



## SYLLABUS

### Justice for all: Access to Justice Across Jurisdictions

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**Course Description:** This course in comparative law examines the legal aid that states provide their citizens and how access to justice is reconceptualized through alternative dispute resolution and online dispute resolution. By looking closer at constitutional provisions, legal documents, and essential readings on the subject, we will explore cases from Brazil, the United States, and across Europe to better understand how different jurisdictions dialogue and what potentialities and limits exist for further extending access to the court system. We will also think more broadly about access to justice, revisiting now-classic theoretical writings on the theme (Mauro Cappelletti and the Florence project), paradigmatic cases in the United States, and more recent international documents demanding legal aid in and for developing countries.

Under U.S. Law, institutes such as plea bargaining and plead guilty have been highly criticized by scholars advocating for social change. In light of this literature on access to justice and judicial retrenchment, this course will expose students to cases such as *Gideon v. Wainwright*, 372 U.S. 335 (1963), *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), as precedents for the right to counsel under criminal charges and the limits of pleading under the Federal Rules of Civil Procedure. Using the Brazilian scenario, this course will present the students with the challenges of access to justice in developing countries— of ensuring fundamental rights, fighting police brutality, and enforcing rights before the courts. Cases will include challenges to human rights violations of incarcerated populations, lawsuits against land expropriation, claims for compensations for environmental damage, rearrangements in family law, and other landmark cases before the Supreme Court and the Inter-American Court of Human Rights. By featuring leading cases on how different parties have access to the courts, students will



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engage in critical debate over the relationship between access to justice and incarceration rates, the role of lawsuits in fighting inequality, and the unprecedented changes facing courts as they adapt to technological change. We will close by exploring the trends of digitalization and online dispute resolution and to what extent they promise to expand access.

**Purpose of the Course:** This course aims to offer a comprehensive framework for the different ways states provide legal aid and how access to justice is reconceptualized through alternative dispute resolution and online dispute resolution. By the end of the course, you will recognize the new paths access to justice is taking in a critical, comparative, and historical perspective.

**Course Materials:** During the semester, we will be using the following course materials. As the course progresses, additional readings will be uploaded onto Blackboard:

- Cappelletti, Mauro, and James Gordley. "Legal Aid: Modern Themes and Variations Part One: The Emergence of a Modern Theme." *Stanford Law Review*, vol. 24, no. 2, Stanford Law Review, 1972, pp. 347–86.
- Cappelletti, Mauro, and James Gordley. "Legal Aid: Modern Themes and Variations Part Two: Variations on a Modern Theme." *Stanford Law Review*, vol. 24, no. 2, Stanford Law Review, 1972, pp. 387–421.
- Monateri, Pier Giuseppe. "The weak law: contaminations and legal cultures." *Transnat'l L. & Contemp. Probs.* 13 (2003): 575.
- Alves, Cleber Francisco. The Nature of Legal Aid Rights: Civil or Social/Welfare Right? Possible implications under 'ratchet effect' doctrine. In *Defensoria Pública no século XXI: novos horizontes e desafios* / Cleber Francisco Alves, Pedro González. – 2.ed. – Rio de Janeiro : Lumen Juris, 2019, p. 179-193.



