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Comparative Rights to Counsel and Access to Justice: The American and Brazilian Approaches and Realities

Benjamin H. Barton

Fernanda Antunes Marques Junqueira

Flavio de Costa Higa

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COMPARATIVE RIGHTS TO COUNSEL AND ACCESS TO JUSTICE: THE AMERICAN AND BRAZILIAN APPROACHES AND REALITIES

By Fernanda Antunes Marques Junqueira, Flávio da Costa Higa & Benjamin H. Barton[*]

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[*] Fernanda Antunes Marques Junqueira is a Ph.D. student at São Paulo University and a substitute Labor Judge of the Regional Labor Court of the Fourteenth Region located in Guajará, Amazonas, Brazil. Flávio da Costa Higa is a Ph.D. at São Paulo University and Head Judge of the Labor Court of Coxim-MS located in Coxim, Brazil. Benjamin H. Barton is a Helen and Charles Distinguished Professor of Law at the University of Tennessee College of Law.

ABSTRACT

The United States and Brazil are the two largest countries in North and South America respectively by population and GDP. They both claim world and regional leadership roles, yet they both suffer from large and growing access to justice crises. Given the common issues in Brazil and the U.S., the authors endeavor to use the tools of comparative law to describe and contrast our access to justice woes and suggest some solutions. It turns out that Brazil is far ahead of the U.S. in terms of its constitutional and legal guarantees, especially when considering the right to civil counsel. Yet, Brazil suffers from a brutal lack of funding and governmental support. The U.S., by contrast, has fewer guarantees but spends a great deal more on access to justice than Brazil. However, America's funding seemingly goes for naught because it has insisted on spending its money on individual representation by licensed lawyers, and thus, even large amounts of funding fail to bridge the gap. The U.S.'s legal system is like its health care system; the government spends a fortune for very poor results. By comparing the legal structures at issue, as well as lived experiences, we can see that legal guarantees are only as robust as their funding, but that funding alone is insufficient when licensing and regulation delay assistance. The article ends on a hopeful note by comparing the legal tech space in both countries and how technology may offer a solution in countries as diverse as Brazil and the United States.

"If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice."
- Judge Learned Hand, Remarks at the Seventy-Fifth Anniversary Celebration of The Legal Aid Society (Feb. 16, 1951)

INTRODUCTION

There is a long tradition of skepticism towards lawyers and courts in Western art and culture. For example, the prophet Isaiah offered a harsh assessment of lawyers: "No one enters suit justly; no one goes to law honestly; they rely on empty pleas, they speak lies, they conceive mischief and give birth to iniquity."[1] Jesus was not much more positive. Jesus battles tricky lawyers throughout the New Testament and eventually despairs: "And you experts in the law, woe to you, because you load people down with burdens they can hardly carry, and you yourselves will not lift one finger to help them."[2]

Shakespeare likewise pilloried lawyers in Henry VI when the revolutionaries Dick the Butcher and Jack Cade announce their plans for improving England: "The first thing we do, let's kill all the lawyers."[3] Likewise, in *The Merchant of Venice*, the trial of Antonio

1 *Isaiah* 59:4 (ESV).

2 *Luke* 11:46 (ESV).

3 WILLIAM SHAKESPEARE, HENRY VI, PART II act 4, sc. 2. For a discussion of the true meaning and context of the above Shakespeare quote, *see* Benjamin H. Barton, *The Quintessence of Legal Academia*, 92 CAL. L. REV. 585, 600 n. 46 (2004) (reviewing STEPHEN L. CARTER, THE EMPEROR OF OCEAN PARK (2002))

reveals the gross inequity of the justice system, which, were it not for cunning Portia, would force Antonio to produce a pound of his own flesh to pay a monetary debt.[4]

Charles Dickens' *Bleak House* is a particularly rich lode. Here is Dickens' searing indictment of English Chancery Court:

> This is the Court of Chancery, which has its decaying houses and its blighted lands in every shire, which has its worn out lunatic in every madhouse and its dead in every churchyard, which has its ruined suitor with his slipshod heels and threadbare dress borrowing and begging through the round of every man's acquaintance, which gives to monied might the means abundantly of wearing out the right, which so exhausts finances, patience, courage, hope, so overthrows the brain and breaks the heart, that there is not an honorable man among its practitioners who would not give—who does not often give—the warning, "Suffer any wrong that can be done you rather than come here!"[5]

Dickens also had little praise for English lawyers:

> The one great principle of the English Law is to make business for itself. There is no other principle so distinctly, certainly and consistently maintained through all its narrow turnings. Viewed by this light it becomes a coherent scheme and not the monstrous maze the laity are apt to think it. Let them once clearly perceive that its grand principle is to make business for itself at their expense, and surely they will cease to grumble.[6]

(arguing that despite the efforts of lawyer apologists, Shakespeare in fact meant to disrespect lawyers).

