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As três dimensões do direito administrativo

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Transcrição

All right, let's dive in. This article you sent, the three Dimensions of Administrative Law. I gotta say, the title itself already has me intrigued. Professor Eduardo Jordan really seems to be making a bold statement here. Oh, he definitely is.

So today let's try to unpack what he's getting at. For sure. And just to give everyone a bit of context, this article was published in the anc. Vista de di Rito Administrativo Unconstitutional. Okay, I'm familiar with that one.

Yeah, it's a pretty influential Brazilian law journal. Gotcha. So we're not talking about some obscure academic theory here. No, not at all. This is the real deal.

This is cutting edge stuff. Volume 19, issue 75 to be exact. Back in early 2019. That's the one. So Professor Jardim argues that administrative law is not just about blindly following a set of rigid rules.

He says it actually operates on three distinct dimensions. Exactly. Legal, managerial and political. He calls it a three legged stool. You need all three for the system to function properly.

Or the whole thing collapses. Exactly. What do you think about that? Well, it's a really compelling framework. It forces us to think outside the box beyond just the black and white of legal statutes.

Absolutely. And to consider all these other forces at work in the real world. Definitely. Now, the first dimension, the legal one. Yeah.

This is probably the one everyone's most familiar with. Probably. Yeah. It's about making sure the government operates within the bounds of the law. Right.

Protecting citizens rights. Yes. And ensuring fairness for everyone. It is. And you know, ensuring accountability too.

Exactly. Things like judicial review come to mind. Oh, absolutely. To keep the government in check. Yes.

And clear rules around public spending. Right. That's crucial. Yeah. To prevent misuse of taxpayer money.

You got it. Are those the kind of things you think of when you think about that legal dimension? Absolutely. Those are great examples. It's all about setting boundaries.

Boundaries, like you said, making sure there's accountability. Right. And giving people mechanisms to seek redress if their rights are violated. Right. So if the government messes up, you have a way to fight back.

Exactly. It's all about protecting citizens from arbitrary or unjust actions by the government. Now the managerial dimension. Okay, yes. This is where things get really interesting for me.

I'm all about efficiency. Right. Making sure things run smoothly. Yeah, I like that. So how does this idea of a managerial dimension fit into this bigger picture of administrative law?

Think of it this way. The managerial dimension is all about making sure the public administration can actually deliver. You know, like making sure it actually has the tools and resources to achieve its goals effectively. So it's less about what the government does. Right.

And more about how they do it. You got it. Okay, now I'm starting to see how this all fits together. Yeah. So we're talking about setting up those structures and systems that actually make government work efficiently.

Exactly. Like public enterprises to handle business activities. Yes. Or those specialized regulatory agencies we always hear about. Is that what Professor Jordan's getting at?

Exactly. He actually uses the example of independent regulatory agencies to illustrate this dimension. Oh, interesting. You know, they have the specific expertise to deal with complex issues like telecommunications or energy. Right.

So this allows for more efficient and effective regulation in those specific areas. I like that. So this managerial dimension is almost like. It's like building the engine of government, making sure it's powerful enough to actually get the job done. I love that analogy.

It really is about equipping the government with the right tools and the right structures to really serve the public good. All right, now buckle up. Yeah. Because here comes the political dimension. Okay, here we go.

And anytime the word political enters the conversation. Oh, I know. Things tend to get a little bit, shall we say, lively. It definitely spices things up. Now, Professor Jordan makes pretty bold statement here.

He does. He says that administrative law is inherently political. A strong statement for sure. And you know, he's got a point because at the end of the day, we're talking about choices. Yes, always choices.

Prioritizing some interests over others, Navigating different values and priorities. That's the heart of it. Like, let's say, deciding whether to build a new university or invest in a high speed rail line. Okay, yeah, I see what you mean. Both of those projects serve the public in some way.

They do. But somebody inevitably benefits more than someone else. Right. Decisions, decisions. So how does this political dimension, how does it actually play out in administrative law?

Well, this is where we see those rules and regulations that promote transparency in government. Okay. And encourage citizens to participate in decision making. Yeah. So you're not just left out in the cold.

Exactly. It's about making sure those choices that the government makes are legitimate and reflect what the people actually want. So it's not just a bunch of bureaucrats making decisions behind closed doors. Exactly. You got it.

