INTRODUCTION

Challenges for the Future of Access to Justice

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INTRODUCTION TO THE WORK

The purpose of this introduction is to not only discuss the content of this publication but also to present the Access to Justice in the Americas Project and its contributions to the broad discussion on the theme of access to justice. In the following pages, we will portray how some of the most distinguished legal scholars in the field perceive the future of access to justice and will include innovative input they have gathered, both from developed and developing countries. Furthermore, we will identify what we see as gaps in the current discussion and amend these gaps by suggesting methods to promote a greater access to justice within an international dialogue that encompasses the contributions of social movements, access-to-justice institutions, and academia. To achieve this, we will explore experiences and impressions extracted from ten years of interactions with social movements and the Public Defender's Offices (PDO) in Latin America from an activist and researcher perspective.

This project raises one of the most prevalent problems facing the internationalization of access to justice in the continent today: the challenge of facilitating an international debate outside of the dominant English-speaking world. Although there exists a diverse global community of scholars dedicated to this subject[1], lawyers, public defenders,

and social movements dealing with access to justice in everyday life are primarily local and, when attempting to meet the needs of vulnerable persons in their community, their methods are usually framed by local legal approaches. An example of this is the PDO staff model which has largely spread throughout Latin American countries[2]. Because of this, public defenders' experiences and dilemmas are much more likely to be shared in regional forums, like the Inter-American Association of PDOs (AIDEF) and the Mercosur Associations of PDOs (BLODEPM), than with private or staff lawyers working in legal-aid programs.

Differently, Canada implements a legal-aid system that makes use of community justice centres and legal clinics to gain access to with staff and private lawyers. Lawyers in this system are more comfortable sharing experiences with peers in the United Kingdom, which is famous for their judicare system, or Australia, as they belong to an Anglo-European approach to access to justice rooted in legal aid programs. The United States, as one might expect, shares the same Anglo-European legal traditions. However, they are one specific transitional case with no national policy regarding access to justice. The United States Supreme Court has only recognized the right to grant a state-provided attorney to those unable to afford a private one in the criminal sphere. With no consistent approach to this issue, public defenders in federal and state criminal jurisdiction are combined with NGOs, legal aid societies, neighborhood law offices, and other legal aid programs with private and public funding for providing legal aid in civil cases (Alves, 2006). With one foot in the Latin American model, shown by the United States public defenders' attempts to integrate AIDEF, and one foot in the legal aid approach, embraced mostly by leading universities' legal clinics and scholars dealing with civil rights, the United States should be perceived as a buffer between those two previous models.

Access-to-justice initiatives and forums are firmly attached to their legal approaches and contexts, and therefore, are mainly dependent on national languages[3]. Promoting a continental conversation thus proves challenging. So, how does one foster a dialogue between such different traditions and languages? Comparative studies are the best answer to this question. Comparatists are experts who try to create bridges between legal traditions and are who the access-to-justice movement consistently stems from (notably the Florence Project[4]). Usually, they have employed a dogmatic perspective to identify how different countries' legal systems

have approached the lack of legal defense for the poor. For this, they have been focusing on interpreting statutes, supreme courts' decisions, and some key points related to the institutional design of programs: services provided, jurisdiction, and financial eligibility. Thus, comparative studies have filled the gap in mapping institutional responses at the national level, building the big picture of access to justice in different contexts. However, this method is usually limited to providing information for mapping normative and abstract responses on a large scale, commonly linked to lawyer's or legal scholars' concerns in what we view as a top-down approach.

The perspective we intend to foster in the Access to Justice in the Americas Project is different. It stems from a socio-legal perspective that tries to overcome social hierarchies between lawyers, researchers, and vulnerable persons. Therefore, we aim to exchange local discussions arising from those actors' interactions to understand the socio-political and economic challenges to access to justice. In this way, we can learn valuable lessons and build solidarity between similar struggles. We believe this is a good strategy to find gaps in the literature, make institutions more accountable, and foster a more responsive and scientific legal culture based on concrete practices. Therefore, the Access to Justice in the Americas Project is not exclusively interested in promoting comparative dogmatic studies but also in sharing local knowledge on diverse experiences pertaining to access to justice from across the continent so that social organizations, institutions, and researchers can extract valuable lessons. To achieve this goal, we chose to welcome papers in the four main languages of the region (English, French, Portuguese and Spanish) and we committed to translating the extended abstracts into those same languages. This method attracts international scholars and papers who tell of local experiences, while still allowing the exchange of discussions, methodologies, and conclusions with other local actors. We also intend to host online debates which are accessible in different languages.

Offering a stage for these experiences is a little push for lawyers, public defenders, social organizations, and local researchers to scientifically elaborate upon their cases and contexts in efforts to streamline helpful knowledge for their work. This is the aim of including the following works: Ana Maria Blanco's paper describing an itinerant project involving many judicial institutions to meet legal needs in Argentina's countryside,

INTRODUCTION

Abraham Blanco and Claudia Jaimes's assessment of initiatives carried out by the Venezuelan PDO to provide access to justice for the deaf by considering input from community leadership, and Cleber Alves's description of successful interactions between public defenders and vulnerable people where collective problems caused by considering input from community leadership in Brazil were solved. These cases bring up the recent tendency to discuss the PDO model with regards to its ability to be open for social participation in designing and evaluating access-to-justice initiatives. Regarding the Anglo-European tradition, Brandon Stewart presents a program dedicated to providing legal advice to social service providers in Canada, thus decreasing the likelihood of an escalation of clients' legal problems. More interestingly though, these are experiences that not only inspire projects within the same legal approach but also shed light on similar needs in distant jurisdictions.

