and Guimarães 2013). This is especially true with the creation of the CNJ (Chaves 2022). In parallel, artificial intelligence has become consolidated as a global revolution and has been identified as necessary for competitiveness, including in the public sector (Cóbe et al. 2020). As stated by the government of the United Arab Emirates, which established a Ministry of State for Artificial Intelligence in 2017, digital economy and remote work applications were added in 2020 (United Arab Emirates 2021).

This initiative is not an isolated case, as more than 40 countries already consider artificial intelligence to be strategic (Cóbe et al. 2020), though ethical issues occupy the agendas of organizations from all sectors (Mittelstadt 2020). In addition, artificial intelligence has gained notoriety because of the multiple possibilities in which its applications can shape public opinion, such as by highlighting the role of government institutions in regulating the dissemination of information, including the application of AI as a tool in public administration (Gerlich 2023).

In Brazil, for example, and especially in the judiciary, there are AI projects in practically all courts, covering the state and federal levels, as well as all specialized branches. These projects, developed by a team from the judiciary or in partnership with others, have multiplied in recent years, become institutionalized and are shaped by CNJ Resolution 332, which addresses ethical, transparency and governance issues, establishing the interface condition between the systems of the projects (Ferreira et al. 2021). Another incentive for innovation, one that is not specific to artificial intelligence but includes it, is the innovation management policy in the judiciary, which was instituted in 2021 (Conselho Nacional de Justiça 2021).

With the innovation management policy in the Brazilian judiciary, the CNJ instituted Resolution No. 395 of 6 July 2021, which represents an innovation in the scope of judicial governance and considers the following legal and administrative categories: (a) efficiency, (b) planning, (c) democratic participation, (d) sustainable development, (e) citizen participation in public service, and (f) the fundamental rights and guarantees of the federal constitution. To improve the activities of the agencies, another resolution, Resolution 345, aims to encourage the diffusion of a culture of innovation, making these institutes more

tangible by imposing their implementation in the agencies of the judiciary and by updating the competencies of the Innovation and Development Goals laboratory (LIODS/CNJ) as well as the establishment of the Innovation Network of the Brazilian Judiciary (RenovaJud), among other actions (Conselho Nacional de Justiça 2020b). In this sense, this institutional articulation is also justified as an offshoot of the agreement for the implementation of the sustainable development goals of the 2020 agenda in the judiciary and the public ministry (Conselho Nacional de Justiça et al. 2019) and has repercussions on issues related to the use of artificial intelligence, according to Resolution No. 296 of 19 September 2019 and Resolution No. 332 of 21 August 2020 (Conselho Nacional de Justiça et al. 2019, Conselho Nacional de Justiça 2020a). However, although recent innovative advances are recognized in the Brazilian judicial system, it is imperative that advances continue, especially considering the need for access to justice for those who are most geographically isolated, a reality in a country with such an extensive territory (de Moraes et al. 2024).

The solidified correlation between institutionalization and innovation in the public sector is also highlighted in a study by Castro (2019), who investigated it within the scope of the judiciary, which found that, due to its natural normative impetus—as evidenced by Castro and Guimarães (2019)—its degree of institutionalization can be considered high (Tolbert and Zucker 1998). In parallel, and similar to innovation, the institutional perspective greatly contributes to organizational management. This is because it depends on human action, which carries with it cultural and political contexts (Fachin and Mendonça 2003), which in turn are prominent elements in the judiciary and in the implementation of cutting-edge innovations.

Proposing a theoretical–methodological model for innovation in the judiciary, Castro and Guimarães (2019) show that leadership (at the organizational level) is strongly correlated with the institutional environment, which in turn is likely related to the predisposition to innovate. This finding agrees with the findings of Machado-da-Silva et al. (2005). Innovation and institutionalization are linked by the logic of legitimation in the social system, that is, from the demands of the institutional environment and the need for legitimation that pressure and institutionalize innovation (Tolbert and Zucker 1998).

