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Pushing for Sustainability through Technology: administrative consensuality by default and online dispute resolutions tools

Buscando sustentabilidade por meio da tecnologia: consensualidade administrativa por padrão e ferramentas de resolução de disputas online

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Abstract: The Brazilian Public Administration is a repeat player and, often, predatory and strategic player. The behavior of the Public Administration is oriented towards the litigation and contributes to the increase in the congestion rate of the Judiciary, limiting access to justice. In this article, it was reflected whether a more adequate choice architecture could make the Public Administration start to show a more consensual and less litigious behavior. It was found that an architecture of choices appropriate to the greater promotion of access to Justice must create an administrative consensus by default, implemented based on an online dispute resolution system that presents an architecture of choices that makes the standard choice of individuals who wish to resolve a conflict with the Public Administration is self-composition.

Keywords: Access to justice. Nudge. Choice architecture. Self-composition.

Resumo: A Administração Pública brasileira é uma litigante habitual e, muitas vezes, predatória e estratégica. O comportamento da Administração Pública é orientado ao litígio judicial e contribui para o aumento da taxa de congestionamento do Poder Judiciário, limitando o acesso à justiça. Neste artigo, refletiu-se se uma arquitetura de escolhas mais adequada poderia fazer com que a Administração Pública passasse a manifestar um comportamento mais consensual e menos litigioso. Descobriu-se que uma arquitetura de escolhas adequada a maior promoção de acesso à Justiça deve criar uma consensualidade administrativa *by default*, implementada a partir de um sistema de *online dispute resolution* que apresente uma arquitetura de escolhas que faça com que a escolha padrão dos indivíduos que desejem resolver um conflito com a Administração Pública seja a autocomposição.

Palavras-chave: Acesso à justiça. *Nudge*. Arquitetura de escolhas. Autocomposição.

Summary: Introduction – **1** Technology, Consensuality and Sustainability: how the technology can transform access to Justice – **2** Online conflict resolution – **3** A proposed architecture of choices for more consensus and sustainable public administration – Final considerations – References

Introduction

The system of access to state justice is going through a crisis of confidence and efficiency, especially due to the inability to reduce its congestion rate and effectively deliver judicial protection. The incentives generated by the jurisdictional process model, mostly adversarial, do not contribute to a consensual solution to the dispute, even if the 2015 Civil Procedure Code opted for the creation of a mandatory step of attempting self-composition in the common procedure and created cooperation duties. Among all those who participate in the judicial process. Also, the Public Administration, by strategic option, is responsible for a considerable percentage of Judiciary's congestion rate, either by opting for judicial litigation as standard behavior or by not being able to manage its administrative conflicts in a consensual way.

This context may suggest that the resolution of conflicts outside the Judiciary, through other conflict resolution methods, is the most efficient way to manage certain conflicts, especially conflicts involving the Public Administration. However, despite the legal literature's benefits, non-judicial means of conflict resolution are not the parties' standard option in a dispute. Despite the crisis of confidence and the crisis of effectiveness, the Judiciary is still the standard option.

For this reason, the problem that excites this research can be summarized in the following question: could an adequate choice architecture lead Public Administration to show a more consensual and less litigious behavior?

The hypothesis worked on in this article says yes. An adjustment in the Public Administration's choice architecture and the citizens that relate to it can make administrative conflicts more consensual, efficient, and sustainable. Part of the solution is creating an online dispute resolution system that allows the resolution of administrative conflicts to be carried out in a transparent, inexpensive, efficient, and fast way.

The first chapter of this article is dedicated to linking consensus with sustainability and technological advancement. As technological progress advances, it is possible to offer more effective and sustainable access to justice solutions. The second chapter describes how eBay could offer a highly efficient dispute resolution service from the internet. The third chapter discusses how behavioral economics and, in particular, libertarian paternalism can contribute to making non-judicial dispute resolution more efficient and sustainable.

The method used in this research was limited to the review of scientific literature, especially applied social sciences, which allowed an analysis that aims to present a proposal for a solution to providing a public service.

At the end of the research, the hypothesis was confirmed. An architecture of choices appropriate to the greater promotion of access to Justice must create an administrative consensus by default, implemented based on an online dispute resolution system that presents an architecture of choices that makes the standard choice of individuals who wish to resolve a conflict with Public Administration is self-composition. At this point, it is necessary both to have an administrative consensus by default (and it already exists, as will be shown below) and a tool that offers self-composition by default. Both ends (Public Administration and citizens) should receive nudges and good incentives to manage their conflicts without necessarily submitting a case to the Judiciary.

1 Technology, Consensuality and Sustainability: how the technology can transform access to Justice

1.1 The crisis of the System Access to Justice

The crisis in the state justice system is not a particular feature of Brazil. Countries with economic realities close to the Brazilian, such as India, and even countries like Canada[1] face problems related to Justice access. The Brazilian state

[1] BAILEY, Jane; BURKELL, Jacquelyn. Implementing technology in the justice sector: A Canadian perspective. *Canadian Journal of Law and Technology*. v. 11, n. 2, 2013, p. 253-282.

justice system, however, is distinguished, in particular, by the significant contribution of the Public Administration to the growing congestion rate[2] of the Brazilian Judiciary.

Public Administration (considering all federative entities) is a repeat player and often predatory and strategic litigator,[3] [4] in the state justice system.[5] There is a propensity for litigation in Brazil by a concentrated group of actors, and Public Administration is one of the protagonists. According to the National Council of Justice, in 2011, the Federal Public Sector was responsible for 38% of the proceedings in progress in the Federal Judiciary, the States, and the Labor Court. The National Institute of Social Security, alone, participated in "more than a fifth of the processes of the 100 largest national litigants, this percentage being lower than the entire banking sector".[6] Public Administration is undoubtedly, great litigant. The great litigator terms in this article correspond to the concept of repeat players, drafted by Marc Galanter, to identify parts that are wrapped in many disputes similar over time and, therefore, holds advanced intelligence and can structure the next transaction and build a record.[7]

This propensity for litigation manifested by the Public Administration and increasing the congestion rate of the Judiciary contributes to an inefficient allocation of public resources since the unit cost of the judicial process is increased).[8] In 2011, the average unit cost of tax enforcement proceedings in Federal Court of first degree equivalent to R$ 26,303.81, when the Union proposed the demand, and R$ 1.540.74, when the action was proposed by the Supervisory Boards of the Liberal Professions.[9] The unit cost of each tax enforcement action is a relevant indicator of how scarce public resources are being allocated efficiently, especially when it is

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2 Congestion rate can be defined, it is an indicator that "measures the percentage of cases that remained pending solution at the end of the base year, in relation to what was processed (sum of pending and written offs)" (CNJ – CONSELHO NACIONAL DE JUSTIÇA. *Justiça em Números 2019*. Brasília: CNJ, 2019, p. 78).

3 FLORIANI NETO, Antônio Bazílio; GONÇALVES, Oksandro. *O comportamento oportunista do INSS e a sobre utilização do Poder Judiciário*. *In*: POMPEU, Gina Vidal Marcílio; PINTO, Felipe Chiarello de Souza; CLARK, Giovani (Coord.). Florianópolis: FUNJAB, 2013, p. 484-502.

4 CORAL-DÍAZ, Ana Milena; LONDOÑO-TORO, Beatriz; MUÑOZ-AVILA, Lina Marcela. El Concepto de litigio estratégico en América Latina. *Universitas Bogotá*, n. 121, p. 49-76, 2010.

5 AMB – ASSOCIAÇÃO DOS MAGISTRADOS BRASILEIROS. *O uso da justiça litígio no Brasil*. [S.l.]: AMB, 2015.

6 CNJ – CONSELHO NACIONAL DE JUSTIÇA. *100 maiores litigantes*. Brasília: CNJ, 2011. Disponível em: http://www.cnj.jus.br/images/pesquisas-judiciarias/pesquisa_100_maiores_litigantes.pdf. Acesso em: 5 dez. 2020.

7 GALANTER, Marc. Why The "Haves" Come Out Ahead: Speculations on the Limits of Legal Change. *Law and Society*, 1974, p. 95-160.

8 SOUZA, Maria Cláudia da Silva Antunes de; SOUZA, Cássio Bruno Castro. Online Dispute Resolutions e Administração Pública Sustentável. *In*: SOUZA, Maria Cláudia da Silva Antunes de (Org.). *Direito e sustentabilidade*: Temas Contemporâneos. Rio de Janeiro: Lumen Juris, 2020, v. 1, p. 31-58.

9 IPEA – INSTITUTO DE PESQUISA ECONÔMICA APLICADA. *Custo Unitário do Processo de Execução Fiscal na Justiça Federal*. Brasília: Instituto de Pesquisa Econômica Aplicada, 2011.

noted that "most enforcement processes are comprised of tax foreclosures, which represent 73% of the running stock".[10]

Tax foreclosures significantly contribute to the increase in the congestion rate of the Judiciary, "representing approximately 39% of the total pending cases and congestion of 90% in 2018". Fiscal executions correspond to 55.6%, 51.7%, and 49.7% of the acquis total, respectively, of Justice of the States, the Federal Courts, and the Labor Court. In some courts, enforcement takes up more than 60% of the collection. Therefore, "tax enforcement, considering its congestion rate, is not the most appropriate legal mechanism for recovering securitized credits by the Public Administration"[11] and other collection mechanisms may be more efficient, such as the extrajudicial settlement of the active debt of the Public Treasury through protest[12] or from a more efficient choice architecture.[13]

These data suggest that more efficient management of the Public Administration's credit portfolio, based on the choice of more efficient and non-judicial collection methods, can efficiently promote more access to Justice, alleviate high congestion rates, and allocate public resources more efficiently.

Another aspect demands attention when discussing the role of Public Administration in increasing the congestion rate of the Brazilian Judiciary. Public Administration is not always part of a judicial process as an author. Public administration is also frequently demanded from the Judiciary in order to fulfill a legal obligation.

In these cases, the Public Administration contributes to an unjustified increase in the congestion rate of the Judiciary as a debtor of a certain legal obligation. In particular, individuals demand that the Public Administration deliver a social benefit, repair damage, or implement a certain statutory advantage.[14] In other words,

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10 CNJ – CONSELHO NACIONAL DE JUSTIÇA. *Justiça em Números 2019*. Brasília: CNJ, 2019a.

11 SOUZA, Maria Cláudia da Silva Antunes de; SOUZA, Cássio Bruno Castro. Online Dispute..., *op. cit.*, p. 31-58.

12 PINTO, Edson Antônio de Sousa Pontes; AMARAL, José Wilson Moitinho. A eficiência da utilização do protesto como meio alternativo para cobrança de crédito fiscal. *Revista dos Tribunais,* v. 1004, jun. 2019; FRANCO, Marcelo Veiga. A Cobrança Extrajudicial de Dívida Ativa como Meio de Enfrentamento do "gargalo" das Execuções Fiscais. *Revista CNJ,* Brasília, v. 3, n. 1, p. 65-73, jan./jun. 2019, p. 71; RIBEIRO, Flávia Pereira. *Desjudicialização da execução civil.* São Paulo: Saraiva, 2013, p. 83-88.

13 JOHN, Peter; BLUME, Toby. How best to nudge taxpayers? The impact of message simplification and descriptive social norms on payment rates in a central London local authority. *Journal of Behavioral Public Administration,* v. 1, n. 1, 2018; LEICESTER, Andrew; LEVELL, Peter; RASUL, Imran. *Tax and benefit policy: insights from behavioural economics.* Londres: The Institute for Fiscal Studies, 2012. Disponível em: https://www.ucl.ac.uk/~uctpimr/research/IFScomm125.pdf; HALPERN, David. Can "nudging" change behaviour? Using "behavioural insights" to improve program redesign. *Managing under austerity, delivering under pressure*. Canberra, Austrália: ANU Press, The Australian National University, 2015, p. 166.

14 It is important to bear in mind, in the complementary investigations that are being developed, the high complexity that structurally underlies any claim to make a fundamental social right effective. In: the legal relationship that founds the claim, in this way, the Administration is a direct passive debtor of the obligation to the human person; but the existence of the indirect debtor of the obligation to the human person, which is the rest of the community, that bears the burden and individually or collectively can claim the same or

the Public Administration is constantly demanded of the Judiciary to carry out a fundamental right or to repair a violation of a fundamental right resulting from the action or omission of its agents.[15]

In the last 20 (twenty) years, for example, the enforceability of the right to health has moved from a position of ineffectiveness to a situation of excessive judicialization[16] while the number of judicial demands to health increased by 130% between 2008 and 2017, the total number of lawsuits increased by 50%.[17] It is not possible to establish a single cause for the justiciability of the right to health phenomenon. However, it is reasonable to argue that an important part of the justiciability of the right of health is a result of informational asymmetries between Unified Health System's and the Government and the creation of mediation systems including virtual system can be an important incentive for the reduction of "unnecessary judicialization, as it allows the Judiciary to only consider cases that the entities involved are unable to resolve extrajudicially".[18] There is strong evidence that the attempt at prior, extra-procedural mediation contributes to reducing the degree of judicialization of health.[19]

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other rights cannot be ignored. Contemporary Argentine dogmatics is precisely working on the new bases for a general theory of administrative law, substituting the paradigm of classic administrative law (power *vs.* rights - power and its limits-) for a new paradigm (rights *vs.* rights - law and inequalities structural-). In this way, it has been said that in terms of egalitarian justice, the State with its Administration must be an intermediary with the basic objective of rebuilding social inequalities or as an instrument of social equalization; and this because: "the object of regulation of administrative law is multidirectional legal relationships; that is, the interest of the direct parties and third parties (BALBIN, Carlos F. *Crisis del derecho administrativo. Bases para una nueva teoría General*. Astrea: CABA, 2020, p. 394).

15 We cannot fail to note that, as Justo Reyna ponders, "fundamental rights (...) operate in the Constitutional State of Law as conditions and guides for the exercise of administrative discretion, imposing obligations on the administrative authorities" (REYNA, Justo José. El procedimiento administrativo multidimensional como técnica regulatoria en materia ambiental, de patrimonio cultural y de pueblos originarios. *A&C – Revista de Direito Administrativo & Constitucional*, Belo Horizonte, n. 50, p. 131-169, out./dez. 2012, p. 138). By acting against to the realization of fundamental rights and refusing to resolve potential disputes by consensus, the Public Administration violates the Constitution in multiple dimensions, whether in the perspective of conforming administrative discretion to the Constitution itself and fundamental rights, or in the perspective of refusal to enforce the subjective rights of its citizens to an efficient public service.

16 BARROSO, Luís Roberto. Da falta de efetividade à judicialização excessiva: direito à saúde, Fornecimento gratuito de medicamentos e parâmetros para a atuação judicial. *In*: SOUZA NETO, Cláudio Pereira de; SARMENTO, Daniel (Coord.). *Direitos sociais*: fundamentos, judicialização e direitos sociais em espécie. Rio de Janeiro: Lumen Juris, 2008, p. 875-903.

17 CNJ – CONSELHO NACIONAL DE JUSTIÇA. *Judicialização da saúde no Brasil*: perfil das demandas, causas e propostas de solução. CNJ, 2019b. Disponível em: http://www.cnj.jus.br/files/conteudo/arquivo/2019/03/f74c66d46cfea933bf22005ca50ec915.pdf. Acesso em: 26 ago. 2019.

18 SOUZA, Maria Cláudia da Silva Antunes de; SOUZA, Cássio Bruno Castro. Online Dispute..., *Op. cit.*, p. 31-58.

19 GASPAROTTO, Ana Paula Gilio. *A atuação extrajudicial da Defensoria Pública para a efetivação do direito à saúde*: o caso do SUS Mediado. Dissertação de Mestrado, Pontifícia Universidade Católica do Paraná, 2018; OLIVEIRA, Maria dos Remédios Mendes *et al*. Mediação como prevenção à judicialização da saúde: narrativas dos sujeitos do judiciário e da saúde. *Esc. Anna Nery*, v. 23, n. 2, 2019. Disponível em: http://www.scielo.br/scielo.php?script=sci_arttext&pid=S1414814520190002002 29&lng=en&nrm=iso. Acesso em: 8 nov. 2020.

The high congestion rate of the Judiciary and the high unit cost of the judicial process demonstrate how the litigation culture, adopted by the Public Administration, implies an inefficient provision of public service. There are reasons to argue that a public policy more efficient access to justice transit by a sense of non-justiciability, adopting a multiport system, and creating incentives for a more consensus-driven behavioral in both Public Administration and individuals it relates to.

As a social phenomenon, conflict is intrinsic to reality complex and multidimensional of community life and it is a continuous search for what each individual understands to be fair.[20] When there is an impasse in life, the parties involved will intuitively try, either alone or through a third party, to seek a solution. It is not different with Public Administration. When given conflict is based on duty in law, any individual seeking satisfaction with the offered solution tends to seek the Judiciary, which is the institution charged to solve intersubjective conflicts produced in society with definitiveness.[21] An efficient system of access to justice demands that parties to a conflict have at their disposal a simple and informed way, different effective options for the treatment of each controversy. In certain cases, the best possible treatment involves the idea of dejudicialization.