We maintain that international discussion to strengthen local struggles and increase visibility is a common and effective strategy. In demonstration of this strategy, Janeson Oliveira and Angelo Silva present the issue of the closure of courts throughout vulnerable regions in Brazil and the effects it has on local social-economic development. Fedora Mathieu demonstrates the barriers imposed by the Canadian refugee system to Haitian women under gender-based violence. Gloria Song and Melisa Handl address a similar situation where they question how formalistic and superficial the Canadian immigration and refugee system is by examining their denial of refugee claims concerning Guyanese women targeted by domestic violence. Furthermore, Melina Fachin and Sandra Barwinski criticize conflicting applications of the Maria da Penha Act by Brazilian courts which has negatively affected public defenders' efforts to prevent domestic violence against women. Academic papers like these play a role in denouncing the misuse of the law in denying access to justice to vulnerable people, particularly women.

The project is also concerned with the implementation and development of the different models of access to justice, especially with regards to their impact in the broader social context. With this concern in mind, Patricia Magno draws upon the activist tradition of public defenders — which will also be the source of my arguments in this paper — to discuss institutional policies to enforce the PDO's emancipatory role in post-colonial societies like Brazil. Meanwhile, Camilo Zulefato, Ianara Cipriano, and Mauricio Leme

assess Brazilian PDOs' transparency levels and the operational levels of participatory mechanisms within the PDO, like the ombudsperson office. These papers yield insights about the PDO's institutional design while assessing its limitations and capabilities to bear ever-increasing demands for access to justice.

Like the United States, Colombia does not have a specific access-to-justice policy, primarily relying on pro-bono lawyers. In this context, access to justice is closely connected with transitional justice[5] — carried out by the peace agreement between the government and the FARC-EP — which is the most recent constitutional change in the country. Luisa Lozano and Jesus Sanabria describe the challenges to accomplish the agreement's promises considering political, geographic, and social aspects. In line with legal pluralism and Indigenous rights' studies, Marina de Almeida investigates how Indigenous communities in Mexico utilize their traditional legal norms in combination with lawsuits to preserve their autonomy against development ventures that are disastrous for the environment. Transitional justice, legal pluralism, and Indigenous rights are examples of contemporary input to the access to justice movement that has yet to be integrated into access to justice approaches. Simone Alvarez Lima also extends the limits of the law to defend the recognition of new rights and subjects. Her paper advocates for parents' right to legally claim a change of name for their deceased, transgender child. These efforts represent the last frontiers as minorities — victims of war and conflict, Indigenous peoples, and transgender people — have been amongst the most excluded from the justice system.

A distinct approach is employed by Bernard Reis Alo. His paper reflects on the tough debate held in the Brazilian Constituent Assembly that resulted in the selection of the public defenders' model and how this change impacted the distribution of social-political influence in the legal field. In turn, Rodolfo Noronha and his co-authors provide an in-depth analysis of the politics behind the election of judges at the Rio de Janeiro Court of Justice, contesting the popular opinion that these elections are signs of openness and democratization. These papers raise relevant questions about corporatism, privilege, and the reproduction of hierarchies in the justice system. We address those topics under the concept of judicial politics, which includes political preferences and different groups disputing the control of a judicial institution (Silva, 2019). The discussion also

explores political disputes over training, budget management, the relationship between the government and civil society, and difficulties defining institutional priorities.

Furthermore, facing the complexity of these concerns requires knowledge from other areas to aid in developing public policies. In this respect, Rola Koubeissy and Geneviève Audet use Paulo Freire's critical approach and pedagogy to assess how teachers promote the integration of minority students in multi-ethnic schools in Quebec. They consider important questions about racial and social inequality and shared awareness to confront these problems in a non-judicial setting. In his article, Jérémy Boulanger-Bonnelly compares access to justice with access to healthcare to propose innovations that may impact the range, quality, and professionalism of future measures, as well as prevent bottlenecks that can cause systemic disfunction in the justice system. Such a comparison seems even more relevant nowadays when the health system has been under stress because of the pandemic. After all, what can institutions devoted to access to justice learn from an overwhelmed healthcare system about bearing ever-increasing demands? Finally, access to justice must embrace input from international law, theory of justice, and law and development as increased access to justice implies the effectiveness of the rule of law. In line with this discussion, Adriane Seixas describes the implementation of the United Nations' Sustainable Development Goals related to access to justice in Brazil. Those papers prove how transdisciplinary the subject can be.