The proposed model was qualitatively tested by the authors through in-depth, semistructured interviews with 23 professionals from the Brazilian justice system who submitted their practices to the Innovare award, and who were working in all regions of the country, including lawyers, public defenders, judges, prosecutors and civil servants. Although the target audience is composed of professionals interested in innovation, there was nonetheless some resistance to the idea of innovation, justified by the high institutionalization of their organizations—observed as a distinct characteristic of other public or private organizations. Among the dimensions, there was a dynamic articulation between them to overcome the barriers that one or the other imposes, though the risk of generalization remains. Gaps were highlighted regarding the perceptions of actors not participating in innovative projects as well as leaders and about the perceptions of users of justice services in relation to innovation (Castro and Guimaraes 2020).

This theoretical–methodological proposition by Castro and Guimarães (2019) evaluates the institutional, organizational, interorganizational and individual levels in relation to the innovation process in justice organizations by identifying and empirically testing the following five dimensions that influence it: (a) institutional environment, the set of socially accepted rules and values to which organizations submit to be legitimized; (b) leadership, individual competence that influences other individuals to achieve certain goals, (c) organizational resources, means available to perform the functions of the organization; (d) cooperative relationships, linkages between organizations with common interests to achieve their goals; and (e) innovative behavior, a willingness to undertake new ideas to contribute to organizational goals. Thus, these dimensions are perceived, along with institutional and organizational pressures—and their ideas, interests and identities (Scott 2014)—and are articulately functional, which conditions actors to innovate.

The institutional environment plays an important role in judicial governance. In the second model, adapted from [Williamson \(1996\)](#) and from the perspective of the judiciary of [Akutsu and Guimarães \(2015\)](#), the institutional environment, through changes in constitutional and infraconstitutional norms, alters governance practices in judiciary organizations as well as, at the individual level, the practices and behaviors of agents. The institutional environment also has a prominent influence, as shown in the figure of the CNJ, which, through normative, regulatory and comparative instruments, exerts pressure on the courts, which, in turn, in the eyes of their judges, see it to some extent as disrupting their autonomy ([Castro and Guimarães 2019](#)).

[Castro and Guimarães \(2019\)](#) thus confirm the link between institutionalization and innovation in the judiciary, agreeing with [Scott \(2008\)](#) when observing that “the legitimacy of new arrangements is socially constructed and reflects a congruence between the behaviors of the legitimized organization and the shared beliefs and values of the social group” ([Castro 2019](#), p. 74) that, sometimes legitimized, take ontological form, influencing new rearrangements. This is also in accordance with [Tolbert and Zucker \(1998\)](#) and [Meyer and Rowan \(1977\)](#). One study, which proposes the improvement of the model from other theoretical lenses, agrees with [Selznick \(1996\)](#) regarding the mechanisms of the organizational structure that accept the changes, but without unfolding them. In addition, [Castro and Guimarães \(2019\)](#) emphasize that, although innovation theory absorbs concepts of organizational institutionalism, studies focusing on these approaches in the empirical context of justice organizations are still scarce and timely.

Therefore, the core of organizational institutionalism is presented as a relevant explanatory mechanism of innovation in the judiciary. However, to broaden this view, and to seek to contribute to an understanding of the explanatory mechanisms within the context of the judiciary, the historical aspect is presented as a potential mechanism, as it carries with it a historical foundation, as pointed out by [Reale \(1992\)](#). Proponents of this historical aspect seek social balance and stability based on a predetermined order. This ideational dimension, elucidated by [Campbell \(2004\)](#) and built throughout human social development, is evidently decisive in the trajectory of the judiciary. That is, this influence of the past impacts the context of the judiciary, and the context must contemplate the development of innovation in the public sector ([Djellal et al. 2013](#); [Karo and Kattel 2015](#); [Sørensen 2017](#)). Thus, the idiosyncratic nature of the judiciary regarding the institutional pressure that influences the innovation process ([Guimarães et al. 2018](#)) can also be captured.