It's like building in those checks and balances to guard against the potential for abuse of power. I like that. Making sure everyone has a voice and the process is fair and transparent. All right, so we've got these three dimensions. Legal, managerial, and political.

Three legs of the stool, each one kind of pulling the system in a slightly different direction. That's right. A balancing act, for sure. But Professor Jordan doesn't just stop there. He doesn't.

He keeps going. He goes on to show how these dimensions often clash in the real world. They do. It's like a constant tug of war. Exactly.

It's a constant tension trying to find that balance. Exactly. Now he brings up judicial review. Yeah. Good example.

Which we talked about earlier. A cornerstone of that legal dimension. It is. It's essential for protecting people's rights. Absolutely crucial.

But it can also sometimes really slow down government action. Oh, absolutely. It can grind things to a halt sometimes. So there's this inherent tension between ensuring that rights are protected. Yeah.

And allowing the government to operate efficiently. You always have to weigh those two things. It's all about finding that sweet spot, finding that balance. That's the key. Exactly.

And different countries approach that balancing act in different ways, you know. Oh, interesting. How so? Well, Professor Jordan compares the US And French approaches, which I found fascinating. Oh, okay, let's hear it.

So in the US you have the Chevron doctrine, which basically says that courts should generally defer to agencies interpretations of the law. Okay, so that's more about prioritizing efficiency. Right. Trusting the expertise of those agencies. Exactly.

Even if it means potentially limiting the scope of judicial review a little bit. That's the trade off. Interesting. So the idea is to avoid getting bogged down in constant legal battles. Exactly.

Keep the government moving, Let the experts do their job. Right. Now, how does France approach this? Well, the French courts take a much more active role in reviewing agency decisions. Oh, okay.

They don't automatically defer to the agency's interpretation. So they're more likely to step in and say, hold on, we need to take a closer look at this. Exactly. Which means stronger protection for citizens rights. Potentially, but at the cost of some efficiency.

So it's like two sides of the same coin. Each approach with its own advantages and disadvantages. Exactly. Different ways of balancing those competing priorities. Priorities.

Now, does Professor Jordan seem to favor one approach over the other? Not really, no. He just presents both. He does. He's more interested in highlighting how each approach reflects a different emphasis on those three dimensions we talked about.

Oh, okay, I see. So the US System, with its emphasis on deference, it leans more toward the managerial side. Right. Prioritizing that smooth operation. Right.

Relying on expertise. And the French system, it leans more heavily on the legal dimension. Putting those individual rights front and center. Exactly. It's fascinating to see those different values reflected in how each system operates.

It really makes you think about how these seemingly technical legal concepts actually have such a real impact on people's lives. They absolutely do. I mean, the way those three dimensions are balanced, it can determine whether you even have the right to challenge a government decision or whether your voice is even heard in the first place. That's the power of Professor Jordan's framework. I think it helps us see beyond the abstract legal principles and understand.

Understand what the real world consequences are. The actual impact. Who are the potential winners and losers in any given situation? And he doesn't stop there. He takes this even further.

He does. He uses this framework to analyze historical trends in administrative law. Yes. And it's really insightful. So it's not just about looking at the rules as they are today.

No. It's about understanding how they got here. How those rules have evolved over time. Exactly. He's arguing that the development of administrative law.

Yep. It often mirrors broader societal shifts. Okay. And changing priorities. So it's not just a static set of rules.

No, not at all. It's a living, breathing system. Exactly. Constantly adapting. We constantly evolve to new challenges.

That's fascinating. It really brings it to life. It does. And he points out how French administrative law has gone through these distinct phases. Oh, really?

Tell me more. So back in the early 20th century, the focus was mostly on the managerial dimension, building up a strong, efficient state apparatus. So back then, it was all about making the machinery of government run smoothly. Exactly. Efficiency was king.

Got it. But as the century progressed, the focus started to shift. Oh, I see. More towards the legal dimension. Judicial review expanded.

Okay. And citizens rights gained more prominence. So a swing of the pendulum. Exactly. It was response to the growing power of the state at that time.

Right. People wanted more accountability. They did. And stronger protections for individual liberties. That's right.

And it reflects those evolving notions of justice. Makes sense. And what about more recently? Well, more recently, Professor Jordan observes this growing emphasis on the political dimension. Okay.

You see this push for greater transparency? Yeah. I've noticed that. Increased citizen participation. Right.