THE FUTURE OF ACCESS TO JUSTICE

This collection of papers demonstrates how discussing the future of access to justice is an arduous task. The papers attest that we can look at the issue from a myriad of perspectives when we consider grass-roots problems. Impoverishment, racism, gender, sexuality, war, human rights violations, and development ventures led by private companies or the state are just some of the many sources of legal problems. Moreover, they are situations that can prevent people from gaining access to legal assistance.

Following the arguments of Galanter that will be introduced soon after, we hypothesize that the mainstream literature on access to justice still tends to put those contextual elements aside to focus on new rights and legal procedures to feed a specialized field driven by lawyers. This presents

a considerable challenge to the field because it stresses the focus on corrective justice, neglects distributive justice, and does not take seriously other pieces of knowledge that are essential for dealing with the complexity of new rights and subjects of rights. The socio-legal scholarship, which does incorporate interdisciplinary approaches, has either been limited to some Anglophone countries or has been excluded from legal training and practice. To solve this problem, we assert that it is necessary to decentralize lawyers and legal knowledge from the center of the issue of access to justice and commit to a tripod that systematically integrates social movements, researchers, and lawyers with no hierarchy among them.

In the next paragraphs, we will describe the propositions of Marc Galanter[6] and the triad composed of Kim Economides[7], Aaron Timoshanko and Leslie S. Ferraz concerning the future of the subject. We will reflect on their propositions to suggest other topics that can already be seen in current practices. However, readers should be warned that our contributions stem from experiences in Latin America, especially Brazil, and thus Brazil's legal approach may be given more focus than other legal traditions. However, this may provide a check and balance to the weight of the Anglo-European approaches, which are ordinarily afforded more study and discussion, and therefore, may further enliven an intercultural debate.

GALANTER'S DIAGNOSIS

Galanter's 2010 article, "Access to Justice in a World of Expanding Social Capability", briefly sums up developments in the field since the 1970s and takes stock of the promises and accomplishments of the access-to-justice movement. It also identifies future challenges for discussion. He frames the subject under the three classical waves of access to justice: providing legal representation to the poor, widening the scope and subjects of rights to incorporate diffuse and collective interests, and incorporating more efficient and less formalistic conflict-resolution practices into the justice system. Moreover, he exposes how these waves were followed by additional contributions that were part of a broader revolution on how we understand the topic of access to justice today.

The first of these contributions is the dispute perspective, which rationalizes the research on access to justice by using sociological tools to build theoretical schemes that go beyond the traditional, dogmatic perspec-

tive to explain the path of dispute formation and resolution. The dispute pyramid is a remarkable contribution, formed with successive layers that account for unrecognized problems, perceived problems (naming), injuries attributable to someone (blaming), claiming, and disputing. When faced with the pyramid, we realize that judicial dispute resolutions deal with a relatively small fraction of conflicts in society. This suggests a set of different strategies are needed to apprehend lower layers of conflict and to boost the range of access to justice beyond court-like institutions. The dispute perspective also explains symbolic effects and the justice system's selectivity, which would be 'necessary' to prevent the system from collapsing before a massive dispute rush (p.118). Finally, the dispute perspective dwells on the uneven relationship between the 'haves' and 'have-nots' of society, proficient repeat players that accumulate resources, knowledge, and scale for strategic use of the justice system, and the one-shooters who lack those resources. Galanter claims the dispute perspective has successfully integrated mainstream legal scholarship and became common sense in socio-legal studies (p.120).

The second approach is the alternative dispute resolution (ADR) which fosters courts' decentralization in dispute resolution by embracing new practices such as mediation and arbitration. The goal is to reach lower layers of the dispute pyramid, thereby increasing the judicial system efficiency and incorporating informal community-based practices that would make the system more accessible. However, as Galanter says (p.121), ADR was absorbed by institutional demands and corporate power. Instead of creating room for innovation in access to justice for the vulnerable, arbitration was embraced by high-ranked economic organizations to avoid national courts. On the other hand, court-imposed mediation has been integrated into current institutional practices and being absorbed by the court's *habitus*[8], losing connection with original community roots. Mediation is also seen as the court's response to access to justice; it competes against other programs and has legitimized the maintenance of centrality of judges and lawyers by adding new layers into the hierarchies of the legal profession. In many jurisdictions, mediation supports a quantitative accountability model which measures courts' efficiency based on the number of cases solved, with little attention to quality.

With this record in mind, Galanter's concerns about the future of access to justice are related to identified challenges and the justice system's in-

ability to match them. His first concern is that "[l]ike ADR programs, access-to-justice programs hark back to the dispute perspective in a positivist fashion" (Galanter, 2010, p.123). It means that the access-to-justice movement has been working under traditional legal schemes centred on recognized entitlements and the expansion of justice system institutions' responses to under-enforced rights or unattended subjects of rights. His bitterness about it stems from the conclusion that, in a world of expanding social capability, this agenda implicates a society overwhelmed with more diverse and specific laws which will be unable to hamper corporations' influence as frequent, resourceful players (p.123).