3. Historical Institutionalism and the Judiciary

Historical institutionalism participates in the dominant theoretical matrix regarding the systematics of government and political thought, seeking to emphasize the role of institutions in social and political outcomes ([Hall and Taylor 2003](#)). Thus, among the schools that compose the institutional theoretical matrix and which are committed to elucidating the construction between an institution and the behavior, adaptation, and emergence of institutions as a whole, historical institutionalism presents itself as a theoretical lens by which to observe innovation in the judiciary, as it highlights the complex and dynamic character—observed in the judiciary ([Sousa and Guimarães 2014](#))—with which results and social choices are taken, analyzed as fluid and unpredictable, and are contemplated in terms of the actions between an institution’s internal and external agents, each of which have several, and potentially conflicting, objectives ([Sanders 2008](#)). Therefore, historical institutionalism is also concerned with the construction, maintenance and adaptation of institutions ([Sanders 2008](#)).

The approach of this theoretical lens is built on the observation of the state as an actor and institutional structure, and on the ideas of [Krasner et al. \(1984\)](#), who have questioned the functional structures of the state and its perpetuation, even if it occurs in the face of counterproductive state institutions. In this sense, [Krasner \(2009\)](#) perceives that some institutions reach such breadth and depth that they end up defining the actors, who are so unable to conceive of another nature to them that their behaviors and results become

naturalized so emphatically that the costs of change seem prohibitive. Thus, historical institutionalist development highlights the organizational structure of the state.

However, this influence of institutions on actors may not be seen in isolation. According to [Immergut \(1998\)](#), institutions help reduce complexity by providing options for choices; that is, considering a multiparadigm set of institutions, actors can make creative decisions. In historical institutionalism, institutions do not force or determine the behavior of actors in isolation, but through a relational approach in which self-reflective actors make decisions—sometimes creative—based on the dynamics of perceived institutional influence, considering the set of potentially controversial institutional obstacles ([Immergut 1998](#)).

The development of historical institutionalism appropriates [North's \(1990\)](#) concept of path dependence from economic theory in order to describe the effect of a movement that, once initiated for an institution, gains strength over time, fueled by an adaptation of its main actors ([Mahoney and Schensul 2006](#); [Moreira 2019](#)). In this sense, path dependence would represent a reduction in the complexity of choices, as institutions solidify—forming what [North \(1990\)](#) calls the institutional matrix. In other words, this concept of path dependence maintains the state approach in order to incorporate the perception that different institutions rest on different institutional bases or sets ([Thelen 1999, 2002](#)). Thus, the process of path dependence consolidates the institutional matrix as a coupling environment between institutional pressures.

Path dependence can explain, for example, the adoption of technologies and unfolds in explanatory mechanisms, which include (a) increasing returns (i.e., considering that a given process (choice) reinforces itself), (b) self-reinforcement (i.e., when making a choice, a series of complementary forces or institutions reinforce that choice), (c) positive feedback (i.e., a choice creates positive externalities when that choice is also made by other actors), and (d) entrapment (i.e., a choice becomes more natural as a sufficient number of actors adhere to it) ([Page 2006](#)). In this sense, the possibility of not having path dependence is also considered, whereby the processes are not concatenated or chained. However, its informal complexity considers important factors for a process to be path dependent, such as (a) its collective nature, (b) institutional density, (c) the power involved, (d) the complexity of the process, (e) learning limitations, and (f) institutional design resistant to change ([Pierson 2004](#)).

The construction of institutional culture is seen as a part of its organizational structure ([Hall and Taylor 2003](#)), including the relationship between the powers ([Ribeiro 2014](#)). From this perspective, institutions are seen as dynamic structures that guide individual or collective actions. Behavioral changes are built on this very dynamic, which structures the interpretive model, as well as the behavioral possibilities. Thus, there is an inductive tendency based on retrospect to guide decisions ([Ribeiro 2014](#)).

This inducement, in the case of the judiciary, gains strength and social position because it institutionally carries justice as a figure of protection ([Maus 2000](#)) and a basis of society ([Rawls 1999](#)). In addition, this integrative perspective of justice as an institution merges with the judiciary as its organization. Additionally, due to this ideational influence, which is relevant in institutionalization ([Campbell 2004](#)) and crosses time, it is possible to justify the perception of [Lapuente and Suzuki \(2020\)](#) that legal values, as opposed to managerial values, result in great resistance to risk by professionals trained in law.