People want to have a say. They do. And there's this growing demand for a more responsive and accountable government. So it's like this constant dance. It really is.

Between those three dimensions. Constant interplay, Each one taking the lead at different times. Shaped by what's happening in society. Exactly. And by the values that are most important at that moment.

Professor Jourdan doesn't come right out and say this, but I feel like his analysis suggests that this dance, this interplay, it's going to continue. I think so, too. As new challenges emerge and Technology keeps advancing and societal values continue to change. Absolutely. It's a dynamic process always in flux.

I love that. It really paints a vivid picture of administrative law as something alive, something that's constantly evolving and adapting. Exactly. And that's what makes it so fascinating to study, in my opinion. I agree.

It's not just about memorizing rules. It's about understanding the forces that shape those rules. The human stories behind those legal abstractions. Precisely. Professor Jordan's given us a lot to unpack here today.

He has. And I have a feeling he saved the most thought provoking question for last. I think you might be right about that. Because he asks this. Can this tri dimensional framework be applied to other areas of law?

Whoa. Could it be a tool for understanding not just administrative law, but the legal system as a whole? Now we're getting into the big questions. I know, right? I mean, could we use this lens to analyze contract law?

Interesting question. Criminal law, environmental law, what do you think? That's the million dollar question, isn't it? How might this change our understanding of how legal systems work? Yeah.

How decisions are made not just in administrative law, but across the board. How those three dimensions, legal, managerial and political, how they play out in all these different areas of the law. It's really exciting to think about. It is. How can we use this framework to understand this complex interplay between legal principles.

Yes. And social values and political dynamics and how those things all come together to shape the law and ultimately shape our lives. That's going to keep me thinking for a while. Me too. Professor Jordan's definitely given us a powerful new tool here.

A new lens to see the world through. I love it. And it's not just a tool for legal scholars either. Not at all. This is relevant to everyone.

It is understanding those three dimensions. Right. It can help you become a more informed citizen. Absolutely. You can start to understand the forces at play behind government decisions.

That's so important. And you can participate more effectively in shaping the world around you. So to all our listeners out there. Yeah. As we wrap up this part of our deep dive, we leave you with this challenge.

A challenge. I like it. Think about the legal issues you face in your own life. Okay. Can you see those three dimensions at work?

The legal, the managerial, the political. That's right. How are they being balanced? Or maybe how are they not being balanced? Good point.

And most importantly, how does that balance, or lack thereof, affect you? How does it affect your community? How does it affect the society you live in? These are the questions to ponder, folks. Because Remember, administrative law, it's not just about rules on paper, it's much bigger than that.

It's about the constant interplay of those three dimensions. That's right. And ultimately, it's about how we choose to govern ourselves. It really is heavy stuff. It is, but it's important stuff.

Absolutely. All right, dear listeners, that's it for this part of our deep dive into the three dimensions of administrative law. We'll be back soon to continue this conversation and explore even more fascinating ideas from Professor Eduardo Jordan. Until then, keep exploring, keep questioning, and never stop learning. It really is.

It's a dynamic system, for sure. Always evolving. Exactly. He specifically highlights the evolution of French administrative law as an example. Oh, okay.

What do you say about that? So, in the early 20th century in France, administrative law was primarily focused on the managerial dimension. Okay, interesting. It was all about building a strong and efficient state. Ah, so they were all about making the machine of government run as smoothly as possible.

You got it. Efficiency above all else. Pretty much, yeah. But then things started to change, right? They did, yeah.

As the 20th century progressed, the focus shifted more towards the legal dimension. Interesting. What prompted that shift? Well, as the state grew more powerful, people started demanding more accountability. Makes sense.

They wanted to make sure their rights weren't being trampled on. Exactly. And that's when judicial reviews started to expand, giving citizens more power to challenge government actions. So it was a reaction to the changing times. It was.

And it reflects those evolving ideas about individual rights and the role of the state. Right. It's like society was saying, hold on. The government needs to be kept in check. Exactly.

The people demanded a greater emphasis on protecting their liberties. So we see this shift from efficiency to individual rights. Exactly. And then more recently, Professor Jordan observes this growing emphasis on the political dimension of administrative law. Oh, okay.

What does that look like in practice? Well, there's a lot of talk these days about transparency and citizen participation in government decision making. Yeah, I've definitely noticed that. It seems like people are demanding a more responsive and accountable government. They want a seat at the table.