Time passing is another factor that progressively limits the legal planning of access-to-justice programs because it inevitably adds new demands and subjects to vulnerable people's basic legal needs. Galanter (p.124-5) points out several reasons for that: new technologies and social relations create new sources of injustices or change our perception of justice, thereby bringing up unfair situations that used to be seen as fair. Besides that, solving problems can unleash unpredictable injustices. Hence, there is no determined amount of injustice to be eliminated; injustice is fluid. Nevertheless, access-to-justice programs have limited resources and tend to work under the limits of claiming and disputing (p.126). In this situation, the challenge then is how to deal with such an indeterminacy over time.

Based on this diagnosis, Galanter guesses that the justice system and access-to-justice programs would rely even more on the symbolic effect (p. 126). People are partially content knowing that there is a procedure welcoming their claims despite not being efficient in solving them. In turn, he advocates for scientific management of limited resources instead of letting those resources be managed by common sense (p. 126), which is easily captured by time's fluidity. However, his final and more critical point sheds light on different approaches to handle unmet legal needs in the lower layers of the dispute pyramid.

He argues that most access to justice initiatives revolve around corrective justice (p. 128), that is, where legal positivism lies: the recognition of rights to underpin judicial decisions within a given case, when, on the contrary, the advancement of new demands pushes the borderline between corrective justice and distributive justice and breaks the traditional bound-

aries between law and politics. Therefore, the future goal is to integrate distributive justice policies into access to justice, especially when the welfare state has been disassembled.

JUSTICE AT THE EDGE

In their recent paper, "Justice At The Edge: Hearing The Sound of Silence", Economides, Timoshanko, and Ferraz (2020) introduce what they see as the last frontier of access to justice, using experiences extracted from developed and developing countries. The authors expose why embracing First Law — the law of First Nation peoples — and recognizing legal personhood for natural objects can improve access to justice within a counter-wave.

Once again, the starting point is Cappelletti's three waves of access to justice which seek to expand the reach of legal systems into distant communities and identify new approaches so that legal ideas of equity in law become a reality. Beyond Cappelletti's three waves, the authors also mention how the literature has interpreted the possible future waves. Economides describes a fourth wave that envisions the ethical, political, and professional commitment of lawyers with attending clients and communities — which will be touched on later.

Their main point is that these waves seek to overcome the obstacle of inadequate or insufficient access to justice for under-represented and vulnerable people, which would promote law services move from the centre to the periphery, both in the geographic and political sense. Itinerant courts, legal clinics, and technology have been some of the strategies employed to expand access to justice to the peripheries, rural or remote areas despite persistent gaps. However, they describe the newest wave, which intends to move from the peripheries to the centre and is therefore considered a counter-wave. It relies on the First Law and how it regulates relations between First Nations peoples and their environment to increment institutional responses to current challenges.

One example is New Zealand where natural objects, such as natural parks or mountains, have been granted legal personhood. In Latin America, the recognition and enforcement of nature's (Pachamama's) rights by Bolivia's and Ecuador's governments has proved to have had remarkable socio-pol-

itical impacts. Recognition implies introducing First Nations worldview into the general legal system through legislation and judicial decisions.

First Law, as the authors claim, has generally been marginalized or displaced by current legal systems. In most cases, despite being recognized by the judicial system, First Law principles are rarely used or encountered in court. Moreover, they are aware that attempts to integrate First Law into the legal system have caused Indigenous peoples' damage. "In some cases, well-intentioned efforts to improve access to justice may have been counterproductive by undermining traditional authority structures that support First Law" (p.74). This is especially true in reference to Canada.

The challenge identified by the authors is how to differentiate this counterwave from a process of assimilation (pp 81-84). Past experiences of extending the general legal system to those peoples have disorganized traditional social relations and led to Indigenous people's defensive behavior, such as not sharing their knowledge and sensitive information, to prevent cultural appropriation. Despite this, recognizing personhood to natural objects is seen as a good example of mutual benefits for the centre and for Indigenous peoples. They acknowledge well-succeeded exchange experiences between First Law and the general legal system, especially in New Zealand (p.75).

Ultimately, "Justice at the Edge" explores how the legal fiction of personhood has been applied to natural objects based explicitly on First Law principles and why it can protect Indigenous peoples. This ensures the legal system is more inclusive and meaningful for Indigenous peoples and widens the range of access to justice to include individuals who share natural objects' interests and may benefit from their representation in court. Rural and Indigenous peoples are embraced by the same benefits investors and businesspersons enjoy as a result of granting personhood to corporations. In the second place, the overlap between the interests of a legal entity (be it a river, a mountain, or any other natural object) and the interests of Indigenous peoples may increase access to justice for all by promoting the preservation of the environment against development ventures and other threatening activities. Furthermore, it can help countries comply with their international obligations to protect Indigenous rights and the environment and to push reconciliation. Thus, the paper contributes

to new ways of thinking about expanding access to justice in terms of defining new rights and applying Indigenous legal concepts.

GAPS

To begin this analysis, an in-depth look at some of the issues raised by Galanter will be taken. He portrays a very comprehensive and deep understanding of structural factors that frame access-to-justice programs and limit their development. We will deepen his analysis by introducing other elements not yet fully embraced by current literature.