4 WILLIAM SHAKESPEARE, THE MERCHANT OF VENICE, act 4.

5 CHARLES DICKENS, BLEAK HOUSE 19 (Signet Classic 1964).

6 *Id.* at 555.

The theme has even been covered in song. In Johan Strauss' master opera *Die Fledermaus*, the aptly named lawyer Dr. Blind argues so poorly and at such great length that the judge adds years to his client's prison sentence.[7]

Modern American art and culture are, if anything, sharper in their critiques. Public Enemy compared American Judges to slave ship captains in "Can't Truss It."[8] Bob Dylan's "The Lonesome Death of Hattie Carroll" and "Hurricane" take longer to make a similar critique.[9] The innate unfairness of American courts and the corruption of American lawyers are the central themes of all of best-selling author John Grisham's finest novels like *A Time to Kill*, *The Firm*, *The Rainmaker*, or *The Runaway Jury*.

Brazilian art and culture reflect a similar skepticism. In the 1960s and 70s, Brazilian musical artists like Caetano Veloso, Gilberto Gil, and Chico Buarque famously railed against the (now deposed) military dictatorship in Brazil, pointing out the government's flagrant abuses of power under the law.[10] More recent Brazilian movies like *Carandiru* (a blistering critique of Brazil's prison system) and *Tropa de Elite* (same for the police) are brutal indictments of the criminal justice system.[11]

Perhaps there is a reason why these tropes have lasted for so long: from biblical times forward there has been a significant gap between what we promise and what we deliver in terms of access to justice. America has repeatedly declared access to justice as a central tenet of its government. America declared independence from England because King George III repeatedly denied the colonists'

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7 *See generally* JOHANN STRAUSS ET AL., DIE FLEDERMAUS (EMI Classics 2006) (1874).

8 PUBLIC ENEMY, *Can't Truss It, on* APOCALYPSE 91 (Def Jam 1991).

9 *See* BOB DYLAN, *The Lonesome Death of Hattie Carroll, on* THE TIMES THEY ARE A-CHANGIN' (Columbia Rec. 1964); BOB DYLAN, *Hurricane, on* DESIRE (Columbia Rec. 1976).

10 Camila M.A. Blikstad, *Musical Artists Against the Brazilian Military Dictatorship: Caetano Veloso, Gilberto Gil, and Chico Buarque*, NORTHEASTERN U. POL. REV. (Nov. 18, 2021), https://tinyurl.com/57e4sdfc.

11 CARANDIRU (Sony Pictures Classics 2003); TROPA DE ELITE (Universal Pictures 2007).

legal rights and "the Administration of Justice."[12] The Pledge of Allegiance ends by affirming that America guarantees "liberty and justice for all." The Supreme Court building in Washington, D.C. holds the inscription "Justice, the Guardian of Liberty" on one façade and "Equal Justice for All" on another.[13] And yet, America is far from realizing this lofty goal.

While *Gideon v. Wainwright* proudly proclaimed a right to counsel in felony trials,[14] and later decisions have stretched that holding to reach most criminal proceedings threatening jail time, any fair observer of America's criminal justice system (with its racial disparities, over-incarceration, and pleas in the place of trials) would struggle to proclaim that justice is being served.[15] Moreover, *Gideon* and its progeny only apply to the indigent, so the middle class is left to pay what they can for a defense.[16] The situation in America's civil courts is actually worse because at least most indigent criminal defendants nominally have a lawyer, however over-burdened. In civil courts, there is no guarantee to counsel, and while Legal Aid does yeoman's work, they cannot begin to meet all of the demands from America's poor, let alone the middle class.[17] A recent Legal Services Corporation Justice Gap Report established that in 2021, 74% of low-income Americans experienced at least one civil legal problem in areas as varied as health care, housing, disability access, veterans' benefits, and domestic violence.[18] A whopping 92% of these civil legal problems received inadequate or no legal help.[19]

The problems are deeper in Brazil. As the country and the world struggles with the legacy of the pandemic, the fundamental right to access to justice is farther away than ever. Brazil's

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12 THE DECLARATION OF INDEPENDENCE para. 12 (U.S. 1776).