To dejudicialize a conflict consists of removing the monopoly of the Judiciary to resolve conflicts of interest. The dejudicialization process has been consisting "in procedural simplification, tools in the courts within the judicial process to informal means and to 'non-jurists' for the resolution of some disputes 'and the transfer of jurisdiction to' Resolution of a court dispute for non-judicial instances or the 'old' or 'new' legal professions' scope of action, or even of the new management and conflict resolution professions".[22] "Dejudicialize is more accustomed to the situation – the movement of withdrawal procedures that were typical judicial function now being absorbed by other noncourts. Actually, it is possible to maintain the means' coexistence, or not. Thus, some procedures are even excluded from judicial review, and others that are also assumed by administrative or notarial procedures".[23]

This article proposes that the most efficient and sustainable way for the Public Administration to resolve their conflicts of interest, especially those involving disputes over property interests, it is necessarily consensual. Therefore, the most appropriate response is to de-judicialize and create multiport systems for access

[20] SPENGLER, Fabiana Marion. *Fundamentos políticos da mediação comunitária*. Ijuí: Unijuí, 2012.

[21] SALLES, Carlos Alberto de; LORENCINI, Marco Antônio Garcia Lopes; SILVA, Paulo Eduardo Alves da. *Negociação, mediação, conciliação e arbitragem*: curso de métodos adequados de solução de controvérsias. 3. ed. Rio de Janeiro: Forense, 2020.

[22] PEDROSO, João. Percurso(s) da(s) reforma(s) da administração da justiça - uma nova relação entre o judicial e o não judicial. *Direito e Democracia*, Canoas, v. 4, n. 1, 1º sem. 2003, 9. 47-89.

[23] OLIVEIRA, Daniela Olímpio de. *Desjudicialização, acesso à justiça e teoria geral do processo.* Curitiba: Juruá, 2014, p. 16.

to justice. A self-composed Public Administration is, at the same time, an efficient and sustainable Public Administration.

1.2 Dispute resolution and sustainability

A system of Justice access must be sustainable and promote sustainability. Certainly, in fulfilling its social pacification function when resolving an intersubjective conflict definitively, the system of access to justice promotes sustainability by guaranteeing stability in social relations and social pacification. The search for conflict harmonization is not limited, however, to resolving disputes definitively (res judicata). However, it presupposes that the system of access to justice is concerned with understanding and treating the underlying causes of the conflict and allowing and effectively enabling that disputes are resolved by the parties involved in the conflict. And it is not limited to an entirely state-owned justice system or that necessarily passes through the Judiciary.

It is not unknown that the courts have a central role in managing the balance between individual rights and the demands for responsible behavior towards society in general, and the most precious resource of the Judiciary is the credibility that is based on their independence and the way they exercise a careful and explained judgment within the rules of the law.[24]

The jurisdiction's objective is to promote social peacemaking, turning the conflict legally irrelevant based on res judicata.[25] Courts promote peacemaking by ensuring, by their authority, that social conflict is managed in a way that does not increase its scale, preserving social harmony by providing security in the application of the rule of law to all citizens and putting an end to litigation.[26] Conflict management is the first role normally assigned to the Judiciary and its guiding, therefore.[27] The importance of this function normally attributed as a primary function of justice cannot be overlooked: the existence of an effective state justice system of the rule of law and provides security and stability to social relations, especially due to the possibility of legitimating the use of state coercion for the purpose to affect their decisions. However, in some cases, the use of state power may exacerbate the

[24] CANNON, Andrew J. Sustainable justice: a guiding principle..., *op. cit.*, p. 3.

[25] CARNELUTTI, Francesco. *Sistema de direito processual civil*. Trad. Hiltomar Martins Oliveira. São Paulo: Classic Book, 2000; CABRAL, Antônio do Passo. Coisa julgada e preclusões dinâmicas: entre continuidade, mudança e transição de posições processuais estáveis. 3. ed. Salvador: JusPodium, 2019; FREEDMAN, Warren. *Res Judicata and Collateral Estoppel*. Westport: Quorum, 1988.

[26] SCOTT, Austin Wakeman. Collateral estoppel by judgment. *Harvard Law Review*, v.56, n.1, 1942, p. 1-29; ALEXANDER, Rose M.; RUBIN, Ofie T.; VAUGHN, Anita G.; WINGO, Carol L. Collateral estoppel. *University of Richmond Law Review*, v.16, n.2, 1982, p. 342-390; SOLDO, Linda J. Parklane Hoisery: Offensive Use of Nonmutual Collateral Estoppel in Federal Courts. *Catholic University Law Review*, v. 29, n. 2, p. 509, 1980.

[27] CANNON, Andrew J. Sustainable justice: a guiding principle..., *op. cit.*, p. 3-4.

conflict, rather than resolve it. If the main purpose of the Judiciary is to maintain social harmony, the accountability of people for illicit acts, the Judiciary itself, is just one of the tasks required to achieve this goal.[28]

Many of the lawsuits, especially adversarial ones[29] controlled by lawyers, ignite conflicts in place to fix them,[30] which causes many of the models legal tender not to be suitable for resolving conflicts.[31] Particularly, the adversarial civil process can lead the parties to adopt extreme positions,[32] which disagree and their result can generate discontent; the system creates incentives for the parties to delay payment of their debts, lose control over their obligations and see their disputes widened and the chances of resolving it buried under the increasing complexity and costs of the process.[33] Cannon argues that a system of justice adversarial financial rewards encourages greed and dishonesty and focus on the past facts, on what went wrong, increases the damage and reduces the chance of remedy it constructively. For this reason, the increasing diversity dispute resolution methods outside and adjacent to the judicial system has meant an answer clear to failure of the system judicial to solve all kinds of conflict and a recognition that the resolution of a dispute by the 3rd generally is not the best way to manage conflicts.

The theoretical boundaries that propose non- adversarial justice or a model that is not exclusively contradictory in civil proceedings) are not new. Especially in countries linked to the common law, there is a recognition that it is necessary to move away from adversarial judicial processes, especially when it is intended to resolve civil disputes.[34] The recognition that conflict is managed at many levels of society and that courts and lawyers deal with only a small fraction of those conflicts (especially when other doctors fail), is necessary to understand that courts are not alone in their role: guarantee and maintain social harmony.[35]

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28 CANNON, Andrew J. Sustainable justice: a guiding principle..., *op. cit.*, p. 3-4.

29 As Furlan and Medeiros Neto explain, an adversarial process model is defined as the "procedure in which the formal and material conduct of the process is the responsibility of the parties" (2017, p. 307). It is a model of process controlled by the parties that, in the systems of Romano-Germanic tradition, is called a model of contradictory process or governed by the parties (FURLAN, Simone; MEDEIROS NETO, Elias Marques de. A audiência de saneamento compartilhado do art. 357, §3º, do CPC/2015 e os princípios da cooperação e efetividade. *Revista Eletrônica de Direito Processual – REDP,* Rio de Janeiro. a. 11. v. 18. Número 3. Setembro a dez. 2017, 297-368, p. 307).

30 RANGEL, Tauã Lima Verdan. Mediação e direito fraterno em um cenário de litígios: o diálogo como instrumento de fomento na administração de conflitos e na promoção da cidadania ativa. *In*: Felipe ASENSI *et al.* (Org.). *Direito, Sociedade e Solução de Conflitos*. Rio de Janeiro: Multifoco, 2017. p. 147-164.

31 CANNON, Andrew J. Sustainable justice: a guiding principle..., *op. cit.*, p. 3-4.

32 FISCHER, Roger; URY, William; PATTON, Bruce. *Como chegar ao sim*: como negociar acordos sem fazer concessões. Rio de Janeiro: Solomon, 2014.

33 CANNON, Andrew J. Sustainable justice: a guiding principle..., *op. cit.*

34 FREIBERG, Arie. Non-adversarial approaches to criminal justice. *Journal of Judicial Administration*, v. 16, n. 4, 2007, p. 205-222.

35 The administrative procedure and the Administration, in this way and as a level of Government, have as a challenge in this new century, that of resolving and making the fundamental social rights effective. They must become the first instrument for making effective and analyzing the fundamental social rights tensions

When the conflict comes to the Judiciary, the courts are increasingly concentrated on its performance in identifying and treating underlying causes of a conflict, repairing the damage, and improving the social skills of people in a court case. This approach is generally described as therapeutic jurisprudence,[36] which has the merit of recognizing that law can affect people in different ways, especially in their wellbeing. Although therapeutic jurisprudence is, in Brazil, normally oriented to the adequate judicial treatment of people accused of drug trafficking crimes,[37] the approach can be used in environmental jurisdiction,[38] in confronting child labor,[39] in family law,[40] right educational[41] and lawsuits involving labor claims.[42]

The therapeutic jurisprudence consists only in one offered answer to the standard dispute resolution method: the adversarial process in court. The concern to offer adequate solutions for each type of conflict has meant that mediation and other appropriate dispute resolution methods are an encouragement in the context of multiport systems of access to justice. The term multiport conflict resolution systems can be understood as an approach in which "for each problem, there is a

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underlying the complex legal relationship (Conf. Citation 17). This is for two reasons: 1) to assume that it is the first step so that conflicts are managed at the first level where they must be exhibited to all competent offices responsible for protecting and guaranteeing social rights (at least at their essential levels), resolving the conflict expressly (positively or negatively, as appropriate); and 2) place, in this way, the citizen in a position to exercise the best option or system that is designed, for the resolution of his conflict, transforming the Administration and the procedures for that purpose, in order to eliminate unnecessary judicial congestion. A co-author of this work has analyzed the modulations in the Administration for the protection of social rights on the part of all the public levels obliged in particular legal relationships (REYNA, Justo José. La Reforma de la Administración Pública Local para la tutela de los derechos fundamentales en el siglo XXI. *A&C – Revista de Direito Administrativo & Constitucional,* Belo Horizonte, a. 14, n. 56, abr./jun. p. 35).

36 KING, Michael S. Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice. *Melbourne University Law Review*. v. 32, 2008, p. 1096-1126.

37 BRAVO, Alejandro Omar. Tribunais Terapêuticos: vigiar, castigar e/ou curar. *Revista Psicologia e Sociedade*, São Paulo, 2002; RIBEIRO, Fernanda M. Lages. *Justiça Terapêutica Tolerância Zero*: arregaçamento biopolítico do sistema criminal punitivo e criminalização da pobreza. Dissertação de Mestrado – UERJ, 2007.

38 BAKER, Gregory. Rediscovering Therapeutic Jurisprudence in Overlooked Areas of the Law – How Exposing Its Presence in the Environmental Justice Movement Can Legitimize the Paradigm and Make the Case for Its Inclusion into All Aspects of Legal Education and the Practice of Law. *Florida Coastal Law Review*, v. 9, 2008, p. 215-236.

39 NICHOLSON, Caroline Margaret Anne. The Impact of Child Labor Legislation on Child-Headed Households in South Africa. *Thomas Jefferson Law Review*. v. 30, 2008, p. 407-427.

40 BRYANT, Diana; FAULKS, John. The "Helping Court" Comes Full Circle: The Application and Use of Therapeutic Jurisprudence in the Family Court of Australia. *Journal of Judicial Administration,* v. 17, 2007, p. 93-126; RATHUS, Zoe. 'The research says…': perceptions on the use of social science research in the family law system. *Federal Law Review*. v. 45, n. 1, 2018.

41 BROOKS, Susan L. Therapeutic and Preventive Approaches to School Safety: Applications of a Family Systems Model. *New England Law Review,* v. 34, n. 3, 2000, p. 615-622; BROOKS, Susan L. Practicing (and Teaching) Therapeutic Jurisprudence: Importing Social Work Principles and Techniques into Clinical Legal Education. *St. Thomas L. Rev.* v. 13, 2005, p. 513-530; APPELL, Annette. Children's Voice and Justice: Lawyering for Children in the Twenty-First Century. *Nevada Law Journal.* v. 6, 2006, p. 692-723.

42 KING, Michael S.; GUTHRIE, Robert. 2007, Using Alternative Therapeutic Intervention Strategies to Reduce the Costs and Anti-Therapeutic Effects of Work Stress and Litigation. *Journal of Judicial Administration*, v. 17, n. 1, 2007, p. 30-45; KING, Michael S. *Solution-Focused Judging Bench Book.* Australasian Institute of Judicial Administration and the Legal Services Board of Victoria, 2009.

specific door to be opened to resolve the conflict".[43] Moreover, in family disputes, the judges themselves adopt mediation techniques, called JDR (judicial dispute resolution)[44] and increasingly courts have sat the with indigenous elders to follow their advice and make the court[45] relevant and involved[46] with those communities.[47] In all of these cases, courts deal constructively with the causes of conflicts, avoiding adversarial processes.

In fact, using force in conflict management, is sometimes necessary and can even subdue the conflict. However, it is rarely able to successfully deal with the underlying causes of conflicts. If the causes are not resolved, they will resurface when the force/coercion is removed. Andrew Cannon shows, for example, that recidivism rates correspond to almost 70% in three years after incarceration for drug offenses in the United States of America. Therefore, he argues, legal proceedings should aim to resolve the causes of the conflict, so that the parties can put it behind them and have more capacity to manage their conflicts in the future.[48] And this task involves giving the parties a greater role in conflict management.

One way to describe this objective of a judicial system can be extracted from the idea of sustainability. Based on the idea of sustainability, social systems must be designed to improve the quality of life and ensure more human relationships and history teaches that an independent judicial system that applies objective law (preserving the rule of law) is an essential part of management of power in a successful social system. A principle that should, therefore, guide the work of the Judiciary in managing conflicts and ensuring social harmony is the principle of sustainability, which should lead to the emergence of Sustainable Justice, which can be defined as a framework of legal norms, institutions, policies and judicial practices of accessing Justice in the present without compromising the ability of future generations to enjoy the benefits of a just society.[49]

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43 FERRARI, Isabela; LEITE, Rafael; RAVAGNANI, Giovani; FEIGELSON, Bruno. *Justiça Digital.* São Paulo: Revista dos Tribunais, 2020.

44 LANDERKIN, Hugh; PIRIE, Andrew. Judges as Mediators: What's the Problem with Judicial Dispute Resolution in Canada? *The Canada Bar Review*, v. 82, 2003, p. 249-298.

45 CANNON, Andrew J. Sustainable justice: a guiding principle..., *op. cit.*, p. 6-7.

46 JOHNSON, Shelly. Developing First Nations Courts in Canada: Elders as Foundational to Indigenous Therapeutic Jurisprudence. *Journal of Indigenous Social Development,* v. 3, n. 2, 2014. Disponível em: https://scholarspace.manoa.hawaii.edu/bitstream/10125/34473/v3i2-02johnson.pdf. Acesso em: 30 dez. 2020.

47 FAGAN, Laurie. *Indigenous people courts*: How they can help offenders. BC News Posted: Aug. 23, 2017. Disponível em: https://www.cbc.ca/news/canada/ottawa/how-indigenous-peoples-court-help-offenders-1.4258203. Acesso em: 30 dez. 2020.

48 CANNON, Andrew J. Sustainable justice: a guiding principle..., *op. cit.*, p. 6-7.

49 BARLOW, Melissa Hickman. Sustainable Justice: 2012 Presidential Address to The Academy of Criminal Justice Sciences. *Justice Quarterly.* v. 30, n. 1, 2013, p. 1-17.

Much of the publications around Sustainable Justice arise from concerns about the criminal justice system's sustainability,[50] especially due to the high rate of incarceration[51] and criminal recidivism.[52] However, the approach must be extended to the entire system of access to justice, not just criminal and not just the state. A sustainable approach to Justice helps people manage their conflicts so that they do not become legal disputes. This objective can be achieved by offering a consistent, accessible and the applicable rule of law as standards of conduct with which people know that they must comply. This approach allows people to manage their businesses around a predictable structure and this management only works if people know that they are likely to be held responsible if they violate the law.[53]

The first level of providing access to Justice could create various conflict resolution processes, such as community-based legal centers and well-developed mediation and conflict resolution systems available to help people manage their conflicts that have turned into disputes without recourse to state power.

For the judicial system to be sustainable, it must conduct proceedings to repair the damage done and improve the parties' ability to manage conflicts in a less harmful way in the future. Justice system processes must be designed to achieve these key outcomes. For this, all processes in a Sustainable Justice system must be guided fairly, with dignity and respect for all involved. The processes will be designed to constructively repair any damage caused and resolve the problems that caused the conflict.[54]

In short, a Sustainable Justice approach must (i) provide a clear and consistent role of the rule of law; (ii) provide advice and assistance to help people manage conflicts without becoming a dispute and to help them resolve disputes without the need to resort to state power; (iii) have an accessible, independent and professional judicial system to manage and validate all access to state power to remedy violations of the law; (iv) ensure that the entire application of State power is designed to repair the damage caused and to remedy the underlying causes of the conflict that is heading for a dispute; and (v) aim to reform people who have committed a crime and only separate them from the community if there is an unacceptable risk of causing further damage.[55]

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50 SEGGER, Marie-Claire Cordonier; WEERAMANTRY, Christopher. *Sustainable justice*: Reconciling economic, social and environmental law. Boston, MA: Martinus Nijhoff, 2005.

51 PAVEL, Margaret Paloma. *Breakthrough communities: Sustainability and justice in the next American metropolis.* Cambridge, MA: The MIT Press, 2009.

52 AGYEMAN, Julian; EVANS, Bob. "Just sustainability": The emerging discourse of environmental justice in Britain. *The Geographical Journal,* v. 170, n. 2, jun. 2004, p. 155-164.