One issue is the problem of the dispute perspective becoming mainstream legal scholarship in the United States and other countries that share the Anglo-European approach of access to justice connected with socio-legal scholarship. However, in regards to Latin American public-defender models where the discussion about access to justice is mostly limited to interpreting and expanding Cappelletti's texts and includes little reference to a socio-legal scholarship in line with the sociological methods based on the dispute perspective or empirical data, it has not become mainstream. Public defenders' training is still underpinned by legal positivism, which puts aside the dispute perspective as non-legal but sociological.

In this approach, access to justice revolves around the law on the books, a debate dominated by professional interest about expanding the range of recognized rights or sustaining the recognition of new rights and subjects of rights, with little attention to empirical data or the law in action. This debate directly influences lawyers' and public defenders' practice by guiding pleadings and framing the relationship with clients. On the other hand, they do not provide scientific data about the assisted population, such as their demography, legal needs' formation, data about the quality and impact of the legal service, or tools to help manage resource allocation, which would rationalize the service.

The discussion about PDOs' institutional development usually involves a conflict of jurisdiction against other judicial institutions and financial eligibility to the service, which are still within the normative sphere. We believe that the training of lawyers working in legal aid programs is not entirely different. It means that, despite being considered mainstream legal scholarship, the dispute perspective is rather academic and does

not directly influence the legal practice enough to break the dogmatic wall. There is a persistent gap between the socio-legal scholarship about access to justice and the actual practice of lawyers and public defenders.

When it comes to scientific management of resources, the ability to choose priorities, and the development of a steady response to increasing demand, in the PDO model, these jobs are done by higher councils composed of public defenders who, in general, are immersed in such a positivist tradition, with little support of good science and data. We believe that this reflects Galanter's critique of the common sense's management of access-to-justice programs. Furthermore, we agree with Galanter that positivist common sense is also responsible for framing access to justice within corrective justice limits, disregarding distributive justice. This disregard tends to exclude public policies from the radar of program managers, as such initiatives are naturally considered out of scope.

In turn, when assessing Economides et al.'s counter-wave, we agree that assimilation and cultural appropriation are the main points of concern. However, it is still unclear how the incorporation of First Law to justify natural objects' personhood can differ from other well-intentioned initiatives to expand access to justice that have hampered Indigenous peoples' social organization. The problem is that, whether representation before the court is made by Indigenous people or by a lawyer on their behalf, litigation is still framed within the positivist legal tradition of the judicial system. In this sense, this counter-wave may be a counter-wave only in a superficial way. By borrowing First Law concepts into legal positivism, they are still submitting the periphery to the centre's legal framework. Access to justice continues to become colonized by positivism and corrective justice. Legal institutions from the political centre are strengthened since they still make the final decision and control the participation of the periphery. The main movement continues to originate from the centre into the periphery, both geographically and politically.

To displace the justice system's centrality, it is necessary to address some structuring factors that make the effective recognition of those new rights and subjects difficult within the daily operation of legal institutions and programs. The justice system's *habitus* and corporatist interests to perpetuate legal structures and hierarchies are two of those factors. New rights require extra training beyond the "core" of legal education (Kennedy, 1983), accur-

ate information about new subjects of rights, and specific knowledge about institutional management to implement them. Amidst the lack of complex 'sociological' knowledge, lawyers and public defenders cling to their positivistic legal approach, incorporated values and naturalized behavior, which tend to put alternative knowledge aside. Therefore, instead of changing judicial institutions, the worldview of marginal subjects can be colonized and absorbed into current structures and deviates from its original goal and meaning to reinforce excluding practices.

The translation of social demands into judicial demands (corrective justice) tends to favour the capture of social demands by the corporatist nature of the judicial system's institutions. It happens because a broader jurisdiction that includes sensitive political and economic matters increases the symbolic capital of an institution, which can be exchanged for political and economic capital, i.e., the institution can bargain for a bigger budget and privileges. It means that access to justice can, although not necessarily, justify the expansion of corporatist and elite hierarchies reproduced by the justice system together with the expansion of services, facilities, programs, and institutions.

Besides this, unmet legal needs have their share in reinforcing legal hierarchies in a scenario of legal expansion. Often, an expansion (more services, facilities, staff) does not match the rhythm of rising new legal problems. In this case, the justice system's — and more importantly, access-to-justice programs' — predictable inefficiency is balanced by its symbolic effect. In turn, this symbolic effect, which is responsible for accommodating increasing demands within a limited capacity of reaction, becomes essential for access-to-justice programs' social legitimacy in the first place. However, the symbolic effect also justifies the continuity of the *status quo*. It happens because changes towards efficiency often increase social expectations for a deeper transformation in *habitus* and institutional practices, requiring the understanding and realization of new legal needs, which corporatist groups are not always happy with. Therefore, the symbolic effect strengthens the position of those concerned with corporatism and maintaining the reproduction of hierarchies.

The absorption of access-to-justice programs by corporatism is a real risk, as I have witnessed and studied in a particular case involving the PDO's model (Silva, 2019). It is also true that the same problem may arise

for Bar associations that manage legal aid programs. They often reproduce lawyers' interests in managing programs' budgets or even preventing access-to-justice programs from taking off because they fear for the lawyers' monopoly over legal disputes. It is a problem that does not belong to a specific model or program.