13 *Building Features,* SUP. CT. OF THE U.S., https://www.supremecourt.gov/about/buildingfeatures.aspx (last visited Nov. 28, 2022).

14 372 U.S. 335 (1963).

15 BENJAMIN H. BARTON & STEPHANOS BIBAS, REBOOTING JUSTICE 17-45 (2017).

16 *Id.*

17 *See generally* DEBORAH RHODE, ACCESS TO JUSTICE (2004).

18 *The 2022 Justice Gap Study*, LEGAL SERV. CORP., https://justicegap.lsc.gov/resource/executive-summary/ (last visited Nov. 28, 2022).

19 *Id.*

Constitution and treaty requirements seemingly require the government to fully fund Public Defender's Offices, which handle both civil and criminal matters for the poor in Brazil.[20] Yet, a comparative analysis between the budgets of the Public Defender's Office, the Public Ministry, and the Judiciary reveals the imbalance between the institutions that constitute the Brazilian justice system. For the 2021 budget, the amounts allocated to the Public Defender's Office will be 313.0% lower than the Public Ministry's budget and 1,575.4% lower than the Judiciary's budget.[21] In order for the Public Defender's Office to meet its constitutional mandate it needs to be better equipped.[22]

The United States and Brazil are the two largest countries in North America and South America respectively by population and GDP.[23] They both claim world and regional leadership roles, and yet, they both suffer from large and growing access to justice crises. Given their common issues, the authors endeavor to use the tools of comparative law to describe and contrast Brazil and America's access to justice woes and suggest some solutions. The first step is, of course, to stop "fighting the inevitable" and remove the "eye bolt" to see the impacts of the problem.[24] The illusory speech guaranteeing justice in America and in Brazil are hypocritical to the point of untenability. The singularity of the present moment, in which the globe feels the aftereffects of the health crisis caused by COVID-19, demands "a hermeneutical opening of constitutional jurisdiction to

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20 Alexandre dos Santos Cunha, *Public Defenders' Offices in Brazil: Access to Justice, Courts, and Public Defenders*, 27 IND. J. GLOB. STUD. 273, 274-87 (2020).

21 *See Análise Nacional*, NAT'L PUB. DEF. SURV., https://pesquisanacional defensoria.com.br/pesquisa-nacional-2020/analise-nacional/ (last visited Nov. 28, 2022).

22 Júlia Lordêlo Travessa, *Vazio Defensorial: Patologia Fruto do Estado de Coisas Inconstitucional Orçamentário* (Feb. 22, 2022, 11:15 AM), https://tinyurl.com/r4fh69cj.

23 For population, *see Total Population by Country*, WORLD POPULATION REV., https://worldpopulationreview.com/countries (last visited July 21, 2022). For GDP, *see* Caleb Silver, *The Top 25 Economies in the World*, INVESTOPEDIA (June 27, 2022), https://www.investopedia.com/insights/worlds-top-economies/.

24 SOPHOCLES, ANTIGONE, *Vydavateľstvo Spolku slovenských spisovateľov* (2016) (c. 441 B.C.E.); *Matthew* 7:3–5 (King James).

the understanding and conformation of the economic and social reality experienced,"[25] to find solutions to our desperate needs.

I. ACCESS TO JUSTICE IN BRAZIL AND AMERICA – CIVIL VERSUS COMMON LAW COURTS

One key distinction between Brazil and the United States is the difference between common law and civil law courts. Brazil is a civil law country, while the U.S. follows the common law. First, in Brazil, all law comes from either a code or the constitution, not from past judicial decisions.[26] Brazil's codes are, of course, unique and individualized to the country, but have their roots in the older codes of Italy, Germany, and France.[27]

Civil law judges are never supposed to "make law," and as a result, there is (theoretically at least) no judicial precedent in Brazil.[28] Civil law scholars consider this feature of the system to be a boon to access to justice, because—theoretically—any literate citizen can read the law and understand what they are required to do, and lawyers are thus less necessary.[29] In contrast, the common law system, with its overlapping sources of authority and judicial discretion, requires a lawyer to navigate.[30] Further, civil law countries, like Brazil, operate

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25 Gilmar Mendes, *Jurisprudência de Crise e Pensamento do Possível: Caminhos Constitucionais*, CONSULTOR JURÍDICO (Apr. 11, 2020), https://tinyurl.com/mrydy45b.