53 CANNON, Andrew J. Sustainable justice: a guiding principle..., *op. cit.*, p. 6-7.

54 CANNON, Andrew J. Sustainable justice: a guiding principle..., *op. cit.*, p. 6-7.

55 CANNON, Andrew J. Sustainable justice: a guiding principle..., *op. cit.*, p. 8.

Courts, therefore, must not only apply objective law to a specific case. The main function of a justice system consists of precisely managing conflicts efficiently and promoting social harmony, and success, in this function, goes far beyond pronouncing sentences, collecting debts, and condemning people. And sustainable access to the justice system presupposes that the parties involved in a conflict can manage their conflicts themselves without necessarily resorting to state justice. A sustainable justice system must address the underlying causes of conflicts and find them a solution.[56]

A Sustainable Justice system will always seek to manage disputes in ways that hold people accountable for illegal activities and, at the same time, understand the underlying causes of the conflict so that its processes repair the damage that has been caused and better equip the parties to manage future conflicts, so that social harmony is improved.[57] This approach must understand that adversarial and state process models are not always appropriate and sustainable dispute resolution models.

2 Online conflict resolution

Although online dispute resolution systems have only developed since the mid-1990s[58] there is an impressive amount of litigation that discusses their efficiency,[59] trust[60] and sustainability.

What is an online resolution of disputes system? What are these systems capable of doing? And what is the future of these systems? Certainly, any attempt to answer the last question, in the current state of technological development, can result in a frustrating exercise in prediction. However, it is possible to define, with great precision, what can be understood by online dispute resolution systems and what these systems can do.

Online dispute resolution systems can be set from a broad perspective and strict perspective. Comprehensively, it defines the online dispute resolution systems as different approaches to forms of conflict resolution that would include (but not be limited to) the ombudsman systems, mediation, facilitated solutions, arbitration etc.

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56 CANNON, Andrew J. Sustainable justice: a guiding principle..., *op. cit.*, p. 8.

57 CANNON, Andrew J. Sustainable justice: a guiding principle..., *op. cit.*, p. 8.

58 SOUZA, Maria Cláudia da Silva Antunes de; SOUZA, Cássio Bruno Castro. Online Dispute..., *op. cit.*, p. 31-58.

59 KATSH, Ethan. Online Dispute Resolution: Some Implications for a Emergence of Law in Cyberspace. *Lex Eletronica*, v. 10, n. 3, Hiver/Winter 2006. Disponível em: https://www.lex-electronica.org/files/sites/103/10-3_katsh.pdf. Acesso em: 01 dez. 2020.

60 NIKOLA, Šimková. A Literature Review on Online Dispute Resolution and Application to B2B E-commerce. IDIMT 2015: Information Technology and Society – Interaction and Interdependence – *23rd Interdisciplinary Information Management Talks*. Conference-paper, 2015.

These approaches and forms can merge elements online and offline. This concept is given by the United Nations Commission on International Commercial Law.[61]

On the other hand, in a restricted way, online dispute resolution systems are defined as platforms specifically designed to resolve disputes resulting from transactions explicitly connected with these platforms.[62] A stricter definition of online dispute resolution systems would not include systems that only set out to enable e-negotiation, e-mediation and e-arbitration. In all these cases, the idea means simply using e-mail to negotiate, consensual dispute resolution, or a third-party intermediary for resolving disputes binding instead of using other forms of communication. Online dispute resolution systems have a communication architecture in ways that go far beyond the mere exchange of e-mail messages.[63]

In a manner quite safe, most definitions found in the literature comprise these online dispute resolution systems as online resolution forms using alternative dispute resolution methods (alternative dispute resolution).[64] In other words, the term covers ways of solving partial disputes or fully realized through the internet, initiated in cyberspace, but an external source (offline).[65] It is, without synthesis, the result of the implementation of alternative dispute resolution tools through the internet. Therefore, if, on the one hand, technological innovations "have increased the number of disputes and litigations (due to the ease of establishing relationships quickly), technology has also been used to develop new and more effective ways of solving conflict.[66]

The first platform to provide an online dispute resolution system on a large scale, directly between two ends, was eBay, from SquareTrade. The ODR system used by eBay now allows conflict resolution from two steps. At first, the conflict parties have a negotiation process with technological support hosted on the web. In a second step, a human mediator's intervention becomes possible, if the parties

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61 UNCITRAL. *Technical Notes on Online Dispute Resolution,* 2017. Disponível em: https://www.uncitral.org/pdf/english/texts/odr/V1700382_English_Technical_Notes_on_ODR.pdf, p. 1. Acesso em: 15 nov. 2020.

62 BRAND, Ronald A. Online Dispute Resolution. A paper based on the author's presentation at the Summer School in Transnational Commercial Law & Technology, Verona, Italy, May 30-June 1, 2019 (scheduled for publication by the University of Verona School of Law, Marco Torsello, editor). *University of Pittsburgh Legal Studies Research Paper*, n. 2019-31. Disponível em: SSRN: https://ssrn.com/abstract=3506094. Acesso em: 23 dez. 2020.

63 BRAND, Ronald A. Online Dispute Resolution. A paper based on the author's presentation at the Summer School in Transnational Commercial Law & Technology, Verona, Italy, May 30-June 1, 2019 (scheduled for publication by the University of Verona School of Law, Marco Torsello, editor). *University of Pittsburgh Legal Studies Research Paper*, n. 2019-31. Disponível em: SSRN: https://ssrn.com/abstract=3506094. Acesso em: 23 dez. 2020.

64 MANIA, Karolina. Online dispute resolution: The future of justice. *International Comparative Jurisprudence.* v. 1, n. 1, 2015, p. 76-86.

65 WAHAB, Mohamed Abdel; KATSH, Ethan; RAINEY, Daniel. *Online dispute resolution: Theory and practice. A treatise on technology and dispute resolution.* Hage: Eleven International Publishing, 2012.

66 FERRARI, Isabela; LEITE, Rafael; RAVAGNANI, Giovani; FEIGELSON, Bruno. *Justiça Digital.* São Paulo: Revista dos Tribunais, 2020.

choose to intervene.[67] The system offers both a direct negotiation process and a mediation process.

For this article, especially as it presents a platform architecture that gives efficient incentives to self-composition, it is convenient to analyze how eBay's system can resolve conflicts so efficiently. One of the reasons cited by the literature and by the platform developer itself[68] is the non-use of language that suggests any type of adversarial relationship and the structure for dispute resolution is simplified as a result of previous experiences and enables (i) Quality and the buyer claims if an item is an item not received or is received but not as described; and seller's claims for unpaid item fees (which occur when the buyer fails to pay, but eBay charged the seller a fee because a sale was agreed). The fact is that, in 2012, eBay Dispute Resolution handled over 60 million disputes with a satisfactory 80% result, second only to Alibaba's dispute resolution system, which handles hundreds of millions of disputes.[69] Part of the platform's success can be explained by the dispute resolution process and part by controlling language and communication between the parties.

EBay's goal is to allow buyers and sellers to resolve transaction problems between them before proceeding to a level where eBay must intervene. Where the parties fail to find a solution on their own, any of them can submit your complaint to eBay Resolution Center, set by himself eBay, as the safest form of sellers and buyers to communicate when there is a problem with a transaction.[70] The resolution of disputes process begins with online negotiation between the parties; followed by facilitated settlement; followed by a binding decision, most often applied automatically through a chargeback in the PayPal / eBay financial system.[71]

For Rule Colin, responsible for designing and implementing eBay's ODR system, the use of adversarial language has a detrimental effect on the platform.[72] For this reason, it argues that an ODR system should avoid making available to the user/complainant the possibility of making a complaint in an open text box, to avoid the natural expression of frustration and negative feelings, as well as using

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67 KATSH, Ethan. Online Dispute Resolution: Some Implications for a Emergence of Law in Cyberspace. *Lex Eletronica*, v. 10, n. 3, Hiver/Winter 2006. Disponível em: https://www.lex-electronica.org/files/sites/103/10-3_katsh.pdf. Acesso em: 01 dez. 2020.

68 RULE, Colin. Designing a Global Online Dispute Resolution System: Lessons Learned from eBay. *U. St. Thomas L.J.* v. 13, n. 1, 2017, p. 354-369.

69 KATSH, Ethan; RABINOVICH-EINY, Orna. *Digital Justice*: Technology and the Internet of Disputes. Nova Iorque: Oxford University Press, 2017.

70 DAL PUBEL, Luca. E-Bay Dispute Resolution and Revolution: An Investigation on a Successful Odr Model. *Platform Economy & Labour Market*, 2018, p. 130-151.

71 BRAND, Ronald A. Online Dispute Resolution. A paper based on the author's presentation at the Summer School in Transnational Commercial Law & Technology, Verona, Italy, May 30-June 1, 2019 (scheduled for publication by the University of Verona School of Law, Marco Torsello, editor). *University of Pittsburgh Legal Studies Research Paper*, n. 2019-31. Disponível em: SSRN: https://ssrn.com/abstract=3506094. Acesso em: 23 dez. 2020.

72 RULE, Colin. Designing a Global Online Dispute Resolution..., *op. cit.,* p. 354-369.

a classification process by whereby parties can be excluded from the exchange platform (eBay itself) if they have a negative reputation. The protection of confidence from the mutual evaluation[73] gives the seller incentives to respond from a more positive tone to the buyer to claim.[74] The positive tone in communications within the ODR system increases the possibility of successful dispute resolution, as well as promoting "responsibility, empathy and reasonableness".[75] Therefore, Rule notes that (i) users want the system to be simple to use, fair to all participants and easy to understand; (ii) it is important to pay attention to the difference in bargaining powers, especially since, in the case of eBay, sellers are repeat players; and (iii) the communication tone is important, so that language shapes the way we look at the world and on how we think about solving problems. If language promotes empathy and rationality, it can strongly encourage conflict resolution.[76]

Alibaba created an ODR system similar to eBay's three-step model. It is diagrammed on the Alibaba website. But not only Alibaba developed a system similar to eBay. Platforms like Airbnb, Uber and TaskRabbit have created ODR systems inspired by the eBay format. The expansion of ODR systems on the market makes Rule suggest that it is possible that the justice systems of the future will jam more, like with designs creates for eBay, than systems geographically linked today.[77]

The ODR system designed and implemented by eBay handles more than 60 million liters per year, has an 80% success rate. As noted by Rule, language, and the way the parties communicate are essential for the platform's success. Therefore, incentives matter and good choice architecture can promote the use of more friendly, empathetic, and responsible language.

3 A proposed architecture of choices for more consensus and sustainable public administration

This article aims to answer a problem. But it also proposes to offer a proposal. If the adoption of alternative means of conflict resolution promotes more satisfaction to the parties, whether from a financial or emotional point of view,[78] as well as generating social benefits, why is the rate the use of ODRs in Brazil so low?[79] And

[73] LEMOS, Ronaldo; SOUZA, Carlos Affonso Pereira de. Aspectos jurídicos da economia do compartilhamento: função social e tutela da confiança. *Revista de Direito da Cidade,* v. 08, n. 4, 2016, p. 1757- 1777.

[74] RULE, Colin. Designing a Global Online Dispute Resolution..., *op. cit.,* p. 354-369.

[75] RULE, Colin. Designing a Global Online Dispute Resolution..., *op. cit.,* p. 354-369.

[76] RULE, Colin. Designing a Global Online Dispute Resolution..., *op. cit.,* p. 354-369.

[77] RULE, Colin. Designing a Global Online Dispute Resolution..., *op. cit.,* p. 354-369.

[78] WATKINS, Daniel. A Nudge to Mediate: How Adjustments in Choice Architecture can Lead to Better Dispute Resolution Decisions. *The American Journal of Mediation,* v. 4, 2010. Disponível em: http://www.americanjournalofmediation.com/pg6.cfm. Acesso em: 20 out. 2020.

[79] Although there are no statistical reports that make a comparison between the use of the Judiciary and extrajudicial self-composition methods, the Justice in Numbers 2020 Report of the National Council of

why would it be reasonable to assume that the adoption of ODRs could change the scenario of low demand for non-jurisdictional conflict settlement solutions? The answer may lie in how public policymakers consider the architecture of the parties' choices in a conflict of interest.

3.1 Libertarian paternalism, the architecture of choices and bad decisions

It is commonplace, among publications specialized in Law, to affirm that the option for self-composting methods can be more efficient than the adversarial and state process model.[80] However, if self-composition is often considered better than the award to resolve certain conflicts, why do the parties usually choose the award instead of auto composition? A possible response for that question may consider that there is an asymmetry of information with regard to the benefits of the self-composition procedures. This argument starts from the premise that people decide in order to maximize their rational utility.[81] And this is an argument based on the rational choice model. The argument that, if before a case that demands a solution, the individual, on the model of rational choice, relate to the desired results (values), anticipates the actions that can be adopted in their search (options); every action contributes to the expected result and at what cost (recovery) and choose the

Justice revealed that in 2019, only 12.5% of the judicial processes were resolved through conciliation. When comparing the year 2019 with the year 2018, it is possible to notice that there was "an increase of only 6.3% in the number of ratification of agreements, despite the provision of the new Civil Procedure Code (CPC), which, in force since 2016, made it mandatory to hold a prior conciliation and mediation hearing" (CNJ, 2020, p. 6). When the report considers "the total conciliation index, including pre-procedural procedures and procedural classes that are not accounted for in this report (for example, inquiries, pre-procedural complaint, detailed terms, letters of order, precatories, petitions of small value, among others), there is a reduction in the reconciliation index from 12.5% to 9.6%. The biggest reduction occurs in the State Justice regarding the total of the segment (from 11.3% to 8.2%), but the numbers change in the evaluations by court" (CNJ, 2020, p. 173).

80 LIMA, Anna Paula Monnerat Carvalho; FRANCO, Ângela Barbosa. A eficiência dos métodos de auto e heterocomposição na resolução dos dissídios trabalhistas: a importância da mediação no atual cenário jurídico brasileiro. *Revista de direito do Trabalho,* São Paulo, v. 43, n. 177, p. 115-136, maio 2017; MENEZES, Felipe Barbosa de; MORAES NETO, Aurélio Ferreira de. A autocomposição como forma de concretização da eficiência administrativa. *Revista da ESDM*, Porto Alegre, v. 4, n. 8, 2018, p. 21-33; MELLO, João Augusto dos Anjos Bandeira de; FONSÊCA, Rafael Sousa. O mecanismo da autocomposição como alternativa para solução de controvérsias na seara administrativa. *Revista de Formas Consensuais de Solução de Conflitos.* v. 2, n. 1, p. 136-151, Jan/Jun. 2016; POMPEU, Gina Vidal Marcílio; MARTINS, Dayse Braga. A autocomposição de conflitos no contexto do neoprocessualismo civil e o princípio da consensualidade. *Scientia Iuris,* Londrina, v. 22, n. 2, p. 85-114, jul. 2018; PIERONI, Fabrizio de Lima. *A consensualidade e a Administração Pública*: a autocomposição como método adequado para a solução dos conflitos concernentes aos entes públicos. 2018. 190 f. Dissertação (Mestrado em Direito). Pontifícia Universidade Católica de São Paulo – PUC-SP, São Paulo, 2018.