Economides's (1999) fourth wave, which accounts for legal education, professional responsibility, and political and ethical commitment to clients' struggles, is a big step in solving this problem, but it is not yet enough. Again, the approach seems to be centred on the lawyers' positions and the relevance of legal education to promote social values within professional ethics. Despite being relevant and necessary, this specific approach overstates the ideological aspects of training and commitment instead of proposing a more institutional, sociological, and material solution. By giving our attention to the lawyers, the movement is once more focused on the centre instead of the periphery when it is what is needed is to displace the justice system from the centre. The main question then is how to present deeper alternatives to positivism and a better understanding of legal pluralism. It is also important to regain focus on distributive justice, correct the lack of complex knowledge associated with new rights, subjects of rights and institutional management, redirect the pressure of corporatism, change justice system's *habitus* and ensure the reproduction of hierarchies within access-to-justice initiatives.

One last consideration must be made: despite the tendency of using First Law concepts within corrective justice, those concepts should also be mobilized for distributive justice. This would implicate, for instance, land management and environmental preservation programs that prioritize traditional land use over modern-capitalist exploitation of natural resources. These programs would prevent litigation by preserving populations from sources of persistent rights violation. However, the proposition to switch focus to distributive justice still leads to the paradox that points out the legal process's inadequacy to respond to political and economic claims. This way, the discussion seems to transcend the access-to-justice framework to the political economy, losing much of the subject's identity. In keeping the focus on corrective justice, the access-to-justice subject's identity is preserved but can hardly touch structural and systemic factors that cause injustices to the vulnerable.

CONTRIBUTIONS: THE TRIPLET METHODOLOGY

The issues mentioned above — lack of complex socio-legal knowledge, habitus, corporatism, and the focus on corrective justice — have worried some public defenders and lawyers who are concerned with expanding and implementing the PDO model in Latin America. They are especially worrying to those affiliated with the post-neoliberal agenda prevalent in the region in the first 15 years of the century[9]. They made innovations into how access to justice is conceived in the region by integrating large strata of vulnerable populations into the justice system. Another significant innovation is that they targeted not only individuals or communities affected by specific rights violations, but also social movements that have organized those individuals and communities over a long period of struggles for recognition, distribution, and social participation. Because of the interaction between these public defenders and social movements, the ideas of accountability, social control, and participation in the justice system, specifically within the PDOs, gained relevance. We want to underscore one main development from this activist sub-tradition that is capable of facing the challenges we identified above: the methodology that engages the triplet approach of combining social movements, academia, and lawyers/public defenders throughout all levels of access-to-justice programs, including advocacy for the implementation of public policies before legislative and executive branches in municipalities, states, or nationwide.

THE TRIPLET

The centrality of access to justice in the figure of lawyers goes hand in hand with the prevalence of positivism and the focus on corrective justice. Absorbing influences from outside the legal field to create new responses within the same old structure does not imply undermining this centrality. In contrast, this activist sub-tradition of the lawyers and public defenders above-mentioned developed a horizontal approach that put social movements' activists, professors, and legal professionals at the same level to discuss litigation strategies, action research, and the proposition of justice policies. Such a horizontality minimizes the hierarchies between lawyers and clients, and researchers and research subjects, which has often reinforced the vulnerability. This methodology has been incorporated and developed by the Justice Forum Project, which has cataloged experiences that have been applying it in Brazil.

One employment of the triplet methodology concerns the governance level. The triplet should take part in access-to-justice programs' design, management and assessment and consider the insights brought up by social movements and a network of scholars that encompasses social scientists from different areas, such as anthropology, sociology, criminology, and economics, alongside the lawyer. The same is valid for building protocols for attending clients and delivering services, as well as the training of lawyers and public defenders to gain a complex knowledge and better deal with new rights and their subjects. The assessment of initiatives, actions and litigation strategies should also involve those three elements, creating room for better accountability and transparency, opportunities to challenge the symbolic effect that tends to maintain hierarchies and the status quo.

The centrality of lawyers in governance is fundamental for the legal field's wealth and prosperity compared with other professions (Dezalay & Garth, 2012). Consequently, such an approach frontally threatens corporatism and justifications for privileges, mostly in legal systems where they are deeply rooted. That is why attempts to get closer to this triplet model are seriously opposed by peers and must come to a compromise to take off. In reality, these attempts lead to moderate corporatism in governance (Silva, 2019). It means that public defenders make use of specific means to aggregate input from social movements and scholars but still have the final word in managerial decisions.

Here we list the main mechanisms of social participation in the management of PDOs in Brazil. Participatory budget experiences allow social movements and associations of vulnerable people to suggest budgetary priorities regarding specific departments or the whole institution. Another mechanism is that PDO's administrative board meetings are open to the public and a period of time is addressed to hearing the consideration of the civil society about topics under discussion. Finally, the main participatory process is the election of the PDO's ombudsperson, who has the role of connecting the civil society to the PDO permanently.