26 Marcelo Moscogliato, *Foreign Direct Investment in Corporations: Restrictions in the United States and Brazil on the Grounds of National Defense*, 9 OR. REV. INT'L L. 67, 70 n. 9 (2007).

27 Carlos Aboim, et al., *Resolution of Transatlantic IP and Commercial Disputes Between Brazil and Europe*, 50 LES NOUVELLES 48, 52 (2015).

28 Rodrigo Sadi, *Legal Education and the Civil Law System*, 62 N.Y.L. SCH. L. REV. 165, 170-72 (2018).

29 JOHN HENRY MERRYMAN & ROGELIO PEREZ-PERDOMO, THE CIVIL LAW TRADITION 29 (3rd ed. 2007) (arguing that "one of the objectives of the [Napoleonic Civil Code] was to make lawyers unnecessary. There was a desire for a legal system that was simple, nontechnical, and straightforward.").

30 Sande L. Buhai, *Access to Justice for Unrepresented Litigants: A Comparative Perspective*, 42 LOY. L.A. L. REV. 979, 979 (2009) ("The problem of access to justice is one that affects the ordinary American who cannot afford an attorney and is disqualified from receiving free legal aid, and thus must rely on self-representation

"inquisitorial courts," where the judge runs the process, asks the questions, gathers the documents, and then comes to a decision. As such, civil law scholars argue that their courts are much easier to operate without a lawyer.[31]

Obviously these are generalizations, but still, at a structural level, civil law systems generally have a reputation for being friendlier to unrepresented litigants than the typical American common law court, where the adversary system rules and the judge is meant to serve as a neutral umpire, rather than active participant.[32] In fact, one reason why *pro se* litigants struggle in American courts is that those courts are not set up to be inquisitorial and many judges feel uncomfortable guiding a litigant to the relevant issues, let alone asking the questions themselves.[33]

II. ACCESS TO JUSTICE IN BRAZIL AND AMERICA – CONSTITUTIONAL GUARANTEES

In Brazil (and in many countries), access to justice is a human and fundamental right guaranteed by the constitution and various treaty obligations.[34] Access to justice is so fundamental that the great

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in court. But, the unrepresented litigant often does not stand a chance against the represented litigant. Herein lies the problem--unequal access to justice. Self-help centers, alternative dispute resolution options, and the unbundling of legal services have not adequately addressed this problem. Judges may be able to help unrepresented litigants, but under the American adversarial system of justice, stringent limitations on judicial activism prohibit such interference. In contrast, in many civil law countries, the legal system and the role of the judge are construed differently, resulting in greater access to justice for ordinary citizens. There are aspects of the civil law system that the American system may borrow in its effort to expand access to justice for all.").

31 *Id.* Note that the procedural rules have changed in Brazil. In the criminal field, for example, attorneys have taken an important role in interrogating and collecting evidence. CÓDIGO PENAL, art. 189-96.

32 BARTON & BIBAS, *supra* note 15, at 150-54.

33 *Id.*

34 The Inter-American Court of Human Rights has defined the right of access to justice as a "norm of international law." For example, in the case of *Cantos v. Argentina*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 97 (Nov. 28, 2002); and *Sawhoyamax Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125 (Mar. 29,

Portuguese jurist and scholar Boaventura de Souza Santos equates it with a "hinge right," a right whose negative implies the refusal of all other rights.[35]

The Brazilian Constitution of 1988 has several different sections that either directly or indirectly guarantee access to justice. Title IV describes the "Organization of the Branches" (legislative, executive, and judicial). Chapter IV of that Title defines "Positions Essential to Justice" and lists constitutional offices that are critical to the operation of the judicial branch. The legal profession itself is listed and protected in Article 133, which states that "Lawyers are indispensable to the administration of justice, and they are immune for their acts and manifestations in the practice of their profession, within the limits of the law."[36]

Article 134 of the Brazilian Constitution states a separate constitutional requirement for the public defender's office:

> The Public Defender's Office is a permanent institution, essential to the State's jurisdiction function, and it shall be fundamentally responsible, as an expression and instrument of the democratic regime, for legal orientation, the promotion of human rights, and the integral and gratuitous defense, at all levels, judicial and extrajudicial, of individual and collective rights of the needy.[37]

This Article has been interpreted to guarantee a right to counsel to the needy in both civil and criminal matters and to also require the establishment of public defenders' offices to provide these services.[38]

2006). On October 13, 2013, in the case of *Duarte and others v. Uruguay*, the Court consolidated the right to be heard, which is essential to the right of access to justice. Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 243 (Oct. 13, 2011).