This study by [Lapuente and Suzuki \(2020\)](#), concerning attitudes toward innovation in the public sector, analyzed questionnaires from 9333 senior public sector executives from 21 European countries and 1200 other experts to assess the factors that impact innovation in the public sector. Focusing on aspects genuinely specific to the public sector, such as politicization and bureaucratic legalism, this research revealed that an institution that is in more of an accord with the judiciary is a prominent barrier to innovation, with the traditionalism present in law training a particular example. In other words, the research revealed that public sector professionals who have a degree in law are less inclined to innovate. Thus, the authors of this research were able to demonstrate what [Rawls \(1999, p. 3\)](#)

partly explains: the origin of the idiosyncrasies that make the administration of justice a promising field (Guimarães et al. 2018).

Justice is the first virtue of social institutions, as truth is a system of thought. A theory, however elegant and economical it may be, must be rejected or revised if it is false; likewise, laws and institutions, however efficient and well-organized, should be reformed or abolished if they are unjust. Justice is the basic structure of society, or more precisely, the way in which great social institutions distribute fundamental rights and duties and determine the division of the advantages of social cooperation.

The point of view of the historical context is central to this theoretical current. It is generally considered that the causal perceptions of institutionalization can be better understood by its contextualized evolution than by seeking universal laws, which apply to parts of history (Thelen 2002). In this way, with the adoption of the path dependence approach, institutional evolution is explored given the unfolding of structure and rules in the conduct of the actors. Path dependence itself stands out as an alternative analysis method because it allows process tracking and comparisons (Bennett and Elman 2006). A brief historical-contextual incursion suggests positioning the judiciary as a bulwark of the institutional matrix, according to legal deontology—which seeks the value of fairness—calibrated by the structures of legal-normative judgments (Reale 2017).

Maine (1893) mapped the institutional link that brought together law, morals and religion, analyzing ancient law—institutionalized with a robustness deriving from its observing of the first legislated texts—because they were taken as better sources of law than the memory of a certain number of people, even if it was something customary. In Brazil, although not in a normative nature, this connection with the church is symbolically evidenced by the practice of observing the crucifix affixed in the plenary of the Federal Supreme Court to the symbol of the republic. According to the perspective proposed by Montesquieu, in a more recent institutional division, the judiciary is presented as a state power in the presidential regime (2010), which divides the political power of the state according to concept of the rule of law.

Therefore, given the functions of cohesion and social control, the judiciary carries the normative institutionalization of models of conduct translated by laws that have been objectified and sedimented since the time of ancient societies. In this evolution, the law is no longer provided by gods; it is confused with customs that are to be identified with the law (Wolkmer 2007). In this normative sense, in a modern-day approach, the judiciary remains a prominent defender of the status quo: its fundamental foundation—the law—represents the formation with the greatest resistance to innovation in the public sector (Lapuente and Suzuki 2020).

Thus, history confirms its conditioning role (Wolkmer 2007), while this link is evident also from a deontological point of view, especially in the final activities of the judiciary. The legal experience is guided by a succession of estimates and options that seek to balance stability, and movement systematizes its composition and ordering in a predetermined way, thus making the reality of law a historical process inherent to its deontological conception, which in turn involves the historical process of objectifying axiological requirements (Reale 2017). In other words, “the law cannot be understood without a minimum of written legislation, certainty, typification of conduct and generic predictability” (Reale 2017, p. 709).

However, the Brazilian example shows efforts to reflect some impacts and take advantage of opportunities related to the use of artificial intelligence that were condensed in Resolution 332, as well as the definition of some limitations in its use (Conselho Nacional de Justiça 2020a). In addition, numerous actions have been implemented to take advantage of this tool as a contributory innovation for the judiciary (Salomão 2020). In parallel, there is a difficulty in the innovation that is justified by the autonomous institutionalization of the courts, despite the strong incentive for such an autonomy arising from the reform of the judiciary and its institutional consequences (Chaves 2022).