Within this model, the role of the ombudsperson also includes mediating internal conflicts and receiving disciplinary complaints against public defenders. However, the focus is primarily on promoting continuous interactions between vulnerable groups of society and the PDO and for design-

ing and implementing institutional responses for collective and diffuse socio-legal problems. Responses encompass organizing public hearings, debates and legal advice sessions in remote areas, training courses for public defenders and for client groups, assessment and critique of the PDO's management and budget from the perspective of vulnerable client groups, and, depending on the case, the mobilization of civil society in favour of the PDO's budgetary requests before legislative bodies.

The ombudsperson is selected for a two-year mandate by the PDO's higher council from a list of three nominees preselected by social movements and civil society organizations that represent vulnerable populations. It implies the mobilization of social groups, which, on the one hand, have to learn about access to justice and, on the other, provide their own knowledge, worldview, and social demands to the PDO. To this day, this model of the ombudsperson is in place in 14 states of Brazil and is mandatory to be implemented in all 26 states, the Federal District, and at the Union level. Therefore, the PDO's Ombudsperson Office represents the attempt to promote the triplet in the governance of access-to-justice programs officially.

Nevertheless, the triplet is also employed in legal practice and cases, when it implicates that the strategic decisions within a legal dispute — how and when go to court, witnesses to be called, legal arguments, and evidence, etc. — are made through consulting and in agreement with social movements and researchers involved. In general, those are class actions meant to be part of a broader strategy for advancing the position of vulnerable people in social struggles. Thus, corrective justice is linked to distributive justice. Litigation is then connected to advocacy in administrative and legislative bodies and other initiatives related to fostering public policies, social service, education, and legal education.

Within the Justice Forum, we follow up with federal and state public defenders that apply this methodology in the industrial city of Volta Redonda, in the Rio de Janeiro State. Their practice includes frequent meetings with vulnerable social groups in the region such as Indigenous peoples, *quilombolas* (Afro-Brazilians who live in traditional communities built by enslaved people looking for refuge during the slavery period), recyclable material collectors, young people in vulnerable situations, and others. They also develop a partnership with the local public university to develop solidary, economic projects and open legal education courses. Their practice aims

at fostering social organization and implementing public policies that have already been approved by central and local government.

In fact, it is not rare that the result of the interaction among those different actors leads to avoiding litigation in favor of alternative means. Though, this is an approach totally different from traditional ADR techniques, like mediation and arbitration, as the goal is not to settle legal disputes within a corrective justice model but to promote distributive justice before state agencies and the government and to reach the bottom layers of the dispute pyramid.

We can see that the triplet's employment in legal practice contributes to the input of complex knowledge and the design of different strategies to avoid litigation and tackle social conditions leading to legal problems. It is possible, due to the decentralization of lawyers and legal knowledge, as lawyers do not dominate and do not necessarily frame the social problems according to their own *habitus*, training, and corporatist interests. Instead, they are an additional component within broader social struggles, providing their specific and valuable expertise on behalf of vulnerable groups in a more diverse setting. Unfortunately, those experiences are not yet common sense within public defenders. They represent avant-garde legal practices in access to justice when most legal services are still provided according to the traditional legal positivism based on the limits of corrective justice.

CONCLUSION

In general, the reach of legal assistance varies according to the legal aid program or the judicial scope of the public defender's office. The literature has conceived that a broader range of legal assistance encompasses not only legal representation in court but assistance in administrative courts, legal advice, and consulting. The literature seeks to increase access to justice mostly by incorporating new rights and subjects. Although necessary, we can say that this broader legal assistance is still under the corrective justice framework, *habitus*, and corporatist goals that represent legal hierarchies.

Going further in what is necessary to address those obstacles, an activist sub-tradition of lawyers and public defenders bond together with social

movements and researchers to design strategies of advocacy to push vulnerable peoples' rights in court and before the legislative and executive branches. Seminars, conferences, round tables, courses, publications, communication strategies, mobilization of social actors (religious groups, associations, unions), legislative committees, and partnerships with NGOs and researchers count as outreach efforts. Besides, they follow up the implementation of approved policies regarding attended vulnerable populations by holding seats in public policies committees and holding meetings with public policy managers, including mayors and other representatives.

Including initiatives to strengthen civil society and improve social movements' organization in access-to-justice programs seems to better answer the questions of how to reach the lower levels of the dispute pyramid and how to change focus towards collective conflicts, systemic sources of injustice, and distributive justice. Those practices somehow mirror public interest law firms that flourished in the United States within the civil rights movements and encouraged the early access-to-justice movement. They also match common practices of corporate law firms, which are frequently involved in lobbying the government on behalf of their client's interests. However, instead of applying their legal expertise favoring corporations, lawyers and public defenders in access-to-justice programs use their knowledge and social and political capital in favour of the vulnerable. In this sense, there are better chances to balance the inherent disparities between the haves and have-nots.

Practices towards distributive justice are more successful when developed following the triplet methodology, which decentralizes the legal system and the legal knowledge from dominating dispute resolution by horizontally considering the knowledge provided by social movements and researchers from different areas. Following this activist sub-tradition, the Access to Justice in the Americas Project attempts to raise attention to local initiatives based on the triplet methodology that move towards distributive justice by taking into account what is seen as contextual elements by the literature.