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- Susskind, Richard E. *Online Courts and the Future of Justice*. Oxford University Press, 2019, p. 55-70.
- Yves Dezalay, and Bryant G. Garth. *The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States*. The Chicago Series in Law and Society. Chicago: University of Chicago Press, 2002, p. 163-185.
- Gidi, Antonio and Zaneti Jr, Hermes, *The Cost of Access to Justice Revisited— The ‘Age of Austerity’ in Brazilian Civil Procedure Five Years Later. Winds of Change?* (May 14, 2021). *University of Miami Inter-American Law Review*, Vol. 52, No. 2, 2021, Available at SSRN: <https://ssrn.com/abstract=3849342>.
- Burbank, Stephen B., and Sean Farhang. *Rights and Retrenchment: The Counterrevolution Against Federal Litigation* / Stephen B. Burbank, Sean Farhang. Cambridge: Cambridge University Press, 2017, p. 130-191.
- Staszak, Sarah L. *No Day in Court: Access to Justice and the Politics of Judicial Retrenchment*. Oxford [u.a: Oxford Univ. Press, 2015.
- Katsh, M. Ethan, and Orna Rabinovich-Einy. *Digital justice: technology and the internet of disputes*. Oxford University Press, 2017, chapters 1 and 2.
- Mattei, Ugo., and Laura. Nader. *Plunder: When the Rule of Law Is Illegal* / Ugo Mattei and Laura Nader. Malden, MA: Blackwell Pub., 2008, chapter 7.
- Brown, Darryl K. "How to Make Criminal Trials Disappear Without Pretrial Discovery." *Am. Crim. L. Rev.* 55 (2018): 155.
- Johnson Jr, Earl. "Equal access to justice: Comparing access to justice in the United States and other industrial democracies." *Fordham Int'l LJ* 83 24 (2000).



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- Galanter, Marc. "Why the haves come out ahead: Speculations on the limits of legal change." *Law & Soc'y Rev.* 9 (1974): 95.
- LaFave, Wayne R. *Modern Criminal Law: Cases, Comments and Questions* / Wayne R. LaFave, David C. Baum Professor of Law Emeritus and Center for Advanced Study Professor Emeritus, University of Illinois. Sixth edition. St. Paul: West Academic, 2017, p. 693-738.
- Varano, Vincenzo, and Alessandra De Luca. "Access to justice in Italy." *Global Jurist* 7.1 (2007).
- Lasser, M. (2003). The question of understanding. In P. Legrand & R. Munday (Eds.), *Comparative Legal Studies: Traditions and Transitions* (pp. 197-239). Cambridge: Cambridge University Press.
- Alves, Cleber Francisco. Meeting Immediate Legal Needs Via the Brazilian Public Defender's Office: An Exemplary Case. In *Access to Justice in the Americas*. Org. Vinícius Alves Barreto da Silva. 1.ed. Rio de Janeiro: Fórum Justiça, 2021, p. 84-103.
- Woo, Margaret YK; Cox, Connor; ROSEN, Sarah. Access to Civil Justice. *The American Journal of Comparative Law*, 2022.

**Classes:** Friday, from 12:00-14:00. Webex link:  
<https://unito.webex.com/unito/j.php?MTID=me4deb1038b3f211aff0dcb5c3d7d870d>

**Attendance Policy:** This course complies with the university policies on the subject, and it is recommended for a good quality final presentation acquaintance with the indicated topics.

**Lateness:** Preferable not exceeding 10 minutes, extended when necessary.



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**Learning Outcomes:** During this course, the student must achieve confidence in the topic and the literature on the theme. An additional purpose of the program is to familiarize students with Common Law cases on the subject, enabling the student to search for related cases when needed. The student will also be encouraged to examine statutes and precedents applying Comparative Law methods as valuable tools to sophisticate their knowledge.

**Expected Student Workload:** this course expects from students their ability to conduct further independent readings.

**Final Grade for the Course:** The final grade for the course will be determined as follows: a) preparation for classes; b) participation in classes; c) attendance to special guest lectures; d) final oral presentations in classes on the analyzed topics; e) handling written papers of students' presentations.

### Course Schedule and Reading Assignments:

- 21-10: Syllabus.

### Historical Background

- 28-10 -: Cappelletti, Mauro, and James Gordley. "Legal Aid: Modern Themes and Variations Part One: The Emergence of a Modern Theme." *Stanford Law Review*, vol. 24, no. 2, Stanford Law Review, 1972, pp. 347–86.
- 04-11: Cappelletti, Mauro, and James Gordley. "Legal Aid: Modern Themes and Variations Part Two: Variations on a Modern Theme." *Stanford Law Review*, vol. 24, no. 2, Stanford Law Review, 1972, pp. 387–421.