The CNJ itself is also noteworthy as an imminent organization of the judicial government that reformed the judicial administration after more than twenty years of its

proposition in the political arena. Thus, the CNJ is presented as a progressive and relevant political actor with a central role in the innovation of the judiciary, but lacks the criticism that allows for greater social perception. Thus, observing the systematics of the judiciary and its insular composition—justified largely by the autonomy of the courts—the CNJ lacks legitimacy as a control body so its contributions to innovation in the judiciary occur in a less controversial way when disputing nongovernmental activities. with the courts (Chaves 2022).

Another recent study by Zanoni (2019), specifically dedicated to innovation in the Brazilian judiciary, relates it to institutionalization by analyzing it as an offshoot of the constitutional text. The principle of efficiency gives rise to an innovative public service guided by the expectations of the challenged citizen and nestled within the judiciary by the strong liturgical formality of the trials, forming the hierarchical structure that is solidified in the Brazilian judicial system. In parallel, the 2004 reform of the judiciary reinforced the need to innovate by guaranteeing the right to a reasonable duration of the process, provoking both procedural and administrative management. The autonomy of the judicial units is questioned because, despite their broad structure, there is still a lack of implementation of important management measures, in addition to strong resistance to innovation. In turn, procedural management lacks training for the challenges and responsibilities during the process to enable managerial innovations. In this sense, the Innovation Laboratory of the Federal Justice of São Paulo (iJuspLab)—the first of its kind in the Brazilian judiciary—provokes culture in its midst. Therefore, working in an interinstitutional network supported by leaders and bringing together judges, civil servants and other actors in the innovation process from the perspective of the service user is a substantial challenge, as civil servants or judges becomes accustomed to thinking about the service to meet the needs of the service user and their respective desires (Zanoni 2019).

Recent social and economic changes have been reflected in a focus on the public and research agenda in an attempt to understand them and to adapt the state to the demand for new public services (Isidro 2018). This search reveals a mismatch that delegitimizes the public administration itself (Denhardt 2012) for not aligning administration and politics. In Brazil, the scale of this democratic disorder is the result of a public administration that puts its sociopolitical dimension in the background, focusing on an approach centered on managerialism (de Paula 2005). In a way, this orientation distances the state from democracy, because without the necessary attention to the political dimension, the distance from opportunities becomes natural from a less humanistic perspective (de Paula 2005).

This notion that our responsibility is unrestricted to the fate of each party is justified by a notion of justice. However, the proposition of a democratic state of law brings elements that would, on merit and in a more democratic construction supported by the last ratio of the judiciary, be able to avoid this tyranny. In this approach, the judiciary gains even more notoriety as, in the presidential system, it becomes a state power with the role of protecting minorities and individual freedom as a force against the majority, as well as of meeting the democratic precepts of respect for the majority established by the constitution, the magna constitution (Sadek 2010).

4. Conclusions and Recommendations

This essay sought to discuss the tensions between innovation and the judicial context using the concepts of institutionalization and innovation in services and in the public sector. Guided by the controversies presented regarding innovation and institutionalization, we sought to outline ways—based on systematized observations—to ultimately guide their development. Thus, when discussing and increasing this theoretical link, historical institutionalism, more specifically path dependence, is revealed as an analytical model designed to understand the paradoxical relationship between innovation and institutionalization in a way that is adaptable to the contexts of institutional arrangements, especially those applicable to the judiciary.

In this construction, the text briefly describes the historical context of the judiciary and its nature, permeated by its contemporary Brazilian context. Thus, it is supported by the paradoxical perspective and is timely in seeking to advance in the field of administration as a tool to promote its theorization (Clegg et al. 2020; Poole and Van de Ven 1989) and to seek potential explanations about innovation and institutionalism, given its contribution to the study of innovation in justice organizations (Castro and Guimarães 2019).