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ENDNOTES

1 The International Legal Aid Group — ILAG is an example of a global organization that pushes the access-to-justice agenda by encompassing different actors linked to legal aid programs. The reports presented at ILAGs' conferences are valuable sources for comparing different approaches and for observing the evolution of access to justice worldwide. Although ILAG counts on the participation of civil servants, managers, lawyers, scholars, and other officials to produce data on different programs from over a dozen countries, the organization lacks the social participation of clients. Due to its composition, it is an organization that could profit from the methodology we explain in this paper.

2 The PDO model may vary according to the country and have differing, local characteristics despite the persistent features of the model. For instance, in most countries of the South Cone (Argentina, Brazil, Uruguay and Paraguay) the PDO comprises civil and criminal matters, while in Chile it is only dedicated to criminal justice. When compared to legal aid programs, from the organizational perspective, the PDO aims to achieve a position of an autonomous (politically and financially) state institution of the justice system, similar to the position of the Prosecutor's Office but dedicate to the legal defense of vulnerable people. Following this, public defenders not necessarily need to be members of the bar since they belong to a specific career with its own standards for entry. It gives to public defenders a different status from staff-lawyer in legal aid programs, who are affiliated to the bar and self-identify as a lawyers.

With regards to staff-lawyers who are not public defenders, despite receiving a salary independently from the cases they were involved in, usually staff-lawyers are part of legal aid programs that are linked to welfare governmental initiatives, while public defenders tend to be member of a judicial system institution.

3 French is a good example. The language is a symbol of Quebec national pride, and it runs parallel with a unique, mixed legal system (similar only to that of Louisana) that operates both Common and Civil Law legal concepts. Although the Quebec legal aid system follows Canada's main traits, Quebec's legal tradition is still very much tuned into France and the Francophone world.

4 Today, the Global Access to Justice Project (http://globalaccesstojustice.com/) has been applying a similar methodology to a broader set of countries in an effort to update the findings of the Florence Project carried out in the 1970s. This project gathers reports on countries' statutes, institutions, and statistics to build the big picture of access to justice. The project is led by Brazilian public defenders, featuring Professor Cleber Alves and relies on pioneers of the Florence Project, such as Kim Econmides and Earl Johnson Jr.

5 Transitional justice accounts for granting reparation for victims of systemic human rights violations perpetrated during dictatorial regimes and civil war to promote the transition to a democratic and legitimate regime. It implicates policies towards the rescue of victims' memory, their financial, social and psychological reparation, dismantling authoritarian institutional practices by a new constitution or constitutional reforms, and fomenting a democratic culture to preserve human rights. Transitional justice originates in Argentina, leading to the trial of members of the dictatorial military junta and inspiring similar initiatives in South Cone countries' transition to democracy. Post-apartheid attempts at national reconciliation in South Africa and the peace treaty aimed at ending the civil war in Colombia are also examples of transitional justice.

6 Marc Galanter is a scholar famous for his paper about why the "haves" always win in court and his noteworthy contributions about the Indian legal system, making him a prominent reference in socio-legal studies and developing countries

7 Kim Economides a distinguished socio-legal scholar based in Australia who is known for having worked in the Florence Access to Justice Project and for discussing the waves of access to justice alongside law reform, legal ethics, and Indigenous rights

8 *Habitus* is a concept introduced by Pierre Bourdieu (1986) and can be describe as a system of dispositions inculcated into a person or a group by the social conditions the person or group is immersed in. *Habitus* imposes strong tendencies related to physical skills, taste, behavior, preferences and other unconscious responses to social situations, which are acquired or framed by a given social position. It is used in the text in the sense of the naturalized behavior (the way to dress, speak, report to clients, colleagues, other professionals, superior, and subaltern) that corresponds to the hierarchical position of lawyers and public defenders in the legal field and the way they approach member of other social fields.

9 For a more comprehensive history of this sub-tradition regarding the relation between lawyers and social movements, see Ribas (2016) and Carlet (2015). The main ideas of this sub-tradition linked to public defenders were compiled and developed by public defenders affiliated to the Justice Forum Project and can bee seen in Lavigne (2015) and Britto et al. (2013). Luciana Zaffalon (2010) registered how those ideas flourish with the creation of the PDO in Sao Paulo in 2006. They have evolved since then within the Justice Forum project. Among the intellectual influences we feature the work of Boaventura de Sousa Santos and the World Social Forum, the political thought of Guillermo O'Donnell on democratization, Joaquín Herrera Flores' critique of human rights, Nancy Fraser's justice theory, the legal practice and scholarship of Thomaz Miguel Pressburguer and Miguel Lanzellotti Baldéz, Marxist legal thought, and the Black social justice movements.

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I thank Prof. David Wiseman for discussing the paper and introducing me to the concept of legal empowerment. Designed by Stephen Golub, it is defined as "the use of rights and laws specifically to increase disadvantaged populations' control over their lives" (Golub, 2013, p. 5). Research considers this concept to assess the impact of internationally funded NGOs providing legal services among poor communities in African and Asian countries, emphasizing the role of paralegals, legal education, implementation and legal reform. It seems to be an interesting approach that does not intend to be situated in any specific wave and that deserves more attention.