They do. And they want to make sure their voices are heard. So it's like a constant dance between these three dimensions, wouldn't you say? I would. A constant interplay.

Yeah. Each one taking the lead at different times, depending on what's happening in society at that moment and depending on what people value most at that time. Right. Like, what's the priority? Efficiency, Individual rights, or having a say in how things are running.

Professor Jordan doesn't come right out and say this, but I think it's pretty clear from his analysis that this dance, this interplay between the dimensions, it's probably going to continue, don't you think? I think so too. I mean, think about all the changes that are happening right now with technology and everything else. It's like the world's in constant motion. Exactly.

New challenges are emerging all the time, and society's values are constantly evolving. So administrative law, it can't just stay frozen in time. It has to adapt. It does. It has to be flexible enough to respond to all these changes.

It's a living, breathing thing. I love that way of putting it. It really captures the dynamic nature of administrative law, and that's what makes it so interesting to study. I think. I agree.

It's not just about memorizing dry rules. Right. It's about understanding the forces that shape those rules and understanding the people behind those rules, the human stories behind those legal abstractions. Exactly. And that's what Professor Giordan really gets at.

I think he shows us that administrative law is about more than just abstract principles. It's about real people and real world consequences. It affects our everyday lives in profound ways. It absolutely does. Now, Professor Jordel has given us a lot to think about already.

He has. He's really challenged us to look at administrative law in a new way. But I think he saved the most thought provoking question for last. Oh, what's that? He asks, can this tridimensional framework

be applied to other areas of law?

Wow, that's a big one. He's really pushing us to think outside the box here. He's saying, could we use this same lens to analyze, say, contract law or criminal law, or environmental law? It's fascinating to consider, isn't it? Like, could this framework help us understand how those different areas of law operate and evolve?

Could it shed light on the interplay between legal principles, social values, and political power dynamics in those fields as well, and how those forces shape not just the law itself, but our lives more broadly. It's a question that could keep us talking for hours. It really could. And it's a question that's relevant for everyone, not just legal scholars. Right.

Because at the end of the day, the law affects all of us. It shapes our society and determines how we live our lives. So, dear listeners, as we continue our deep dive into the three dimensions of administrative law, we want to leave you with this challenge. Think about the legal issues that you encounter in your own life. Think about the rules and regulations that affect you, your family, your community.

Can you identify Those three dimensions at play, the legal, the managerial and the political, how are they being balanced? Or maybe how are they not being balanced? Are certain dimensions being prioritized over others? And most importantly, how does that balance, or lack thereof, affect you? How does it affect the people around you?

These are the questions we should all be asking ourselves. Because understanding how those three dimensions interact and how they shape the legal landscape, that's the first step towards creating a more just and effective legal system, and ultimately a more just and effective society. It really is. It's about understanding the trade offs, the compromises that are made in the name of efficiency or in the name of protecting certain rights. And who benefits from those compromises?

And who maybe loses out. Exactly. Professor Jordan's given us this framework to really analyze these complex dynamics. A new way of thinking about the law, a new way to see how these different forces interact. And it's not just relevant for lawyers and judges either, is it?

No, not at all. This is something that everyone can benefit from understanding. It is because when you understand these dynamics, you can start to see how administrative law, and really any area of law, affects your life, your community, your society. It's empowering, I think it is, to be able to see those forces at play and to recognize those trade offs. Exactly.

It allows you to participate more effectively in shaping the kind of world you want to live in and the kind of government you want to have. Right. Because ultimately, administrative law is about how we choose to govern ourselves. Powerful stuff. It is, but it's also fascinating stuff.

It is. So, listeners, as we wrap up this deep dive. Yeah. We want to leave you with this. Okay.

Think about the legal issues you encounter in your daily life. The rules, the regulations, the decisions. Can you spot those three dimensions at play? The legal, the managerial, the political. How are they being balanced?

Or are they even being balanced at all? Good point. And how does that affect you? Yeah. Your family, your community.

Keep those questions in mind as you navigate the legal world. Because remember, administrative law, it's not just some abstract set of rules. It's a living, breathing system. It affects all of us, and we all have a role to play in shaping it. So until our next deep dive, keep exploring, keep questioning, and never stop learning.

That's the key.

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