From the ontological point of view, innovation and institutionalization appear to be opposite phenomena. However, when analyzed in more detail, paradoxically, they are not mutually exclusive; in contrast, they are clearly dependent. According to the analogy of Nelson and Winter (1982), the success of any innovation will pass through the institutionalization sieve, according to the concept of innovation in services, as an established result of a new service that adds value to interested parties (Gustafsson et al. 2020).

Thus, innovation in services is presented as a perspective that accords with the new social demands of cocreation in public service. While, in addition to institutionalization, it potentially explains innovation in the judiciary as its more recent increase is perceived. Therefore, an agenda that contemplates its articulation in relation to the judiciary is suggested.

Taking innovation in services as a result, the concept of institutional change also emerges as its explanatory alternative, as it seeks to reach, beyond economic logic, explanations for institutions (North 1990).

Once the concepts of institutionalization and innovation were articulated, innovation was added to the institutionalization process by Meyer and Rowan (1977), with the aim of empirically adopting it and especially of exploring institutional barriers inherent to innovation in the public sector. The institutionalization process that considers adaptation between the rationalized institutional elements—myths—and the complexity of the network of social organization and change signals that it stages (observed in Tolbert and Zucker 1998) will be more advanced according to the robustness of its myths. Thus, there is a correlation between the degree of innovation and the stage of institutionalization, suggesting that innovation and the institutionalization stage are inverse forces that should also be investigated empirically. As a theoretical analytical support, the unfolding of the institutional pillars demonstrates a potential contribution because they are central to innovation in association with other theoretical lenses, such as innovation in services.

The judiciary exercises an important social function that, anchored in institutionalism, is not prone to natural innovation. The institutionalization process—habitualization, objectification and sedimentation (Tolbert and Zucker 1998)—is closely related to the law, as it comprises “a minimum of written legislation, certainty, typification of conduct and generic predictability” (Reale 2017, p. 709), revealing it to be central in the institutional matrix of society. This position is reinforced by its role, arising briefly through the historical perspective, as well as by the influence of history on law (Wolkmer 2007), in turn confirming path dependence as an analysis model for this paradoxical relationship.

Therefore, the dependence of the validation of the law on public administration, as empirically described by Lapuente and Suzuki (2020), allows us to propose, by isolating this legal dimension, a continuum for innovation in the public sector, which becomes paradoxical as it approaches this legal barrier. In this sense, within the judiciary, this relationship is made tangible by the nature of work, positioning the paradox most evident in its end activities and discontinuing itself as it moves to middle activities. On this continuum, paying attention to the overlaps and interdependencies between the end and means activities (judicial governance), exemplified in the Brazilian case by the administrative autonomy of the courts that operate the law (Chaves 2022), suggests an agenda that maps and evaluates the path of innovation in the judiciary from the point of view of the nature of its activities, as well as its consequences and its origins.

In addition, despite the natural reticence to innovation evidenced by the nature of its core activities, there is a technological increase, with its potential impacts being consolidated in the judiciary today. In this sense, studies that investigate the limits of innovation in

this field in protecting and reflecting the role of law and the judiciary in society should compose a future agenda, one that considers the presented continuum. Thus, in the field of judicial organization—formed by this social context—there are institutionalized aspects in the regulatory, normative or cultural–cognitive form that express pressures for innovation, while other pressures suggest maintenance of the status quo. Faced with this dual pressure, organizations may even adopt ceremonial practices to remain legitimate. In this process, it is also worth mentioning the ideational form of institutionalization, which impacts the process of institutional change (Campbell 2004), especially when considering, in the field of justice, the representative force of the judiciary (Maus 2000) and its conception of social virtue (Rawls 1999). Therefore, in the case of innovation in the judiciary, and according to this reasoning, this form could occur in a potentially restricted way as a way to accommodate both of the aforementioned pressures, as the field shows (Lapuente and Suzuki 2020).

In view of the potential consequences of provocation based on a paradox, as suggested by Clegg et al. (2020) and Poole and Van de Ven (1989), this essay increases and proposes a theoretical rescue of institutionalization constructs by inserting innovation. Additionally, this essay rescues part of the historical trajectory and the context of the judiciary and law, also on a theoretical basis, to reveal the paradox. The various potential ramifications of these approaches reinforce the proposals that Clegg et al. (2020) and Poole and Van de Ven (1989) have put forward to consistently advance theorization regarding the field of administration.