81 WATKINS, Daniel. A Nudge to Mediate: How Adjustments in Choice Architecture can Lead to Better Dispute Resolution Decisions. *The American Journal of Mediation,* v. 4, 2010. Disponível em: http://www.americanjournalofmediation.com/pg6.cfm. Acesso em: 20 out. 2020; YEUNG, Luciana Luk-Tai. Análise Econômica do Direito do Trabalho e da Reforma Trabalhista (Lei n. 13.467/2017). *Revista Estudos Institucionais*, v. 3, 2, p. 891-921, 2017.

way that the aids more (choice), so that there is a presumption that people make decisions using this procedure, without necessarily have consciously followed.[82] It is not as if all individuals made complex calculations evaluating choices when deciding, but it seems intuitive to say that when rational utility maximizers get good information, they make good decisions,[83] because the model the rational choice makes the alternative that will be taken depending on the information available on the options and repercussions. The best option is chosen by the person among those you know and to obtain more information, the choice may not seem optimal in the future.[84] Therefore, if the parties involved in a conflict understand the award meets their needs more efficiently than self-composition is perhaps because they received little information about the benefits of the self-obtained resolution so that people who advocate the advantages of self-composition should do more to bring information to the parties about the advantages of self – composition.[85]

The argument presented in the pair will preceding paragraph assumes that people, in general, are unaware of the benefits and advantages of the auto composition methods of solution of conflicts and have access to good information that the Judiciary is an appropriate place to resolve conflicts. However, if the degree of confidence in the Judiciary is not as high and negative aspects predominate in society in relation to the Brazilian Judiciary, such as sadness (13%), indignation (12%), shame (11%) and fear (6%) and a certain degree of concern (26%),[86] it is reasonable to assume that this movement should push rational choices towards non-judicial means of conflict resolution. A survey prepared by Irapuã Santana[87] shows that 49.7% of the people interviewed are considerably inclined to make an agreement in a conciliation hearing scheduled after the start of the judicial process. Another 17.6% are very inclined. Only 8.9% would be slightly inclined and 1% would not make a deal at all. Also, according to Irapuã Santana,[88] "people who earn between one and three wages - minimum (36%), or even below a wage - minimum (28%)," only consider submitting their dispute to the Judiciary if the loss suffered equal to or greater than R$1,000.00 (one thousand reais). Even if Brazil experiences a scenario of great litigation, the average Brazilian has a strong tendency to support pecuniary losses in order not to file a lawsuit. If there is a tendency of the people

[82] MACKAAY, Ejan; ROUSSEAU, Stéphane. *Análise Econômica do Direito*. Trad. Rachel Sztajn. 2. ed. São Paulo: Atlas, 2015.
[83] WATKINS, Daniel. A Nudge to Mediate: ..., *op. cit.*
[84] MACKAAY, Ejan; ROUSSEAU, Stéphane. *Análise Econômica do..., op. cit.*
[85] WATKINS, Daniel. A Nudge to Mediate: ..., *op. cit.*
[86] Instituto de Pesquisas Sociais, Políticas e Econômicas (IPESPE). *Estudo da imagem do Judiciário brasileiro*: Sumário Executivo. dez. 2019, 169 p.
[87] SANTANA, Irapuã. *Os incentivos sistêmicos ao acesso à justiça*. Estado da Arte, 2020. Disponível em: https://estadodaarte.estadao.com.br/incentivos-acesso-justica-irapua-santana/. Acesso em: 23 set. 2020.
[88] SANTANA, Irapuã. *Os incentivos sistêmicos ao acesso à justiça, ..., op. cit.*

to make court settlements after starting a lawsuit, for which reason people do not seek voluntary self-composition procedures before starting a lawsuit? Are people making irrational choices, even if they have information? This action, which seems inconsistent or irrational, requires questioning, precisely, the extent of the agent's ignorance and the nature of the informational bias.[89]

It is no exaggeration to say that people make non-rational choices. Economists linked to the behavioral approach to economics understand that the rational choice model is an abstract economic model that describes the behavior of imaginary people. As a model that describes imaginary people (called econs), Richard Thaler suggests that it is necessary to stop assuming that "these models are accurate descriptions of human behavior and to stop basing public policy decisions on such flawed analyzes".[90] It is necessary to start considering, in the formulation of public policies (and access to justice a public policy), supposedly irrelevant factors that influence the decision making by the subjects, such as bias and heuristics. Public policy on access to justice should therefore change the way in which conflict resolution options are presented to citizens, so that they can make the right choice. A nudge is necessary, based on an architecture of choices.

And how to do that? First, it is necessary to understand that people do not always choose to maximize utility. The rational choice model ignores that the decision-making process considers supposedly irrelevant factors, such as bias and heuristics. Second, the Government must understand that the way it presents citizens with the various options for resolving disputes greatly influences the choice of people who must manage a conflict. The concept of choice architecture is based on the idea that a choice can be presented in several ways and the specific form that is used influences the decision maker's choice.[91] Third, one must consider that there is a cheap and unobtrusive way of getting people to make the right choice: libertarian paternalism.

3.2 Factors supposedly irrelevant: as heuristics and biases influence decision making

As Thaler argues, one of the most important ways in which behavioral economics can enrich economic analysis is to point out the supposedly irrelevant factors that matter most in the decision-making process.[92] Supposedly irrelevant

89 MACKAAY, Ejan; ROUSSEAU, Stéphane. *Análise Econômica do Direito, op. cit.*

90 THALER, Richard. Misbehaving: a construção da economia comportamental. Trad. George Schlesinger. Rio de Janeiro: Instrínseca, 2019.

91 THALER, Richard; SUNSTEIN, Cass. *Nudge: como tomar decisões melhores sobre saúde, dinheiro e felicidade*. Trad. Ângelo Lessa. Rio de Janeiro: Objetiva, 2019.

92 THALER, Richard. *Behavioral Economics: Past, Present and Future*, 2016. Disponível em: http://dx.doi.org/10.2139/ssrn.2790606.

factors are variables that are not considered or that apparently have no effect on the behavior of a rational person, such as framing a problem, the order in which options are displayed, the relevance of one option over another, the presence of a previous sunk cost (or gain), if the customer in a restaurant can see its dessert options to choose whether to follow the diet planned etc.[93] And there are supposedly irrelevant factors that may prevent a given public policy from achieving its stated objectives. Public policies, legal rules, administrative decisions often go against human nature: against our prejudices, the heuristics we use, the lack of discipline and the limited capacity for processing information, etc. For this reason, attempts to change behavior are often ineffective and inefficient,[94] precisely because they neglect these supportively irrelevant factors.

Heuristics and cognitive biases are variables that matter in making decisions and are ignored by policymakers. But what are heuristics and cognitive biases? Often, people make errors of judgment and choice that result, especially, from biases of intuition.[95] The word bias consists of a literal translation of the English word bias, which, in turn, means bias, prejudice, bias, slope etc. Bias, in a more technical way, means a systematic discrepancy between the (average) judgment of a person or group and a true value or norm[96] and, in most cases, biases are defined as deviations from statistical principles,[97] but also may represent a bias (moral when a judgment deviates from a moral norm), a regulatory or statutory bias, one social bias, one psychological bias and other. More generally, there are many types of bias, depending on the type of pattern used.[98] As Kahnemann warns, "even statisticians were not good intuitive statisticians",[99] so that intuitive human judgment (used in decision-making), in most cases, deviates from statistical principles. Therefore, it is important to realize that what should be considered when working with the concept of bias is that it is not that people make mistakes - we all do, but if these statistical or logical principles are really sensible norms / standards of behavior, the that would qualify deviations as mental illusions.[100] Biases are, therefore, systematic errors, which can lead to wrong decisions. And they often imply decisions based on prejudice.

93 THALER, Richard. *Behavioral Economics:..., op. cit.*

94 REISCH, Lucia; ZHAO, Min. Behavioural economics, consumerbehaviour and consumer policy:state of the art. Behavioural Public Policy. v. 1, n. 2, 2017, p. 190-206.

95 KAHNEMANN, Daniel. *Rápido e Devagar: duas formas de pensar*. Trad. Cássio de Arantes Leite. Rio de Janeiro: Objetiva, 2012.

96 GIGERENZER, Gerd. The Bias Bias in Behavioral Economics. Review of Behavioral Economics. v. 5, p. 303-336, 2018.

97 GIGERENZER, Gerd. The Bias Bias in Behavioral Economics..., *op. cit.*

98 DANKS, David; LONDON, Alex John. Algorithmic bias in autonomous systems. In: Proc. of the Int. Joint Conf. on Artificial Intelligence, p. 4691–4697. AAAI Press, 2017.

99 KAHNEMANN, Daniel. *Rápido e Devagar: duas formas de pensar..., op. cit.*

100 GIGERENZER, Gerd. The Bias Bias in Behavioral Economics. Review of Behavioral Economics. v. 5, p. 303-336, 2018.

Part of these thought patterns is defined as heuristics. Heuristics are mental shortcuts used to "relieve the cognitive burden of making a decision".[101] These are rules that do not require a complete search for information or exhaustive calculations[102]. These shortcuts consist of general rules and serve as an 'educated guess" given to the basis of past experience, or just looking at what other people are doing.[103] Examples of heuristics are anchoring, availability, and representativeness. These are the heuristics that most influence the decision process, as well as the biases of optimism and overconfidence, aversion to loss, status quo, framing, self-control, and herd behavior as biases that sometimes impair decision-making.

Since people are limitations as information processors, prejudices can (and often do) reduce the amount of thinking and processing a person runs to make a choice, especially in stressful or limited time situations. For this reason, the way information is presented and how analyzes are conducted also impact the number of cognitive resources and the collection of information that a person needs in a situation.[104]

Take the anchoring heuristic as an example. The anchoring is based on the idea that the decision-maker, in its final estimates, adjust the value to the anchor considered, but tend to insufficiently adjust from that point.[105] That is, anchoring manifests itself in numerical predictions, when relevant data are available,[106] so that our guesses can be quite different depending on the information we have. For Thaler and Sunstein, anchors can act as nudges, so it is possible to influence a choice in a specific situation "subtly suggesting a starting point for your thought process". To exemplify, the authors state that "when charities ask for a donation, they usually present options of values such as one hundred dollars, 250 dollars, one thousand dollars, 5,000 dollars or 'other'. If funders know what they are doing, these values are not random because the options influence the amount people decide to donate. People give more if the options are one hundred dollars, 250

[101] HISCOX, Michael; OLIVER, Tara; RIDGWAY, Michael; ARCOS-HOLZINGER, Lilia; WARREN, Alastair; WILLIS, Andrea. *Going blind to see more clearly*: unconscious bias in Australian Public Service shortlisting processes. Commonwealth of Australia, Department of the Prime Minister and Cabinet, 2017. Disponível em: http://behaviouraleconomics.pmc.gov.au/sites/default/files/projects/unconscious-bias.pdf Acesso em: 20 nov. 2020.

[102] GIGERENZER, Gerd; MOUSAVI, Shabnam. Heuristics are Tools for Uncertainty. ..., *op. cit.*

[103] HISCOX, Michael; OLIVER, Tara; RIDGWAY, Michael; ARCOS-HOLZINGER, Lilia; WARREN, Alastair; WILLIS, Andrea. *Going blind to see more clearly..., op. cit.*

[104] PHILLIPS-WREN, Gloria, POWER, Daniel J.; MORA, Manuel. Cognitive bias, decision styles, and risk attitudes in decision making and DSS. *Journal of Decision Systems.* v. 28, n. 2, 2019, p. 63-66.

[105] TRONCO, Paula Borges *et al*. Heurística da Ancoragem na Decisão de Especialistas: Resultados Sob Teste de Manipulação. *Rev. adm. contemp.,* Curitiba, v. 23, n. 3, p. 331-350, June 2019. Available from: http://www.scielo.br/scielo.php?script=sci_arttext&pid=S1415-65552019000300331&lng=en&nrm=iso. Access on: 4 dec. 2020. Epub June 27, 2019, p. 333.

[106] TVERSKY, Amos; KAHNEMAN, Daniel. Judgement under uncertainty: Heuristics and biases. *Science.* v. 185, n. 4157, p. 1124-1131, 1974.

dollars, one thousand dollars and 5,000 dollars than when they are 50 dollars, 75 dollars, one hundred dollars and 150 dollars".

On the other hand, the availability heuristic consists of the "process of judging frequency according to the ease with which events come to mind".[107] As Ciarelli and Avila explain, "if we adopt this rule of judgment, we evaluate the frequency or chances of an event occurring according to the ease with which occurrences of the event can be remembered, that is, they are available in memory".[108] This is a rule of thumb that makes sense. However, "there are other factors that also facilitate the recall of an event, influencing the judgment on its frequency and probability of occurrence without, in fact, actually changing them".[109] For example, and prominent winds, which attract our attention, are easily recovered by our memory: divorces between celebrities, sex scandals involving politicians. This can lead us to the conclusion, even without any statistics regarding these facts, that divorces are more frequent among celebrities and sex scandals among politicians. The same is true with dramatic events (such as the crash of a plane with extensive press coverage) that can affect our judgments about flight safety and personal experiences can be more significant than statistics: "A judicial error that affects you will undermine your faith in the justice system more than a similar incident that you read about in a newspaper".[110]

Both heuristics are related to how past events have more impact or influence on the decision-making process than statistics and probabilities.[111] They are heuristics of judgment. Therefore, a person who has personally experienced an earthquake will be more likely to believe in the likelihood of an earthquake than if he had only read about it in the newspaper.[112] In this sense, "the availability heuristic helps explain a good deal of risk-related behavior, including both public and private decisions regarding precautionary measures".[113] By "taking into account the availability heuristic, the choice architect can improve public or private decisions if judgments can be guided by real probabilities".[114]

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[107] KAHNEMANN, Daniel. *Rápido e Devagar: duas formas de pensar..., op. cit.*

[108] CIARELLI, Gustavo; AVILA, Marcos. A influência da mídia e da heurística da disponibilidade na percepção da realidade: um estudo experimental. *Rev. Adm. Pública,* Rio de Janeiro, v. 43, n. 3, p. 541-562, jun. 2009. Disponível em: http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0034-76122009000300002&lng=pt&nrm=iso. Acesso em: 4 dez. 2020.

[109] CIARELLI, Gustavo; AVILA, Marcos. A influência da mídia e da heurística da disponibilidade na percepção da realidade: um estudo experimental. *Rev. Adm. Pública*, Rio de Janeiro, v. 43, n. 3, p. 541-562, jun. 2009. Disponível em http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0034-76122009000300002&lng=pt&nrm=iso. Acesso em: 4 dez. 2020.

[110] KAHNEMANN, Daniel. *Rápido e Devagar: duas formas de pensar..., op. cit.*

[111] KAHNEMANN, Daniel. *Rápido e Devagar: duas formas de pensar..., op. cit.*

[112] THALER, Richard; SUNSTEIN, Cass. *Nudge: como tomar decisões melhores..., op. cit.*

[113] THALER, Richard; SUNSTEIN, Cass. *Nudge: como tomar decisões melhores..., op. cit.*

[114] THALER, Richard; SUNSTEIN, Cass. *Nudge: como tomar decisões melhores..., op. cit.*

In addition, and stereotypes also matter. As Thaler and Sunstein explain, the heuristic of representativeness is a heuristic of similarity. The central idea is that "when we ask how likely it is that A belongs to category B, people (especially their Automatic Systems) respond based on the similarity they see between A and B's image or stereotype (that is, if A is 'representative' of B)".[115] The heuristic of representativeness describes how stereotypes impregnated in our minds can affect our decisions. People often see patterns where they do not exist and get carried away by the illusion of the pattern.[116] Much of the questions related to the probability that people often face are related to two questions: How likely is object A to be in category B? How likely is event A to originate from process B? How likely is process B to result in event A? As Kahneman and Tversky explain, in order to answer these questions, people often use the heuristic of representativeness, which makes probabilities to be evaluated by a question of degree: A is representative of B insofar as A resembles B.[117]

For example: The more A is representative of B, the more likely that A is the result of B. On the other hand, if A is not similar to B, probably A is not the result of B. Khanemann illustrates the heuristic from the description of a person, chosen at random from a representative sample: "Steve is very shy and withdrawn, invariably helpful, but with little interest in people or in the real world. Of a docile and organized nature, it needs order and structure, and a passion for detail".[118] From these characteristics, asks Khanemann, is Steve more likely to be a farmer or a librarian? As Khanemann ponders, Steve's description brings to mind the characteristics of a stereotyped librarian. However, at the time of the trial, statistical considerations are often overlooked: there are more than 20 male farmers for each librarian in the United States. So "as the disproportion is so great, it's almost a certainty that more indoles" docile and organized "will be found driving tractors than sitting behind the information desk of the libraries".[119]

In addition to anchoring, availability and representativeness, loss aversion is a heuristic that plays an important role in the decision process. Humans are loss averse. And this aversion significantly influences human decisions, especially when assessing the influence of the status quo bias in the decision-making process and perceptions about the world.

[115] THALER, Richard; SUNSTEIN, Cass. *Nudge: como tomar decisões melhores..., op. cit.*
[116] KAHNEMANN, Daniel. *Rápido e Devagar: duas formas de pensar..., op. cit.*
[117] TVERSKY, Amos; KAHNEMAN, Daniel. Judgement under uncertainty: Heuristics and biases. *Science*. v. 185, n. 4157, p. 1124-1131, 1974.
[118] KAHNEMANN, Daniel. *Rápido e Devagar: duas formas de pensar..., op. cit.*
[119] KAHNEMANN, Daniel. *Rápido e Devagar: duas formas de pensar..., op. cit.*

As Samuelson and Zeckhauser[120] ponder, according to the rational choice model, neither the order in which the alternatives are presented, nor any labels they carry should affect the individual's choice. However, in real-world decision problems, alternatives often come with influential labels. In other words, an alternative inevitably carries the status quo label, that is, doing nothing or maintaining the current or previous decision is almost always a possibility. When faced with new options, decision-makers tend to stick to the status quo alternative, for example, to follow the company's usual policy, elect a holder for another term, buy the same brands of products or stay in same job. For this reason, it is always relevant to investigate whether the framing of an alternative – whether it is in the status quo position or not – will significantly affect the likelihood of your choice.

Other biases and heuristics can be related and can demonstrate how the human being, in the real world, can make very irrational choices, such as problems related to self-control, inattentive choices, overconfidence etc. The limits of this research do not allow a discussion, albeit shallow, of each heuristic and cognitive bias that may interfere in the decision-making process.[121] But it is not just internal cognitive biases that influence the decision-making process. People and their choices are affected by in f social confluency. If many people think in a certain way, information is transmitted to the whole society that perhaps that way of thinking is the best option. For this reason, social influences are important, either because most people learn from others (this is how individuals and society develop), or because one of the most efficient ways of poking is through social inclusion[122]. People learn from others. Many of our biggest prejudices, by the way, come from other people. Therefore, when social influences make people have false or preconceived beliefs, a nudge can help.[123]

Therefore, there is evidence that people use pocket rules and mental shortcuts to make the most of their choices throughout life. And why do people use mental shortcuts to make such complex choices? Psychologists and behavioral economists

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[120] SAMUELSON, William; ZECKHAUSER, Richard. Status Quo Bias in Decision Making. *Journal of Risk and Uncertainty,* 1, 7-59 (1988), p. 8.