### Tools for Doing Comparative Law



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- 11-11: **a)** Lasser, M. (2003). The question of understanding. In P. Legrand & R. Munday (Eds.), *Comparative Legal Studies: Traditions and Transitions* (pp. 197-239). Cambridge: Cambridge University Press. **b)** Monateri, Pier Giuseppe. "The weak law: contaminations and legal cultures." *Transnat'l L. & Contemp. Probs.* 13 (2003): 575.

### Access to Justice in the U.S and Legal Change

- 18-11: **a)** Mattei, Ugo., and Laura. Nader. *Plunder : When the Rule of Law Is Illegal*. Malden, MA: Blackwell Pub., 2008, chapter 7. **b)** Staszak, Sarah L. *No Day in Court : Access to Justice and the Politics of Judicial Retrenchment*. Oxford [u.a: Oxford Univ. Press, 2015.
- 25-11: Burbank, Stephen B., and Sean Farhang. *Rights and Retrenchment : The Counterrevolution Against Federal Litigation*. Cambridge: Cambridge University Press, 2017, p. 130-191.

### Online Dispute Resolution: access to justice?

- 02-12: **a)** Susskind, Richard E. *Online Courts and the Future of Justice*. Oxford University Press, 2019, p. 55-70. **b)** Katsh, M. Ethan, and Orna Rabinovich-Einy. *Digital justice: technology and the internet of disputes*. Oxford University Press, 2017, chapters 1 and 2.

### The Brazilian case of Judicial Retrenchment

- 09-12: **a)** Alves, Cleber Francisco. Meeting Immediate Legal Needs Via the Brazilian Public Defender's Office: An Exemplary Case. In *Access to Justice in the*



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Americas. Org. Vinícius Alves Barreto da Silva. 1.ed. Rio de Janeiro: Fórum Justiça, 2021, p. 84-103. **b)** Gidi, Antonio and Zaneti Jr, Hermes, The Cost of Access to Justice Revisited— The ‘Age of Austerity’ in Brazilian Civil Procedure Five Years Later. Winds of Change? (May 14, 2021). University of Miami Inter-American Law Review, Vol. 52, No. 2, 2021, Available at SSRN: <https://ssrn.com/abstract=3849342>.

- 16-12: **a)** Yves Dezalay, and Bryant G. Garth. *The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States*. The Chicago Series in Law and Society. Chicago: University of Chicago Press, 2002, p. 163-185. **b)** Johnson Jr, Earl. "Equal access to justice: Comparing access to justice in the United States and other industrial democracies." *Fordham Int'l LJ* 583 24 (2000).

### Access to Justice in Mass Society

- 06-01: **a)** Galanter, Marc. "Why the haves come out ahead: Speculations on the limits of legal change." *Law & Soc'y Rev.* 9 (1974): 95. **b)** Woo, Margaret YK; Cox, Connor; ROSEN, Sarah. Access to Civil Justice. *The American Journal of Comparative Law*, 2022.

### The Right to Counsel in American Criminal Cases

- 13-01: **a)** LaFave, Wayne R. *Modern Criminal Law: Cases, Comments and Questions*. Wayne R. LaFave, David C. Baum Professor of Law Emeritus and Center for Advanced Study Professor Emeritus, University of Illinois. Sixth edition. St. Paul: West Academic, 2017, p. 693-738; **b)** *Gideon v. Wainwright*, 372 U.S. 335 (1963), summary.



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#### Italy and other European Jurisdictions

- 20-01: Varano, Vincenzo, and Alessandra De Luca. "Access to justice in Italy." *Global Jurist* 7.1 (2007).

#### Justice Without Rights: The Normalization of the Exception

- 27-01: **a)** Alves, Cleber Francisco. The Nature of Legal Aid Rights: Civil or Social/Welfare Right? Possible implications under ‘ratchet effect’ doctrine. In *Defensoria Pública no século XXI: novos horizontes e desafios* / Cleber Francisco Alves, Pedro González. – 2.ed. – Rio de Janeiro : Lumen Juris, 2019. **b)** Frankenberg, Günter. *Political technology and the erosion of the rule of law: normalizing the state of exception*. Edward Elgar Publishing, 2014.
- 03-02: Presentation
- 10-02: Presentation
- 17-02: Presentation