When considering the complexity and dynamism of social outcomes and choices over a longer time horizon, historical institutionalism, as indicated, demonstrates the potential to analyze innovation in the judiciary—which is also complex, with extensive historical construction and determined by constructed antecedents. In this sense, the concatenation between institutionalization and innovation suggests an analysis of innovation considering the typology of its antecedents (Walker 2014) in the face of the stages of institutionalization (Tolbert and Zucker 1998).

In turn, the context of the Brazilian judiciary stands out as a research agenda based on path dependence, and an approach that maps institutional movements in order to understand the various and notable recent advances in innovation in this field. Therefore, the period from the creation of the CNJ until the consolidation of Resolution No. 332 is a suggestive time frame because it contains an important recent institutional movement in this sphere.

In addition, when considering the institutional culture inherent to the organization, this perspective indicates high institutionalization of the judiciary according to the perspective of Tolbert and Zucker 1998, as evidenced by its naturally normative/constitutional approach, and reinforces its central position in the institutional matrix of the state. The establishment of the institutional matrix can be empirically observed in the judiciary in the historical retrospective of Chaves (2022), and was also found to be an institutional rearrangement in the analysis of Castro (2019). Thus, path dependence, as a decisive variable in institutionalization, can be seen as agglutinating the five dimensions highlighted by Castro and Guimarães (2019) for specific innovation in the judiciary. This is because, in addition to interpreting the institutional environment, it includes the dynamic framework that is guided by institutions and which influences human decisions (which can be interpreted from the perspective of institutional work), including innovative behavior, while also taking into account the other related dimensions. A model that details the influences of path dependence from the perspective of the limits of innovation in the judiciary, in parallel with the institutional adaptations that thus arise, appears to potentially explain and explore this field.

The historical perspective offers a method of diagnostic analysis of innovation in the judiciary, suggesting its adoption as a trend, because it structures mechanisms that broaden an organic view of its social role. The judiciary, as guardian of the state's normative framework, emerges as central in maintaining the status quo, converging with North's (1990)

institutional matrix approach as an interpretive model that emerges from the perspective of historical institutionalism.

Considering path dependence as an explanation of innovation in the judiciary and given the similarities of its process with the judiciary, its explanatory potential for the adoption of technologies, and the interaction between the CNJ and courts, the following proposition emerges: the logics of self-reinforcement, positive feedback or imprisonment are preponderant for the actors involved in innovation in the judiciary. This proposition can be opposed by another and justified by a strong constitutional orientation toward efficiency, wherein increasing returns become preponderant for the actors.

In the Brazilian case, for example, in order to analyze innovation in the judiciary and its institutionalization, its diffuse nature must be observed (Chaves 2022). To do so, the model of analysis of the five dimensions of Castro and Guimarães (2019), dedicated to innovation in justice organizations, emerges, one which reflects on organizational institutionalism, institutionalization and innovation, potentially grafted with historical institutionalism. This increase is justified by, and contemplative of, path dependence, as well as its significant influence in the judicial context—which is significant for the advancement of innovation in its scope (de Vries et al. 2016). It is also justified by the use of the institutional matrix as an analytical framework for dissemination in the judiciary, which also relates concepts of innovation in services—opportune for advancing innovation in the public sector (Moreira et al. 2020)—such as cocreation (Gallouj and Weinstein 1997) and value creation for stakeholders (Gustafsson et al. 2020)—which are inherent to the common interests of the institutional actors in the institutional matrix. It considers aspects of institutionalization, establishing an interface with mechanisms of path dependence.

Thus, in addition to the theoretical correlation that this text suggests as an analysis for innovation in justice systems, this paper highlights, with the Brazilian context outlined in this article as example, the way in which contemporary analysis regarding the use and institutionalization of tools of artificial intelligence in justice systems is opportune when considering their breadth and their potential impact.

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