[121] To do so, check out: TVERSKY, Amos; KAHNEMAN, Daniel. Judgement under uncertainty: Heuristics and biases. Science. v. 185, n. 4157, p. 1124-1131, 1973, p. 1124-1131; TVERSKY, Amos; KAHNEMAN, Daniel. The Framing of Decisions and the Psychology of Choice. *In*: Wright G. (Eds.) *Behavioral Decision Making*. Springer, Boston, MA, 1985, p. 25-41, p. 25-41; FIEDLER, Klaus; VON SYDOW, Momme. Heuristics and Biases: Beyond Tversky and Kahneman's (1974) Judgment under Uncertainty. *In*: M. W. Eysenck & D. Groome. *Cognitive Psychology*: Revisiting the Classical Studies. Los Angeles, London: Sage, 2015, p. 146-161, p. 146-161; KAHNEMAN, Daniel. Maps of Bounded Rationality: Psychology for Behavioral Economics. *American Economic Review*. v. 93, n. 5, p. 1449-1475, 2003, p. 1449-1475; DALE, Steve. Heuristics and biases: The science of decision-making. *Business Information Review*. v. 32, n. 2, p. 93–99, 2015, p. 93-99; THALER, Richard; SHEFRIN, Hersh. An economic theory of self-control. *Journal of Political Economy*. v. 89, n. 2, p. 392-406, 1981, p. 392-406; DELLAVIGNA, Stefano; MALMENDIER, Ulrike. Paying not to go to the gym. *American Economic Review*. v. 96, n. 3, p. 694–719, 2006, p. 694-719.

[122] THALER, Richard. Misbehaving: a construção da economia comportamental. Trad. George Schlesinger. Rio de Janeiro: Instrínseca, 2019.

[123] THALER, Richard; SUNSTEIN, Cass. *Nudge: como tomar decisões melhores..., op. cit.*

argue that human beings have two systems of thought: System 1 and System 2.[124] [125] System 1 (or Automatic System) is responsible for operating automatically and quickly, "with little or no effort and no perception of voluntary control",[126] almost as an institutional system,[127] while System 2 (or Reflective System) is responsible for carrying out activities that require effort and more complex, so that "the operations of System 2 are often associated with the subjective experience of activity, choice and concentration".[128]

The human being, throughout a day, makes many decisions. Much of these decisions are simple and not complex. A study by researchers at Cornell University estimates that a person makes 226.7 decisions involving food over the course of a day.[129] It can be safely said that "most people are very busy: our lives are complicated, and we cannot spend all our time thinking and analyzing everything".[130] For this reason, even in complex decisions, it is possible to state that System 1 takes the lead in our decisions.

For this reason, by understanding the functioning of System 1, it is possible for policy makers to create choice architectures that can help people make the right choices, especially when the choices involve environmental protection and the adoption of sustainable business practices. By architecture of choices, an activity of organizing the "context in which people make decisions" must be understood.[131] That is, whoever organizes a voting cell to choose candidates is an architect of choices, as well as who elaborates a form of adherence to health insurance or a doctor who exposes the patient to possible treatment options.[132] Government is also architect of choices. Sometimes decisions that involve choosing the method of conflict resolution are difficult decisions, especially due to the lack of important information for the decision and the influence of supposedly irrelevant factors.

3.3 The architecture of choices, libertarian paternalism and self-composition by default

The idea that architects of choice (in other words, designers of environments of choice) can guide people to choose a specific option only by modifying the context in which the decision is made was popularized by Richard Thaler and Cass

[124] KAHNEMANN, Daniel. *Rápido e Devagar: duas formas de pensar..., op. cit.*
[125] THALER, Richard; SUNSTEIN, Cass. *Nudge: como tomar decisões melhores..., op. cit.*
[126] KAHNEMANN, Daniel. *Rápido e Devagar: duas formas de pensar..., op. cit.,*
[127] THALER, Richard; SUNSTEIN, Cass. *Nudge: como tomar decisões melhores..., op. cit.*
[128] KAHNEMANN, Daniel. *Rápido e Devagar: duas formas de pensar..., op. cit.*
[129] WANSINK, Brian; SOBAL, Jeffrey. Mindless Eating: The 200 Daily Food Decisions We Overlook, *Environment and Behavior*. v. 39, n. 1, p. 106-123, 2007.
[130] THALER, Richard; SUNSTEIN, Cass. *Nudge: como tomar decisões melhores..., op. cit.*
[131] THALER, Richard; SUNSTEIN, Cass. *Nudge: como tomar decisões melhores..., op. cit.*
[132] THALER, Richard; SUNSTEIN, Cass. *Nudge: como tomar decisões melhores..., op. cit.*

Sunstein.[133] From the discussion and the number of cases, Thaler and Sunstein show how the architectural choices can be an inexpensive and effective means of regulation. In summary, based on research-based on cognitive psychology and behavioral economics on human behavior and decision-making processes, choice architects can think of efficient strategies to nudge people, leading them to the right choice. This perception is important, especially in order to realize that environments of choice are never neutral and the way the context of choice is presented influences human choices, even though the designer has not deliberately built the environment of choice to achieve this specific effect.[134]

An example can contribute to the understanding of the idea of libertarian paternalism. The Behavioral Insights Team, the UK Government, published a work that demonstrated how (i) the form as job advertisements are published influences who apply for specific job (for example, when the job announcement indicated that the salary is negotiable, women were slightly more likely than men to apply for these vacancies, suggesting that a simple sentence can lead women to look for a higher starting salary, helping to reduce the gender pay gap over time), and that (ii) small changes in the "signals" issued by employers at the time of hiring can not only increase the number of requests for a job vacancy, but also modify the demographic composition of the candidate pool.[135]

The idea of an architecture of choices is founded on the premise of libertarian paternalism. Libertarian paternalists believe in the importance of freedom of choice and "want more and more people to follow their own path, and not impose obstacles".[136] In other words, libertarian paternalists believe that, instead of creating regulations that leave the recipient with a narrow margin of choice, Governments should "create policies that maintain or increase freedom of choice". On the other hand, from the architecture of choices, libertarian paternalists believe in the legitimacy of trying to influence people's behavior, as long as it is to make their lives better. For this reason, for libertarian paternalists, Governments have the role of developing public policies that "consciously direct people to make choices that improve their lives". Paternalism would lie in the conscious attempt to influence people to make choices that are beneficial to them. This influence, induction or nudge is called, by libertarian paternalists, a nudge: an instrument of the architecture of choices "capable

[133] THALER, Richard; SUNSTEIN, Cass. *Nudge: como tomar decisões melhores..., op. cit.*

[134] SELINGER, Evan; WHYTE, Kyle Powys. Is there a right way to nudge? The practice and ethics of choice architecture. *Sociology Compass*, v. 5, n. 10, julho de 2011, p. 923-935. Disponível em SSRN: https://ssrn.com/abstract=1883243. Acesso em: 15 set. 2020.

[135] BRISCESE, Guglielmo; TAN, Cameron. Applying Behavioural Insights to Labour Markets: How behavioural insights can improve employment policies and programmes. *The Behavioural Insights Team* (BIT), 2018. Disponível em: https://www.bi.team/publications/applying-behavioural-insights-to-labour-markets Acesso em: 8 jun. 2020.

[136] THALER, Richard; SUNSTEIN, Cass. *Nudge: como tomar decisões melhores..., op. cit.*

of changing people's behavior in a predictable way without vetoing any option and without any significant change in their economic incentives".[137] Therefore, libertarian paternalism can be defined as "a type of relatively weak, mild and non-intrusive paternalism, as it does not create impediments or obstacles to choices".[138]

When a regulatory agent shapes the environment of choice, the importance of this perception becomes greater. As is known, "citizens are not passive in the face of the rule change they are subjected to", so that "the rule change will lead anyone to ask whether they should adapt their behavior and, if so, in which direction".[139] Therefore, the number of options, the order in which the options are presented, the framing of these options and the selection of a standard option can influence people's choice in different ways.[140] Therefore, there is strong evidences that the change in the way options are presented to individuals can influence their decision, in a very positive way, including in public policies of access to judiciary, this work argues that the person or institution responsible for providing information to society (the "architect of choices") must predict human fallibility, especially understanding that the brain is caught in certain tricks, where heuristics and biases overcome rationality. Good choice architecture is guided by some basic principles.

The first one is the presentation of predefined options. And for what reason? Because a good choice architect cannot ignore the power of inertia and the bias of the status quo. As Thaler and Sunstein explain, "all these forces lead us to believe that if there is a standard option – an option that will prevail if no other is chosen – we can expect that a large number of people will end up maintaining it, even if they do not. be good.[141] The recognition of the power of the standard options influences the way cell phones are configured, the option for health plans, automatic revocation of subscriptions and even environmental preservation,[142] based on the idea of green by default or sustainable[143] by default.[144]

The second principle is the presumption of human fallibility itself. The choice architect should anticipate errors and keep them to a minimum. Precisely because they have the error, increasingly friendly car systems contain devices that alert

[137] THALER, Richard; SUNSTEIN, Cass. *Nudge: como tomar decisões melhores..., op. cit.*
[138] THALER, Richard; SUNSTEIN, Cass. *Nudge: como tomar decisões melhores..., op. cit.*
[139] MACKAAY, Ejan; ROUSSEAU, Stéphane. *Análise Econômica do Direito*. Trad. Rachel Sztajn. 2. ed. São Paulo: Atlas, 2015.
[140] SELA, Ayelet. e-Nudging Justice: The Role of Digital Choice Architecture in Online Courts. *Journal of Dispute Resolution*, n. 2, p. 127-163, 2019.
[141] THALER, Richard; SUNSTEIN, Cass. *Nudge: como tomar decisões melhores..., op. cit.*
[142] THALER, Richard; SUNSTEIN, Cass. *Nudge: como tomar..., op. cit.*
[143] HALE, Lara Anne. At home with sustainability: From green default rules to sustainable consumption. *Sustainability. v. 10, n. 1,* 2018.
[144] WELVAARTS, Michelle. *Helping Consumers Choose the Sustainable Option via Nudging. Sustainable by default in customisation tasks in the cosmetics industry*. Master Marketing in Business Administration. Radboud University Nijmegen, Holanda, 2019.

when the driver is not wearing a seat belt, when it is necessary to change oil, and automate the headlights.[145] Therefore, a good choice architecture system understands that humans make mistakes and must be quite lenient in these cases.[146] And, as a consequence of fallibility, good systems must offer appropriate information/feedback to users, especially when humans make mistakes and helping people to map and, with that, "choose the most beneficial alternatives for themselves", making information about each alternative as simple and understandable as possible.[147]

For these reasons, a good alternative choice architecture may consist of the idea of self-composition by default from the development of systems that observe the basic principles of any choice architecture that wants to be successful. It is argued in this article that a digital system can promote broader and more efficient access to justice.[148] Therefore, it is proposed to develop a digital choice architecture. Recently, research began to be developed with the objective of exploring the unique attributes of digital interfaces as environments of choice.[149] From research in psychology, human-computer interaction and information systems,[150] researchers observed how the elements[151] of digital user experience and user interface influence[152] user choices and entry into the system.[153] As points out, the idea that digital interfaces can be used to persuade their users to act in certain ways, changing people's attitudes and behavior, precedes the conceptualization of digital choice architecture.[154] The findings demonstrate that people behave in online environments differently than

[145] THALER, Richard; SUNSTEIN, Cass. *Nudge: como tomar..., op. cit.*

[146] THALER, Richard; SUNSTEIN, Cass. *Nudge: como tomar..., op. cit.*

[147] THALER, Richard; SUNSTEIN, Cass. *Nudge: como tomar..., op. cit.*

[148] It is necessary to consider, however, that it is necessary to recognize that a constitutionally adequate model of digital government must be able to ensure the effective access of its citizens to its social services. This access depends on a good choice architecture and also presupposes that the State itself provides its citizens with the ability to interact and exercise citizenship in digital environments. As Reyna, Gabardo and Santos argue, while the State cannot fail to provide services that can be provided digitally (either permanently or temporarily), a constitutionally adequate digital government cannot fail to promote constant inclusion, easy access and technological education for people who do not meet updated technological standards. And this dichotomy of action demands the adoption of creative solutions that increasingly promote access and facilitate the relationship between Public Administration and its citizens (REYNA, Justo; GABARDO, Emerson; SANTOS, Fábio de Souza. Electronic government, digital invisibility and fundamental social, *Sequencia*, v. 41, p. 30-50, 2020).

[149] SELA, Ayelet. e-Nudging Justice: The Role of Digital Choice Architecture in Online Courts. *Journal of Dispute Resolution*, v. 2019, n. 2, p. 127-163.

[150] SELA, Ayelet. e-Nudging Justice: The Role of Digital Choice Architecture in Online Courts. *Journal of Dispute Resolution*, v. 2019, n. 2, p. 127-163.

[151] JAMESON, Anthony *et al.* Choice Architecture for Human-Computer Interaction. *Foundations and Trends in Human-Computer Interaction*, v. 7, n. 1-2, 2013.

[152] BENARTZI, Shlomo; LEHRER, Jonah. *The Smarter Screen: Surprising Ways to Influence and Improve Online Behavior*. New York, New York: Portfolio/Penguin, 2015.

[153] SCHNEIDER, Christoph; WEINMANN, Markus; BROCKE, Jan Vom. Digital Nudging: Guiding Online User Choices Through Interface Design. *Communications of the ACM*, V. 61, n. 7, julho de 2018, p. 67-73. Disponível em: https://cacm.acm.org/magazines/2018/7/229029-digital-nudging/fulltext. Acesso em: 15 set. 2020.

[154] FOGG, Brian Jeffrey. Persuasive technology: using computers to change what we think and do. *Ubiquity*, New York, NY, United States, dez. 2002.

they would behave in offline environments and, in this sense, the user's choices can be influenced by changing the design of the option buttons and fonts, or by adjusting the interface color and the organization of content on the screen, so that an important attribute of digital choice environments is that they operate at the point of decision making and, therefore, well positioned to influence users.[155]

As Sela argues, the choice of architecture s digital is a particularly relevant analytical framework to Courts Online (in which case, any system ODR) as interfaces that organize the context in which litigants self-represented take decisions related to disputes and these decisions are difficult and rare.[156] The difficulty and rarity of the decision to choose the method of conflict resolution make it exactly those decisions that are most susceptible to nudges.[157] Even with these characteristics, decisions to resolve a dispute are decisions in which the choosers do not receive immediate feedback and have problems understanding aspects of the situation that should be easily understood,[158] especially due to the legal language.[159] Therefore, it is important to understand Public Administration and Online Courts as environments of digital choice.

There is evidence that countries implementing voluntary court mediation programs or slightly nudge the parties toward self-guided resolution, on average, are more efficient and non-discriminatory compared to countries using stronger nudges.[160] Voluntary mediation presupposes that the parties opt for the free will procedure and do not have direct supervision by the Judiciary, whereas compulsory mediation models have direct supervision by the Judiciary in the mediation process. In the case of compulsory (or mandated) mediation, the mediation procedure is part of the judicial procedure (adjudicative) and, in many cases, duties of good faith are imposed on the parties, which are assessed by the Judiciary at the time of the trial (through formal reporting obligations to the court by the supposedly neutral mediator and, in some cases, that mediator may even be required to testify), as well as financial penalties or costs are imposed on non-cooperative parties.[161]

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155 SELA, Ayelet. e-Nudging Justice: The Role of Digital Choice Architecture in Online Courts. *Journal of Dispute Resolution*, v. 2019, n. 2, p. 127-163.

156 SELA, Ayelet. e-Nudging Justice: The Role of Digital Choice Architecture in Online Courts. *Journal of Dispute Resolution*, v. 2019, n. 2, p. 127-163.

157 THALER, Richard; SUNSTEIN, Cass. *Nudge: como tomar decisões melhores..., op. cit.*

158 CAETANO, Joane Marieli Pereira. A (in)compreensão da linguagem jurídica e seus efeitos na celeridade processual. *Revista Litterata*, v. 3, n. 1, 2013; SOUZA, Antonio Escandiel de *et al*. A Elitização da Linguagem Jurídica e a Necessidade de sua Simplificação. *Signum Estud. Ling.*, Londrina, n. 19/2, p. 123-140, dez. 2016.

159 GUIMARÃES, Luciana Helena Palermo de Almeida. A simplificação da linguagem jurídica como instrumento fundamental de acesso à justiça. *Publ. UEPG Ci. Hum., Ci. Soc. Apl., Ling., Letras e Artes*, Ponta Grossa. v. 20, n. 2, p. 173-184, jul./dez. 2012.

160 ALI, Shahla F. Nuding Civil Justice: voluntary and mandatory court mediation user experience in twelve regions. Cardozo *Journal of Conflict Resolution*, v. 19, n. 2, Nova Iorque, EUA, 2018, p. 269-288.

161 ALI, Shahla F. Nuding Civil Justice: voluntary and mandatory court mediation user experience in twelve regions. *Cardozo Journal of Conflict Resolution*, v. 19, n. 2, Nova Iorque, EUA, 2018, p. 269-288.

It is possible to argue, therefore, that people involved in a conflict are influenced by irrational prejudices and cognitive errors when deciding between self-composition and adjudication and, for this reason, it is necessary to make an adjustment in the individuals' choice architecture for "push" the disputing parties toward optimal decisions.[162] One way to nudge the parties could occur from the establishment of self - composition as a standard dispute resolution procedure for certain types of conflicts, since, in this way, (i) the parties will choose to mediate more often because they will be less susceptible to irrational bias and cognitive errors that lead to suboptimal award decisions instead of mediation, as well as (ii) because the parties to the dispute maintain the choice between mediation and award and only the context in which they make that choice changes.[163]

A public ODR system, to resolve non-jurisdictional administrative conflicts, depends on an initial structure that considers and assesses the digital choice architecture designed for people who choose to litigate without lawyers (lay litigants, self-represented) from considerations related to the literature dispute resolution, behavioral psychology, computer-mediated communication, information systems and procedural justice.[164] As Sela demonstrates, self-guided procedures used in online courts create powerful digital choice architectures that influence the decisions and legal actions of self-represented litigants. The researcher argues that online court designers should take these effects into account and proposes an initial set of recommendations to reduce prejudice and encourage informed and deliberate decision-making.[165]

All of these implications are not purely theoretical, but, on the contrary, timely and practical, whether because Online Courts have gained more and more strength and have served an increasing number of users.[166] As an example, the judicial reform that took place in China in the last decade has promoted an accelerated development of online dispute resolution platforms, specialized courts on the internet and wide use of artificial intelligence tools, blockchain, smart contracts in case management and resolution civil and criminal disputes.[167] In February 2020, China had the world's largest digital repository of legal information, with over 81.5 million judgments and judicial documents published by the Supreme People's Court. This vast repository

[162] WATKINS, Daniel. A Nudge to Mediate: How Adjustments in Choice Architecture can Lead to Better Dispute Resolution Decisions. *The American Journal of Mediation,* v. 4, 2010. Disponível em: http://www.americanjournalofmediation.com/pg6.cfm. Acesso em: 20 out. 2020.

[163] WATKINS, Daniel. A Nudge to Mediate: ..., *op. cit.*

[164] SELA, Ayelet. e-Nudging Justice: The Role of Digital Choice Architecture in Online Courts. *Journal of Dispute Resolution*, v. 2019, n. 2, p. 127-163.

[165] SELA, Ayelet. e-Nudging Justice: *..., op. cit.*

[166] SUSSKIND, Richard. *Online Courts and the Future of Justice*. Oxford, United Kingdom: Oxford University Press, 2019

[167] ZOU, Mimi. *Virtual Justice in the Time of COVID-19*, 16 de março de 2020. Disponível em: https://www.law.ox.ac.uk/business-law-blog/blog/2020/03/virtual-justice-time-covid-19. Acesso em: 2 jan. 2021.

was made possible by the development and implementation of a centralized big data management and service platform that connects all Chinese Courts.[168] In the Courts of Hangzhou, Beijing and Guangzhou, the entire process is done exclusively over the internet; it is possible to download a mobile court application on WeChat; the parties are authenticated to participate in the process using facial knowledge technology; the application allows the parties to start a process directly and communicate directly with the Curt from the sending of text and audio messages, making uploading of evidence in the application itself. The application also allows the parties and the court's simultaneous access, the realization of pre-trial mediation, the conclusion, and the electronic signature of the mediation agreement (if successful), and to be given a sentence.[169]

England and Wales launched the "Online Solutions Court" (OSC) as a tool that integrates a comprehensive judicial reform in order to implement recommendations framework of the review of the Court's Civil, the use of information and communication technologies to improve the efficiency of these judicial bodies and increase access to justice especially for self-represented litigants and, for that reason, since 2018, the English Courts and Tribunals Service (HMCTS) has gradually implemented a series of ODR judicial procedures. The OSC is designed with the explicit aim of turning the case into monetary claims of up to £ 25,000 and the expectation is that by 2022 most civil disputes in England and Wales will be resolved through an online court.[170]

Evidence still suggests that the compulsion or not of self-composition matters. For this reason, the discussion on mediation promotion policies through libertarian paternalism becomes relevant. The option for the voluntary or compulsory model depends on particular domestic influences on the countries. A significant factor in choosing one of the models appears to be the cultural issues of a particular society for resolving controversies. The nature of a particular controversy also seems to influence the adoption of the model so that, normally, family disputes are usually submitted to mediation procedures with a high success rate when compared to other types of civil disputes.[171]

There it examines a variety of mandatory and incentive mediation projects, as well as the relationship between mediation incentives and judicial efficiency; and perceptions and general confidence in justice systems in the context of selected mediation centers in North America, Europe and East Asia, comparing compulsory and voluntary mediation structures with variation in user experience, including perceptions of efficiency, accessibility and availability, impartiality, level

[168] ZOU, Mimi. Virtual Justice in the Time of COVID-19, *..., op. cit.*
[169] ZOU, Mimi. Virtual Justice in the Time of COVID-19, *..., op. cit.*
[170] SELA, Ayelet. e-Nudging Justice: *..., op. cit.*, p. 127-163.
[171] ALI, Shahla F. Nuding Civil Justice: voluntary and mandatory court mediation user experience in twelve regions. *Cardozo Journal of Conflict Resolution*, v. 19, n. 2, Nova Iorque, EUA, 2018, p. 269-288.

of discrimination and application based on data, informed by the justice systems of each country and opinion polls.[172] The main conclusions of the comparative statistical analysis of civil justice indicators suggest that, on average, the sample regions that implement voluntary or stimulated judicial mediation programs are associated with higher overall jurisdictional scores that are statistically significant for efficiency and non-discrimination, with no significant difference in relation to the quality of civil justice effective application, accessibility, and impartiality and effectiveness between voluntary and mandatory mediation systems.[173] Ali's research confirms the insights of nudge theory, suggesting that, at least for the regions in the sample, the positive reinforcement that encourages mediation is at least as effective as traditional instructions issued through formal legislation or court rules.[174]

Financial incentives can be considered as an extra push for the parties to submit to alternative means of conflict resolution[175]. In England, for example, a party's silence in response to an invitation or refusal to participate in an attempt at a non-judicial settlement of the conflict may be considered unreasonable by the court and may cause the court to order that party to pay additional court costs. In Australia, there is a similar approach.[176] In Singapore, in turn, the legislation allows courts to consider any previous attempts by the parties to resolve their dispute through mediation or any other means of resolving disputes when allocating costs for civil litigation cases. As is well known, public policymakers should never ignore incentives: many policies modify the costs and benefits for individuals and, in view of this, change their behavior[177] and these regulations offer the parties an important incentive to consider submitting your dispute to alternative dispute resolution means before filing a claim.[178]

Finally, since people are strongly attached to the status quo's bias, being inclined to conform, especially when they feel the eyes of their social group about them, the more likely people to use something if the first, more visible and often the most selected choice. It is possible to perceive, with regard to the use of alternative means of dispute resolution in Brazil, that mediation and conciliation have not accumulated a considerable critical mass of use outside the judicial space (as part of the common procedure or the procedure of the special courts). This accumulation

[172] ALI, Shahla F. Nuding Civil Justice: *..., op. cit.*
[173] ALI, Shahla F. Nuding Civil Justice: *..., op. cit.*
[174] ALI, Shahla F. Nuding Civil Justice: *..., op. cit.*
[175] ALI, Shahla F. Nuding Civil Justice: *..., op. cit.*
[176] AUSTRALIA. Federal Court of Australia 'Mediation'. Disponível em: http://www.fedcourt.gov.au/case-managementservices/ADR/mediation. Acesso em: 5 dez. 2020.
[177] MANKIW, N. Gregory. *Introdução à economia*. Trad. Allan Vidigal Hastings, Elisete Paes e Lima. 6. ed. São Paulo: Cengage Learning, 2013.
[178] TAN, Joyce A. *WIPO Guide on Alternative Dispute Resolution (ADR) Options for Intellectual Property Offices and Courts*, 2018. Disponível em: https://www.wipo.int/publications/en/details.jsp?id=4342&plang=EN. Acesso em: 15 nov. 2020.

is essential for people to choose the conformity of their choice. What does critical mass of use mean? Just imagine that most people have used the standard dispute resolution method for centuries. The standard option for judicial litigation keeps people in the bias of conformity precisely because it is the method widely used for centuries and inhabits the popular imagination in cinematographic works, soap operas and serials. Therefore, judicial litigation seems the most familiar means of resolving a dispute. And this circumstance must be taken into account when trying to deviate people from the idea that judicial litigation should be the natural choice.[179]

For this reason, the first thing to do is to abandon the term "alternative dispute resolution". This is because, when mediation and conciliation are positioned as alternative dispute resolution methods, these instruments are relegated to the background, the status quo bias is reinforced, and the primacy of jurisdiction (or lack of primacy of self-compositional means) is emphasized dispute resolution. As Graham warns, the alternative term evokes a negative connotation, of not being something for an "average" person. Therefore, one must choose to call mediation by its name: mediation — the same thing with conciliation.

In the same way, as Graham ponders, it is necessary to abandon the idea that self-compositional methods are predominantly informal, while judicial litigation is formal. The formal expression, which adjusts the state judicial process, evokes seriousness, trust, legitimacy, and power. On the other hand, the informal expression, which adjusts the self-composing means of dispute resolution, evokes the idea of casualness, relaxation and softness. Therefore, renaming the processes available within a complaint procedure as 'resolution options' or 'resolution paths' will identify each option for what it is and the circumstances in which each is best used. Instead of an informal and formal section, describe a range of options, each with its own characteristics and benefits.[180]

3.4 Administrative consensus by default, self-composition by default and unavailability of the public interest

This article, therefore, proposes an administrative consensus by default implemented based on an online dispute resolution system that presents an architecture of choices that makes the default choice of individuals who wish to resolve a conflict with Public Administration be self-composition. At this point, it is necessary both to have an administrative consensus by default (and it already exists, as will be shown below) and a tool that offers self-composition by default. Both ends

[179] GRAHAM, Katherine. *How to Use 'Nudge' to Encourage More Parties into Mediation*, dezembro de 2015. Disponível em: https://www.mediate.com/articles/GrahamKNudge.cfm. Acesso em: 6 out. 2020.
[180] GRAHAM, Katherine. *How to Use 'Nudge' to Encourage More Parties into Mediation*, *..., op. cit.*

(Public Administration and citizens) should receive nudges and good incentives to manage their conflicts without necessarily submitting a case to the Judiciary.

The Brazilian Civil Procedure Code 2015 creates the need for a consensual administration by default in Article 174, giving the public Administration the duty to promote consensual resolution of their disputes. The duty attributed by the Civil Procedure Code is inserted in the "context of a public policy with wide access by the jurisdiction to the just and efficient legal order, realized from the possibility of preventing demands from dragging on indefinitely in the Judiciary",[181] especially since the cost of a judicial process for the Public Administration is significantly high, for this reason, the high degree of litigation of the Public Finance is an undesirable behavior.[182] In addition to not being irrational from an economic-financial point of view, it is socially an unfair behavior due to the predatory use of the Judiciary. Consensuality by default makes the Public Administration assume the role of an effective agent of fundamental guarantees for citizens, sustainably self-managing their conflicts, and encourages consensual solutions for eventual conflicts involving both the various administrative entities and the Public Power and citizens,[183] moving away from predatory profile litigation.[184]

As already argued on another occasion, consensuality by default, this standard provision for consensualism, does not have a negative impact on the Administration of the public interest. On the contrary, the public interest is valued to the extent that the Administration can manage its conflicts in a consensual and sustainable manner, it achieves the fundamental objectives of the Federative Republic of Brazil. Therefore, "there is a mistaken premise that the choice, by the Public Power, of a non-judicial means of conflict resolution would imply a disposition of the public interest",[185] because "any alternative method and consensual resolution of conflicts, may present itself as the best way to safeguard and to realize the public interest in the specific case".[186]

[181] SOUZA, Maria Cláudia da Silva Antunes de; SOUZA, Cássio Bruno Castro. *Online Dispute...*, *op. cit.*, p. 31-58.

[182] SOUZA, Maria Cláudia da Silva Antunes de; SOUZA, Cássio Bruno Castro. *Online Dispute...*, *op. cit.*, p. 31-58.

[183] BUNN, Maximiliano Losso; ZANON JÚNIOR, Orlando Luiz. Apontamentos preliminares sobre o uso predatório da jurisdição. *Revista Direito e Liberdade* – RDL – ESMARN – v. 18, n. 1, p. 247-268, jan./abr. 2016

[184] SOUZA, Maria Cláudia da Silva Antunes de; SOUZA, Cássio Bruno Castro. *Online Dispute...*, *op. cit.*, p. 31-58.

[185] SOUZA, Maria Cláudia da Silva Antunes de; SOUZA, Cássio Bruno Castro. *Online Dispute...*, *op. cit.*, p. 31-58.

[186] RODRIGUES, Marco Antônio dos Santos; ALVAREZ, Pedro de Moraes Perri. Arbitragem e a Fazenda Pública. *Revista Eletrônica de Direito Processual – REDP*. v. XIV, 2014, p. 388-410.

This behavioral change brings positive externalities for society and public services' good functioning, not just the judicial service – Justices as a service.[187] In an environment in which the Public Administration is responsible for more than half of the processes that are currently being processed in the Judiciary,[188] "the self-composed solution of conflicts and the establishment of a dialogical administration will promote a more stable relationship in the future with its citizens".[189] Despite legislative advances, Brazil still has a model for resolving litigious conflicts and, as in the United States of America, "litigation has become the nation's secular religion".[190] There are also good arguments in the sense that better case management by the Public Administration results in obvious economic benefits and the spread of a friendly culture to alternative means of conflict resolution in place of traditional litigious culture.

Final considerations

The evidence found from the literature review demonstrates that the state system of access to Justice goes through a crisis of confidence that, to some extent, results from the inability of the Judiciary to reduce its congestion rate and deliver effective judicial protection to citizens. And a large part of the congestion rate of the Brazilian Judiciary is the result of a litigious behavior by the Public Administration and of the very predominantly adversarial characteristic of the judicial process.

The inability to deliver effective jurisdictional protection suggests that conflict management outside the Judiciary can be efficient through other methods of conflict resolution. However, even though the movement in support to more effective access to justice draws attention to the advantages of direct negotiation, mediation and conciliation, self-composting methods are seldom used by Brazilian citizens when it comes to resolving a conflict of interest. While the public Administration seems to adopt a litigious behavior as a procedural management strategy (using the Judiciary as a predatory form), citizens, especially the poorest, have a disposition not to litigate considering the equity value in dispute. This behavioral difference suggests

[187] Justice as a Service (JaaS) is a new type of online service that helps individuals, especially consumers, demand compliance with consumer contracts and rights, based on the use of Artificial Intelligence, Big Data and automation of legal processes. JaaS companies act as intermediaries and resolve disputes.

[188] SOUZA, Maria Cláudia da Silva Antunes de; SOUZA, Cássio Bruno Castro. *Online Dispute...*, *op. cit.*, p. 31-58.

[189] VENY, Ludo; CARLENS, Ivo; VERBEECK, Bengt & WARNEZ, Brecht. Mediation in Belgian Administrative Practice, with Special Focus on Municipal Administrative Sanctions and Urban Planning. *Mednarodna revija za javno upravo* [*International Public Administration Review*], Ljubljana, v. XII, n. 2□3, p. 163□181, February 9, 2015. Disponível em: https://ssrn.com/abstract=2562297. Acesso em: 22 ago. 2020.

[190] ZANFERDINI, Flávia de Almeida Montingelli; OLIVEIRA, Rafael Tomaz. Online Dispute Resolution in Brazil: are we ready for this cultural turn. *Revista Paradigma*, Ribeirão Preto-SP, a. 20, v. 24, n. 1. p. 68-80. Jan/jun. 2015.

that an adjustment in each party's behavior could make access to justice as a public policy, more efficient and sustainable.

For this reason, the development of an online dispute resolution system aimed at resolving administrative conflicts, based on appropriate choice architecture, can make the Public Administration observe a consensual duty (consensuality by default) and citizens are more willing to opt for self-composition conflict management. At this point, it is necessary both to have an administrative consensus by default (and it already exists, as will be shown below) and a tool that offers self-composition by default. Both ends (Public Administration and citizens) should receive nudges and good incentives to manage their conflicts without necessarily submitting a case to the Judiciary.

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Sumário
Contents

Editorial 7

Editorial 9

Três axiomas para o agir administrativo fundado em novas tecnologias de informação e comunicação

Three axioms to administrative action grounded in new information and communication technologies

Vanice Lírio do Valle 11

1 Considerações iniciais 12

2 Riscos determinados pelo distanciamento entre Administração Pública e NTICs 14

3 Três axiomas propostos ao agir administrativo embasado em NTICs 17

3.1 Desenvolvimento de uma cultura de dados como ativo institucional 18

3.2 Superar a aura de "fixidez" das soluções baseadas em novas tecnologias 21

3.3 Internalização do aprendizado digital como processo interativo e incessante 23

4 À guisa de conclusão 26

Referências 26

Digital transformation in public administration: from e-Government to digital government

Transformação digital na administração pública: do governo eletrônico ao governo digital

Ana Cristina Aguilar Viana 29

1 Introduction 30

2 E-Government and its foundations 31

2.1 Defining e-Government 32

2.2 Types of interactions 32

2.3 Areas of intervention 33

2.4 Stages or phases 33

2.5 Electronic Governance 35

2.6 Government 2.0 36

3 Open government 36

4 Digital government 39

4.1 The new technologies 39

4.2 A new rationality 40

5 Evolutionary traits 41

6 Final considerations 42

References 44

Pushing for Sustainability through Technology: administrative consensuality by default and online dispute resolutions tools

Buscando sustentabilidade por meio da tecnologia: consensualidade administrativa por padrão e ferramentas de resolução de disputas online

Cássio Castro Souza, Justo Reyna 47

Introduction 48

1 Technology, Consensuality and Sustainability: how the technology can transform access to Justice 49

1.1 The crisis of the System Access to Justice 49

1.2 Dispute resolution and sustainability 54

2 Online conflict resolution 59

3 A proposed architecture of choices for more consensus and sustainable public administration 62

3.1 Libertarian paternalism, the architecture of choices and bad decisions 63

3.2 Factors supposedly irrelevant: as heuristics and biases influence decision making 65

3.3 The architecture of choices, libertarian paternalism and self-composition by default 71

3.4 Administrative consensus by default, self-composition by default and unavailability of the public interest 79

Final considerations 81

References 82

Promoting economic and social development through an innovative investment framework: the multidimensional role of CFIAs

Promovendo desenvolvimento econômico e social através de uma inovativa estrutura regulatória de investimentos: o papel multidimensional dos ACFIs

Beatriz Figueiredo Campos da Nóbrega 91

1 Introduction 92

2 CFIAs: potential mechanism to enhance economic and social transformation 93

3 Responsible Business Conduct 95

3.1 United Nations Global Compact Guide to Corporate Social Responsibility 96

3.2 OECD Guidelines for Corporate Social Responsibility in Multinational Enterprises .. 98

4 Responsible Business Conduct applied to Foreign Investments 99

5 Responsible Business Conduct measures around the globe 101

6 Conclusion 106

References 107

(Des)Controle digital de comportamento e a proteção ao livre desenvolvimento da personalidade

Digital (un)control of behavior and the protection of free development of personality

Haide Maria Hupffer, Gabriel Cemin Petry 111

1 Introdução 112

2 Novas tecnologias e novas formas de controle: a prática de controle digital comportamental e o valor dos dados pessoais para mecanismos de *profiling* e *behavioral targeting* 113

3 A (re)afirmação do direito ao livre desenvolvimento da personalidade frente ao controle comportamental e riscos à liberdade digital 121
Conclusão 128
Referências 130

Proteção de dados pessoais e Administração Pública

Protection of personal data and Public Administration

Ricardo Marcondes Martins 133
1 Introdução 134
2 Competência federal e autonomia federativa 135
3 Acesso empresarial e acesso administrativo 137
4 Acesso empresarial privado e acesso empresarial administrativo 139
5 Responsabilização da administração por infração à LGPD 141
6 Competência normativa da ANPD 143
7 Conclusões 146
Referências 147

Ética pública e parcialidade no combate à corrupção: o caso *The Intercept Brasil* vs. Operação Lava Jato

Public ethics and partiality in the fight against corruption: The Intercept Brasil vs. Operation Car Wash

Emerson Gabardo, Gabriel Strapasson Lazzarotto, Nicholas Andrey Monteiro Watzko 151
Introdução 153
1 O *hackeamento* das mensagens e a metodologia de investigação 156
2 A presunção de veracidade dos diálogos 161
3 Sistema processual penal brasileiro: inquisitório ou acusatório? 163
4 Análise da regularidade dos diálogos vazados pelo *The Intercept Brasil* 167
4.1 Atuação coordenada entre juiz e Ministério Público 168
4.2 Motivações políticas 174
5 Análise da tipicidade das condutas 178
5.1 Atos de improbidade administrativa 178
5.2 Ilícitos administrativos 181
6 Ilicitude das provas 183
Considerações finais 188
Referências 192

Para cidades justas, em rede e inteligentes: uma agenda pública pelo direito à cidade sustentável

For fair, networked and smart cities: a public agenda for the right to a sustainable city

Lígia Maria Silva Melo de Casimiro, Harley Carvalho 199
Introdução 200
1 A função da cidade para pessoas 201
2 Direito à cidade no século XXI: cidades solidárias, inteligentes e em rede 203

3 A agenda urbana contemporânea deve refletir o Estado Social 207
Considerações finais 211
Referências 213

DIRETRIZES PARA AUTORES 217
Condições para submissões 223
Política de privacidade 224

AUTHOR GUIDELINES 227
Conditions for submissions 233
Privacy statement 234

Editorial

Iniciamos um novo ano que certamente será de intenso trabalho. As condições do país são adversas para a ciência e para o mundo do Direito. Todavia, não podemos esmorecer e continuaremos a realizar um trabalho sério de divulgação científica a partir dos pressupostos do Estado Social e Democrático de Direito.

Neste primeiro número do segundo ano da *International Journal of Digital Law* eu agradeço penhoradamente ao trabalho exaustivo dos três editores adjuntos, doutorandos Fábio de Sousa Santos, Iggor Gomes Rocha e Lucas Bossoni Saikali. Não é fácil conduzir uma revista de qualidade, ainda mais em um momento inicial de suas edições. Porém, com o trabalho árduo da equipe editorial o resultado tem sido muito exitoso. Novamente, os artigos submetidos retratam elevada qualidade, trazendo investigações originais e atuais sobre os problemas contemporâneos.

Reitero meus agradecimentos à Editora Fórum pela excelência dos trabalhos realizados, conferindo credibilidade à publicação.

Emerson Gabardo
Editor-chefe da IJDL

Editorial

We have started a new year that will certainly be of intense work. The country's conditions are adverse for science and the world of law. However, we cannot fail, and we will continue to carry out a serious work of scientific dissemination based on the assumptions of the Democratic State of Law.

In this first issue of the *International Journal of Digital Law's* second year, I gratefully pledge to the three assistant editors' exhaustive work, doctoral candidates Fábio de Sousa Santos, Iggor Gomes Rocha, and Lucas Bossoni Saikali. It is not easy to conduct a quality journal, especially at an early stage of its editions. However, with the hard work of the editorial team, the result has been extraordinarily successful. Again, the articles submitted portray high quality, bringing original and current investigations on contemporary problems.

I reiterate my thanks to Editora Fórum for the work's excellence, giving credibility to the publication.

Emerson Gabardo
IJDL Editor in Chief

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5.2.2. *E-mail:* indicação do e-mail do(s) autor(es) para contato, que será obrigatoriamente divulgado na versão publicada do artigo;
5.2.3. *ORCID iD:* indicação do número de identificação ORCID (para maiores informações clique aqui). O identificador ORCID pode ser obtido no registro ORCID. Você deve aceitar os padrões para apresentação de iD ORCID e incluir a URL completa; por exemplo: https://orcid.org/0000-0003-1781-1726.

5.2.4. *URL:* link para o currículo completo do autor. No caso de autores brasileiros, deve ser indicado o link para o Currículo Lattes.
5.2.5. *Instituição/Afiliação:* indicação da sua principal afiliação institucional ou das duas principais, caso o vínculo com ambas possua a mesma importância (instituição à qual encontra-se vinculado como docente ou discente, ou, caso não seja docente ou discente, a instituição onde foi obtido o seu maior título acadêmico, como doutorado, mestrado, especialização etc.). O nome da instituição deverá constar por extenso e na língua original da instituição (ou em inglês quando a escrita não for latina), seguida da indicação do país de origem da instituição entre parênteses. Caso o autor seja docente e esteja cursando mestrado ou doutorado em outra instituição, a afiliação principal será a da instituição na qual o autor figura como mestrando ou doutorando.
5.2.6. *País:* indicação do país da principal afiliação institucional do autor.
5.2.7. *Resumo da biografia:* indicação do mini currículo, iniciando com a indicação da instituição onde figura como docente, seguida de cidade, sigla do Estado e país entre parênteses, indicação das titulações acadêmicas (começando pela mais elevada), outros vínculos com associações científicas, profissão etc.
5.3. Título e Resumo:
5.3.1. *Título:* título no idioma do artigo, com apenas a primeira letra da sentença em maiúscula.
5.3.2. *Resumo:* resumo no idioma do artigo, sem parágrafo ou citações e referências, com até 200 palavras.
5.4. Indexação
5.4.1. *Palavras-chave*: indicação de 5 palavras-chave no idioma do artigo (em letras minúsculas e separadas por ponto vírgula).
5.4.2. *Idioma*: indicar a sigla correspondente ao idioma do artigo (Português=pt; English=en; Español=es).
5.5. Contribuidores e Agências de fomento: os artigos resultantes de projetos de pesquisa financiados deverão indicar neste campo a fonte de financiamento.
5.6. Referências: inserir a lista completa de referências citadas no artigo, dando um espaço entre cada uma delas.

6. Apresentação do texto e elementos pré-textuais
6.1. Recomenda-se que o trabalho tenha entre 15 e 30 páginas (tamanho A4 – 21 cm x 29,7 cm), compreendendo a introdução, desenvolvimento, conclusão (não necessariamente com esses títulos) e uma lista de referências bibliográficas.
6.2. As margens utilizadas deverão ser: esquerda e superior de 3 cm e direita e inferior de 2 cm.
6.3. No corpo do texto deverá ser utilizada Fonte Times New Roman, tamanho 12, espaçamento entre linhas de 1,5 cm e espaçamento de 0 pt (pontos) antes e depois dos parágrafos.
6.4. Nas notas de rodapé deverá ser utilizada Fonte Times New Roman, tamanho 10, espaçamento simples entre linhas.
6.5. No desenvolvimento do texto, os parágrafos deverão conter recuo de 1,5 cm em relação à margem esquerda. Títulos e subtítulos deverão estar alinhados à margem esquerda, sem recuo.
6.6. A estruturação deverá observar a exposta neste item 6.6.

6.6.1. Título no idioma do artigo, com apenas a primeira letra da sentença em maiúscula e em itálico, centralizado.
6.6.2. Nos casos de necessidade de indicar informações a respeito do artigo (financiamento por agências de fomento, agradecimentos, tradutores do texto etc.), deverá ser inserida uma nota de rodapé com um asterisco (e não com número) situada à direita do título no idioma do artigo.
6.6.3. Título em inglês, com apenas a primeira letra da sentença em maiúscula, em itálico e em itálico, centralizado. No caso de artigos redigidos em inglês, este elemento deverá ser substituído pelo título em português.
6.6.4. O artigo não deve incluir os nomes do(s) autor(es). As informações, para fins de publicação, serão retiradas dos metadados inseridos pelo(s) autor(es) no sistema eletrônico da revista no momento da submissão.
6.6.5. Resumo no idioma do artigo (fonte Times New Roman 12, espaçamento entre linhas simples, sem parágrafo ou citações e referências, com até 200 palavras), antecedido da palavra "Resumo" escrita no idioma do artigo.
6.6.6. Indicação de 6 palavras-chave no idioma do artigo (em letras minúsculas e separadas por ponto vírgula), antecedidas da expressão "Palavras-chave" redigida no idioma do artigo.
6.6.7. Resumo em inglês (Fonte Times New Roman 12, espaçamento entre linhas simples, sem parágrafo ou citações e referências, com até 200 palavras), antecedido da palavra "Abstract". No caso de artigos redigidos em inglês, este elemento deverá ser substituído pelo resumo em português.
6.6.8. Indicação de seis palavras chave em inglês (em letras minúsculas e separadas por ponto vírgula), antecedidas da expressão "Keywords". No caso de artigos redigidos em inglês, este elemento deverá ser substituído pelas palavras-chave em português.
6.6.9. Sumário com a identificação dos títulos das seções e das subseções, com numeração progressiva, separados por ponto vírgula, sequencialmente e em parágrafo único.
6.6.10. Desenvolvimento do trabalho científico: a numeração progressiva, em números arábicos, deve ser utilizada para evidenciar a sistematização do conteúdo do trabalho.
6.6.11. Lista das referências bibliográficas efetivamente utilizadas no artigo, ao final do trabalho, separadas por um espaço simples, alinhadas à margem esquerda (sem recuo).
6.6.12. Aplicam-se, para os demais aspectos de formatação, as normas técnicas brasileiras (ABNT NBR 10520:2002 e 14724:2011).
6.6.13. No caso de artigos com 4 ou mais autores, é necessário incluir de uma nota de rodapé indicando qual foi a contribuição de cada um.
6.7. Todo destaque que se queira dar ao texto deve ser feito com o uso de itálico, ficando vedada a utilização de negrito, sublinhado ou caixa alta para fins de dar destaque ao texto.
6.8. Figuras e tabelas devem estar inseridas no texto, e não no final do documento na forma de anexos.

7. Metodologia científica
7.1. As referências dos livros, capítulos de obras coletivas, artigos, teses, dissertações e monografias de conclusão de curso de autores citados ou utilizados como base

para a redação do texto devem constar em nota de rodapé, com todas as informações do texto, em observância às normas técnicas brasileiras (ABNT NBR 6023:2018), e, especialmente, com a indicação da página da qual se tirou a informação apresentada no texto logo após a referência.

7.1.1. O destaque dado ao título dos livros (ou revistas) citados deverá constar em itálico, ficando vedada a utilização de negrito.

7.1.2. Os artigos redigidos com citação no formato AUTOR-DATA não serão aceitos para publicação, somente o sistema de chamadas numérico exposto nas notas de rodapé.

7.1.3. As referências deverão constar da seguinte forma:

7.1.3.1. Livros:

SOBRENOME, Nome. *Título da obra em itálico*: subtítulo sem itálico. número da edição. Cidade: Editora, ano.

Exemplo:

KEEN, Andrew. *Vertigem digital*: por que as redes sociais estão nos dividindo, diminuindo e desorientando. Trad. Alexandre Martins, Rio de Janeiro: Zahar, 2012. 254p.

7.1.3.2. Capítulos de livros coletivos:

SOBRENOME, Nome. Título do capítulo sem itálico. In: SOBRENOME DO 1º ORGANIZADOR, Nome do organizador; SOBRENOME DO 2º ORGANIZADOR, Nome do 2º organizador e assim sucessivamente, separados por ponto vírgula (Org. ou Coord.). *Título da obra ou coletânea em itálico*: subtítulo sem itálico. número da edição. Cidade: Editora, ano. página inicial-página final [antecedidas de "p."].

Exemplo**:**

DOTTA, Alexandre Godoy. Derechos de la Población LGBT+ en Brasil: Vulnerabilidad Social entre Avances y Retrocesos. In: BRAVO, Álvaro Sánches; CASIMIRO, Ligia Melo de; GABARDO, Emerson. (Org.). *Estado Social Y Derechos Fundamentales en Tiempos de Retroceso*. Sevilha: Ponto Rojo, 2019. p. 203-228.

7.1.3.3. Artigos em revistas:

SOBRENOME, Nome. Título do artigo sem itálico. *Título da Revista em itálico*, cidade, volume, número, página inicial-página final [antecedidas de "p."], meses da publicação [abreviados com as três primeiras letras do mês seguidas de ponto e separados por barra]. ano.

Exemplo:

GABARDO, Emerson; SAIKALI, Lucas Bossoni. A prescritibilidade da ação de ressarcimento ao erário em razão de atos de improbidade administrativa. *Revista Jurídica – Unicuritiba*, Curitiba, v. 1, p. 514-543, 2018.

7.1.3.4. Teses de Titularidade, Livre-Docência, Doutorado, Dissertações de Mestrado, Monografias de Conclusão de Curso de Graduação e Pós-Graduação:

SOBRENOME, Nome. *Título do trabalho em itálico*: subtítulo sem itálico. Cidade, ano. número de folhas seguido de "f". Modalidade do trabalho (Grau obtido com a defesa) – Órgão perante o qual o trabalho foi defendido, Nome da instituição.

Exemplo:

SANTOS, Fábio de Sousa. *Análise Comparada da Competição na Contratação Pública Brasileira e Estadunidense*. Curitiba, 2018. 134f. Dissertação (Mestrado em Mestrado em Direito) – Pontifícia Universidade Católica do Paraná. Curitiba: 2018.

7.1.3.5 DOI – Digital object identifier: Caso o documento consultado na pesquisa tenha o número de DOI recomenda-se a inclusão, de modo complementar, do número após o término de cada referência.
Exemplo:
DOTTA, Alexandre Godoy. Public policies for the assessment of quality of the Brazilian higher education system. *Revista de Investigações Constitucionais*, Curitiba, v. 3, p. 53-69, 2016. DOI. 10.5380/rinc.v3i3.49033.
7.1.3.6. Documentos em meio eletrônico: Documentos extraídos do meio eletrônico deverão apresentar após o término de cada referência o local da rede onde foi encontrado e apresentado da seguinte maneira.
Exemplo:
IJDL. International Journal of Digital Law. *Regras para a submissão de artigos*. Disponível em: https://journal.nuped.com.br/index.php/revista/about/submissions. Acesso em: 12 fev. 2020.
7.1.4. Os elementos das referências devem observar o seguinte padrão:
7.1.4.1. Autor: SOBRENOME em maiúsculas, vírgula, Nome com as iniciais em maiúsculas, seguido de ponto final.
7.1.4.2. Edição: deve ser incluída a informação somente a partir da segunda edição, sem ordinal, seguido de ponto e "ed.". Exemplo: 2. ed.
7.1.4.3. Ano: grafado com algarismos arábicos, sem ponto no milhar, antecedido de vírgula e seguido de ponto.
7.1.5. Nos casos em que for absolutamente impossível obter alguma das informações acima, a ausência deverá ser suprida da seguinte forma:
7.1.5.1. Ausência de cidade: substituir por [S.l.].
7.1.5.2. Ausência de editora: substituir por [s.n.].
7.1.5.3. Ausência de ano: indicar entre colchetes o ano aproximado, seguido de ponto de interrogação. Exemplo: [1998?].
7.2. As citações (palavras, expressões, períodos) deverão ser cuidadosamente conferidas aos textos originais.
7.2.1. Citações diretas devem seguir o seguinte padrão de registro: transcrição com até quatro linhas devem constar do corpo do texto, com letra e espaçamento normais, e estar entre aspas.
7.2.2. Recomenda-se fortemente que citações textuais longas (mais de quatro linhas) não sejam utilizadas. Entretanto, se imprescindíveis, deverão constituir um parágrafo independente, com recuo de 1,5 cm em relação à margem esquerda (alinhamento justificado), utilizando-se espaçamento entre linhas simples e tamanho da fonte 10. Neste caso, aspas não devem ser utilizadas.
7.2.3. Fica vedado o uso do op. cit., loc. cit., ibidem e idem nas notas bibliográficas, que deverão ser substituídas pela referência completa, por extenso.
7.2.4. Para menção de autores no corpo do texto, fica vedada sua utilização em caixa alta (ex.: para Nome SOBRENOME...). Nestes casos todas as menções devem ser feitas apenas com a primeira letra maiúscula (ex.: para Nome Sobrenome...).

8. Redação
8.1. Os textos devem ser revisados, além de terem sua linguagem adequada a uma publicação editorial científica.

8.2. No caso de artigos redigidos na língua portuguesa, a escrita deve obedecer às regras ortográficas em vigor desde a promulgação do ACORDO ORTOGRÁFICO DA LÍNGUA PORTUGUESA, a partir de 1º de janeiro de 2009.
8.3. As citações de textos anteriores ao ACORDO devem respeitar a ortografia original.

9. Artigos resultantes de pesquisas financiadas
Os artigos resultantes de projetos de pesquisa financiados deverão indicar em nota de rodapé, situada ao final do título do artigo no idioma do texto, a informação relativa ao financiamento da pesquisa.

10. Declaração de direitos autorais
Autores que publicam nesta revista concordam com os seguintes termos:
10.1. Não serão devidos direitos autorais ou qualquer outra remuneração pela publicação dos trabalhos.
10.2. Autores mantêm os direitos autorais e concedem à *IJDL* o direito de primeira publicação, com o trabalho simultaneamente licenciado sob a Licença Creative Commons Attribution que permite o compartilhamento do trabalho com reconhecimento da autoria e publicação inicial nesta revista. Ainda, em virtude de aparecerem nesta revista de acesso público, os artigos são de uso gratuito, com atribuições próprias, com aplicações educacionais e não comerciais.
10.3. Autores têm permissão e são estimulados a publicar e distribuir seu trabalho online (ex.: em repositórios institucionais ou na sua página pessoal) a qualquer ponto antes ou durante o processo editorial, já que isso pode gerar alterações produtivas, bem como aumentar o impacto e a citação do trabalho publicado (ver O Efeito do Acesso Livre).

11. Responsabilidade dos autores
11.1. Autores são responsáveis pelo conteúdo publicado, comprometendo-se, assim, a participar ativamente da discussão dos resultados de sua pesquisa científica, bem como do processo de revisão e aprovação da versão final do trabalho.
11.2. Autores são responsáveis pela condução, resultados e validade de toda investigação científica.
11.3. Autores devem noticiar a revista sobre qualquer conflito de interesse.
11.4. As opiniões emitidas pelos autores dos artigos são de sua exclusiva responsabilidade.
11.5. Ao submeter o artigo, o autor atesta que todas as afirmações contidas no manuscrito são verdadeiras ou baseadas em pesquisa com razoável exatidão.

12. Conflito de interesses
A confiabilidade pública no processo de revisão por pares e a credibilidade de artigos publicados dependem em parte de como os conflitos de interesses são administrados durante a redação, revisão por pares e tomada de decisões pelos editores.
12.1. É obrigatório que o autor do manuscrito declare a existência ou não de conflitos de interesse. Mesmo julgando não haver conflitos de interesse, o autor deve declarar essa informação no ato de submissão do artigo, marcando esse campo específico.
12.2. Conflitos de interesses podem surgir quando autores, pareceristas ou editores possuem interesses que, aparentes ou não, podem influenciar a elaboração ou avalia-

ção de manuscritos. O conflito de interesses pode ser de natureza pessoal, comercial, política, acadêmica ou financeira.

12.3. Quando os autores submetem um manuscrito, eles são responsáveis por reconhecer e revelar conflitos financeiros ou de outra natureza que possam ter influenciado seu trabalho.

12.4. Os autores devem reconhecer no manuscrito todo o apoio financeiro para o trabalho e outras conexões financeiras ou pessoais com relação à pesquisa. As contribuições de pessoas que são mencionadas nos agradecimentos por sua assistência na pesquisa devem ser descritas, e seu consentimento para publicação deve ser documentado.

12.5. Manuscritos não serão rejeitados simplesmente por haver um conflito de interesses, mas deverá ser feita uma declaração de que há ou não conflito de interesses.

12.6. Os pareceristas devem, igualmente, revelar aos editores quaisquer conflitos de interesse que poderiam influir em suas opiniões sobre o manuscrito, e devem declarar-se não qualificados para revisar originais específicos se acreditarem que esse procedimento é apropriado. Assim como no caso dos autores, se houver silêncio por parte dos pareceristas sobre conflitos potenciais, isso significará que os conflitos não existem.

12.7. No caso da identificação de conflito de interesse da parte dos pareceristas, o Conselho Editorial encaminhará o manuscrito a outro parecerista *ad hoc*.

12.8. Se os autores não tiverem certeza do que pode constituir um potencial conflito de interesses, devem contatar o Coordenador Editorial da Revista.

12.9. Para os casos em que editores ou algum outro membro publiquem com frequência na Revista, não serão atribuídos tratamentos especiais ou diferenciados. Todos os artigos submetidos serão avaliados através do procedimento *double blind peer review*.

13. Outras informações

13.1. Os trabalhos serão selecionados pelo Coordenador Editorial e pelo Conselho Editorial da Revista, que entrarão em contato com os respectivos autores para confirmar o recebimento dos textos, e em seguida os remeterão para análise de dois pareceristas do Conselho de Pareceristas.

13.2. Os originais recebidos e não publicados não serão devolvidos.

13.3. Asseguram-se aos autores o direito de recurso das decisões editorais.

13.3.1. Serão concedidos 5 (cinco) dias, contados da data da decisão final do Conselho Editorial.

13.3.2. O arrazoado escrito deverá ser enviado para o e-mail: journal@nuped.com.br.

13.3.3. O recurso será analisado pelo Conselho Editorial no prazo de 30 (trinta) dias.

CONDIÇÕES PARA SUBMISSÕES

Como parte do processo de submissão, os autores são obrigados a verificar a conformidade da submissão em relação a todos os itens listados a seguir. As submissões que não estiverem de acordo com as normas serão devolvidas aos autores.

1. A contribuição é original e inédita (salvo em caso de artigos em língua estrangeira publicados no exterior), e não está sendo avaliada para publicação por outra revista; caso contrário, deve-se justificar em “Comentários ao editor”.
2. O arquivo da submissão está em formato Microsoft Word.
3. URLs para as referências foram informadas quando possível.

4. O texto possui entre 15 e 30 páginas (tamanho A4 – 21 cm x 29,7 cm), compreendendo a introdução, desenvolvimento, conclusão (não necessariamente com esses títulos) e uma lista de referências bibliográficas; as margens utilizadas são: esquerda e superior de 3 cm e direita e inferior de 2 cm; no corpo do texto utilizou-se Fonte Times New Roman, tamanho 12, espaçamento entre linhas de 1,5, e espaçamento de 0 pt antes e depois dos parágrafos; nas notas de rodapé utilizou-se Fonte Times New Roman, tamanho 10, espaçamento simples entre linhas; no desenvolvimento do texto, os parágrafos contêm recuo de 1,5 cm em relação à margem esquerda; títulos e subtítulos estão alinhados à margem esquerda, sem recuo; as figuras e tabelas estão inseridas no texto, não no final do documento na forma de anexos.
5. O texto segue os padrões de estilo e requisitos bibliográficos descritos em Diretrizes para Autores, na página para submissão.
6. Em caso de submissão a uma seção com avaliação pelos pares (ex.: artigos), as instruções disponíveis em Assegurando a avaliação pelos pares cega foram seguidas.
7. O autor declara que, com exceção das citações diretas e indiretas claramente indicadas e referenciadas, este artigo é de sua autoria e, portanto, não contém plágio. Declara, ainda, que está ciente das implicações legais que a utilização de material de terceiros acarreta.
8. O autor declara que participou suficientemente do trabalho para tornar pública sua responsabilidade pelo conteúdo e que todas as afirmações contidas no manuscrito são verdadeiras ou baseadas em pesquisa com razoável exatidão.
9. O autor concorda com a política de responsabilidade estabelecida no item 10. Responsabilidade dos autores das Diretrizes para Autores.

POLÍTICA DE PRIVACIDADE

Os nomes e endereços informados nesta revista serão usados exclusivamente para os serviços prestados por esta publicação, não sendo disponibilizados para outras finalidades ou a terceiros.

Este periódico tem um compromisso com a ética e a qualidade das publicações, seguindo padrões internacionais de publicação científica. Defendemos um comportamento ético de todas as partes envolvidas na publicação em nosso periódico: autores, editor, pareceristas, Equipe Editorial e a Editora. Não aceitamos plágio ou qualquer outro comportamento antiético. Para isso, são seguidas as diretrizes do 2nd World Conference on Research Integrity, Singapore, July 22-24, 2010.

Deveres do Editor

- **Decisão de publicação:** o editor é responsável por decidir quais artigos submetidos à revista devem ser publicados. O editor é guiado pelas políticas decididas pelo Conselho Editorial. Essas políticas devem obedecer às exigências legais em vigor sobre difamação, violação de direitos autorais e plágio. Para tomada de decisões o editor pode consultar o Conselho Editorial e os pareceristas.
- **Transparência e respeito:** o editor deve avaliar os manuscritos submetidos sem levar em conta a raça, sexo, a orientação sexual, a crença religiosa, a origem étnica, a nacionalidade ou a filosofia política dos autores.

- **Confidencialidade:** o editor e demais membros da equipe editorial não devem divulgar qualquer informação sobre um manuscrito submetido, a não ser aos pareceristas e os conselheiros editoriais.
- **Divulgação e conflitos de interesse:** O editor não deve utilizar materiais inéditos divulgados em um manuscrito submetido em pesquisas próprias sem o consentimento expresso e por escrito do autor. O editor deve recusar avaliar os manuscritos em que tenha conflitos de interesse por questões competitivas, colaborativas ou outros relacionamentos ou ligações com qualquer um dos autores, empresas ou (possivelmente) instituições ligadas aos manuscritos.
- **Envolvimento e cooperação em investigações:** o editor deve tomar medidas necessárias cabíveis quando foram apresentadas reclamações éticas a respeito de um manuscrito submetido ou artigo publicado.

Deveres dos Pareceristas

- **Contribuição para as decisões editoriais:** a revisão dos pareceristas auxilia o editor na tomada de decisões editoriais e por meio das comunicações com o autor também pode auxiliar o mesmo na melhora do artigo.
- **Pontualidade:** qualquer avaliador de artigo que não se sinta qualificado para analisar o artigo ou sabe que a sua imediata leitura será impossível deve notificar imediatamente o editor.
- **Confidencialidade:** os trabalhos recebidos para análise devem ser tratados como documentos confidenciais. Eles não devem ser mostrados ou discutidos com os outros.
- **Padrões de objetividade:** os pareceres devem ser conduzidos de forma objetiva. Os pareceristas devem expressar seus pontos de vista de maneira clara e apoiados em argumentos.
- **Sobre as fontes:** os pareceristas devem identificar trabalhos publicados relevantes que não foram citados pelos autores. O parecerista deve chamar a atenção do editor sobre qualquer semelhança substancial ou sobreposição entre o manuscrito em questão e qualquer outro *artigo* publicado de que tenha conhecimento pessoal.
- **Divulgação e conflito de interesses:** informações privilegiadas ou ideias obtidas pelo parecerista por meio da leitura dos manuscritos devem ser mantidas em sigilo e não devem utilizadas para proveito pessoal. O parecerista não deve avaliar manuscritos em que tenha conflitos de interesse por questões competitivas, colaborativas ou outros relacionamentos ou ligações com qualquer um dos autores, empresas ou instituições ligadas aos manuscritos.

Deveres dos Autores

- **Normas gerais:** os autores de trabalhos que se referem a pesquisas originais devem apresentar um relato preciso do trabalho realizado, bem como uma discussão objetiva sobre o seu significado. Dados complementares devem ser representados com precisão no artigo. O documento deve conter detalhes suficientes e referências que permitam que outros possam replicar o trabalho. Declarações fraudulentas ou intencionalmente imprecisas constituem um comportamento antiético e são inaceitáveis.

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7.1.1. Book's title (or journal's title) must be highlighted in italics (bold shall not be used for that purpose).
7.1.2. Articles written in the format AUTHOR-YEAR will not be accepted for publishing.
7.1.3. References shall appear as follows:
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LAST NAME, Name Middle Name. *Title of the book in italics:* subtitle not in italics. Number of the edition. City: Publisher, Year.
Example:
KEEN, Andrew. *Vertigem digital*: por que as redes sociais estão nos dividindo, diminuindo e desorientando. Trad. Alexandre Martins, Rio de Janeiro: Zahar, 2012. 254p.
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LAST NAME, Name Middle Name. Title of the Chapter not in bold. In: ORGANIZER'S LAST NAME, Name Middle Name; 2ND ORGANIZER'S LAST NAME, Name Middle Name, and so on, separated by semicolon (Org. or Coord.). *Title of the book in italics***:** subtitle not in Italics. Number of the edition. City: Publisher, Year. first page-last page [preceded by "p."].
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DOTTA, Alexandre Godoy. Derechos de la Población LGBT+ en Brasil: Vulnerabilidad Social entre Avances y Retrocesos. In: BRAVO, Álvaro Sánches; CASIMIRO, Ligia Melo de; GABARDO, Emerson. (Org.). *Estado Social Y Derechos Fundamentales en Tiempos de Retroceso*. Sevilha: Ponto Rojo, 2019. p. 203-228.
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LAST NAME, Name Middle Name. Title of the article not in bold. *Title of the journal in italics*, city, volume, number, first page-last page [preceded by "p."], months of publishing [abbreviated with the first three letters of the month followed by dot and separated by a slash]. Year.
Example:
GABARDO, Emerson; SAIKALI, Lucas Bossoni. A prescritibilidade da ação de ressarcimento ao erário em razão de atos de improbidade administrativa. *Revista Jurídica – Unicuritiba*, Curitiba, v. 1, p. 514-543, 2018.
7.1.3.4. Theses of Full Professor contests, Doctoral theses, Master's dissertations/ essays, Undergraduate and Graduate courses monographs:
LAST NAME, Name Middle Name. *Title in italics:* subtitle. City, year. number of pages followed by "f". Kind of the work (Degree obtained with the defense) – Department or Sector, Name of the institution.
Example:
SANTOS, Fábio de Sousa. *Análise Comparada da Competição na Contratação Pública Brasileira e Estadunidense*. Curitiba, 2018. 134f. Dissertação (Mestrado em Mestrado em Direito) – Pontifícia Universidade Católica do Paraná. Curitiba: 2018.
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DOTTA, Alexandre Godoy. Public policies for the assessment of quality of the Brazilian higher education system. *Revista de Investigações Constitucionais*, Curitiba, v. 3, p. 53-69, 2016. DOI. 10.5380/rinc.v3i3.49033.

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DIJDL. International Journal of Digital Law. *Regras para a submissão de artigos*. Disponível em: https://journal.nuped.com.br/index.php/revista/about/submissions. Acesso em: 12 fev. 2020.
7.1.4. The elements of references must observe the following model:
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7.1.5. In case of being impossible to find one of those elements, the absence must be resolved in the following manner:
7.1.5.1. Absence of city: replace for [S.l.].
7.1.5.2. Absence of publisher: replace for [s.n.].
7.1.5.3. Absence of year: the approximated year must be indicated between brackets, followed by a question mark. Example: [1998?].
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4. The text has between 15 and 30 pages (A4 size – 21 cm by 29.7 cm), including the introduction, development, conclusion (not necessarily with these titles) and a list of references; margins used are: left and top of 3 cm and right and bottom of 2 cm; the text is written in Times New Roman format, size 12, line spacing 1.5, and spacing 0 pt. before and after paragraphs; in the footnotes it was used Times New Roman, size 10, 1 pt. spacing; in the text development, paragraphs have an indent of 1.5 cm from the left margin; headings and subheadings are aligned on the left margin; figures and tables are inserted in the text, not in the end of the document as attachments.
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