35 Boaventura de Sousa Santos, *Introdução à Sociologia da Administração da Justiça*, 21 REVISTA CRÍTICA DE CIÊNCIAS SOCIAIS 11, 18 (1986).

36 *See* CONSTITUÇIÃO FEDERAL [C.F.] [CONSTITUTION] art. 133 (Braz.).

37 *Id.* at art. 134.

38 *Global Study on Legal Aid Country Profiles*, U.N. OFF. ON DRUGS AND CRIME 190-96 (Dec. 2016), https://www.unodc.org/documents/justice-and-

This right to counsel, like the other rights in the Brazilian Constitution, is further protected by Article 5, Section XXXV's right to be heard in court if a constitutional right suffers "any injury or threat." Thus, if a citizen feels they have not been granted their right to a public defender, the courts should be open to their complaint.

Brazil is also obligated to provide civil counsel to the indigent under its treaty obligations. Brazil is a signatory to the Charter of the Organization of the American States. Article 45 of that Charter calls for "all persons to have due legal aid in order to secure their rights," and in 2003, the Inter-American Court of Human Rights interpreted this section to grant a right to civil counsel.[39] Brazil thus has a robust guarantee to counsel in both civil and criminal courts.

The United States, by contrast, guarantees counsel only in criminal cases. *Gideon v. Wainwright* is the flagship for this right.[40] On June 3, 1961, in Panama City, Florida, someone broke into the Bay Harbor Pool Room and stole coins from the cigarette machine and jukebox, as well as some beer and wine.[41] Henry Cook identified Gideon as the burglar, though Cook himself had a criminal record and may himself have committed the crime.[42] A police officer arrested Gideon with pockets full of change, which he later testified he had won by gambling.[43]

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prison-reform/LegalAid/GSLA_-_Country_Profiles.pdf.

39 Inter-Am. Comm'n H.R. Charter of the Organization of American States art. 5, § XXXV, https://www.cidh.oas.org/basicos/english/basic22.charter%20oas.htm. The 2003 decision can be found here: Judicial Condition and Rights of Undocumented Mexican States, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, at 1 (Sept. 17, 2003). For a discussion of this issue see Martha F. Davis, *In the Interests of Justice: Human Rights and the Right to Counsel in Civil Cases*, 25 TUORO L. REV. 147, 182-83 (2013).

40 Gideon v. Wainwright, 372 U.S. 335 (1963).

41 ANTHONY LEWIS, GIDEON'S TRUMPET 59-64 (1964*); Clarence Earl Gideon*, NAT'L REGISTRY OF EXONERATIONS, https://www.law.umich.edu/special/exoneration/Pages/casedetailpre1989.aspx?caseid=113 (last visited Nov. 28, 2022).

42 *Clarence Earl Gideon*, *supra* note 41.

43 LEWIS, *supra* note 41.

Gideon eventually requested the appointment of a free lawyer to assist with his defense.[44] The Court responded:

> Mr. Gideon, I am sorry, but I cannot appoint counsel to represent you in this case. Under the laws of the State of Florida, the only time the court can appoint counsel to represent a defendant is when that person is charged with a capital offense. I am sorry, but I will have to deny your request to appoint counsel to defend you in this case.[45]

Gideon went forward without a lawyer and "conducted his defense about as well as could be expected from a layman."[46] The jury found Gideon guilty, and the judge sentenced him to five years in prison.[47]

Gideon then filed a writ of *habeas corpus* with the Florida Supreme Court. Among the reasons for his remedy, he stated that the refusal to appoint him a lawyer violated the Sixth Amendment.[48] The Supreme Court of the State of Florida, however, summarily rejected his request, giving no reasons for its dismissal.[49] Gideon then appealed to the U.S. Supreme Court, which declared in a unanimous opinion by Justice Black that refusing to appoint counsel to the indigent in felony prosecutions always violates the Sixth Amendment: "reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him."[50] The Court's reasoning was crisp and simple:

> [O]ur state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands

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44 *Gideon*, 372 U.S. at 337.
45 *Id.*
46 *Id.*
47 *Id.*
48 *Id.*
49 *Id.*
50 *Id.* at 344.

> equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.[51]

Gideon remains a remarkable achievement for the Supreme Court and is among its most beloved and influential precedents. Anthony Lewis immortalized the case in his prize-winning book *Gideon's Trumpet*, and Henry Fonda later played Clarence Gideon in a famous dramatization of the case.[52] The case has been followed by numerous expansions, and an indigent defendant now basically has a right to an appointed lawyer in any criminal case where jail time is threatened.[53]

In the United States, there are no similar protections for civil litigants. The Constitution and its Amendments do, of course, cover much of what might collectively be called a right to access to justice such as the due process clause, the right to a jury in both civil and criminal trials, and the right to an attorney in criminal trials.

Some aspects of access to justice that are guaranteed internationally, however, are not covered including a civil right to counsel. In *Lassiter v. Department of Social Services*,[54] decided in 1981, the Supreme Court stated that "an indigent litigant has a right to appointed counsel only when, if he loses, he may be deprived of his physical liberty."[55]

The Court followed up Lassiter with *Turner v. Rogers* in 2011.[56] If *Lassiter* did not permanently close the door on a broad civil-*Gideon* right, then *Turner v. Rogers* did. In *Turner*, a mother sued a *pro se* father for failure to pay child support.[57] The issue was whether the father had a categorical right to appointed counsel before he could be jailed

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51 *Id.*

52 *See* ANTHONY LEWIS, GIDEON'S TRUMPET (2011); HENRY FONDA, GIDEON'S TRUMPET (Hallmark Hall of Fame Productions 1980).

53 Benjamin H. Barton, *Against Civil Gideon (and for Pro Se Court Reform)*, 62 FLA. L. REV. 1227, 1238-41 (2010).

54 452 U.S. 18 (1981).

55 *Id.*

56 Turner v. Rogers, 564 U.S. 431 (2011).

57 *Id.* at 435-439.

for civil contempt.[58] Many activists hoped that the Court would overturn or narrow *Lassiter* and recognize a categorical right to counsel at least in civil cases that could or did result in a deprivation of liberty.[59] Instead, all nine Justices rejected the claimed right to counsel.[60] While the Justices in *Turner* split 5-4 on whether to require due process protections for *pro se* court procedures, the Court was 9-0 on the civil-*Gideon* question.[61] This was true even though *Turner* dealt with actual imprisonment, and *Lassiter* had suggested that free lawyers might be needed when incarceration was possible.[62] The Court's unanimous decision against appointed counsel leaves little room for arguments that some other type of civil case (which would invariably involve a lesser liberty interest than a year in jail) might qualify.[63]

Advocates have searched high and low for other sources of a civil right to counsel in the United States. For example, civil law scholars have placed some hope in the preamble to the U.S. Constitution, which includes, as its first axiological premise, the duty to establish Justice: "We the people of the United States, in order to form a more perfect Union, establish Justice [. . .]." The great German constitutionalist Peter Häberle, has written extensively on the preambles to modern constitutions and emphasizes that the over-arching texts should be read as part of the Constitution, not merely rhetoric.[64] Haberle argues that the preamble works to integrate the constitution as a whole and sets the linguistic and terminological baseline for each constitution it accompanies.[65] For this reason, these preambles, and presumably America's as well, carry sufficient normative power, especially in combination with the rest of the text, to bind governments.[66] For example, the Brazilian Federal Supreme Court has held that the preamble of the 1988 Constitution is legally

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58 *Id.* at 441-442.

59 BARTON & BIBAS, *supra* note 15, at 70-72.

60 *See Turner*, 564 U.S. at 441-50.

61 *Id.*

62 BARTON & BIBAS, *supra* note 15, at 70-72.

63 *Id.*

64 PETER HÄBERLE, TEORÍA DE LA CONSTITUCIÓN COMO CIENCIA DE LA CULTURA 96-100 (Emílio Mikunda Franco trans. 2000).

65 *Id.*

66 *Id.*

binding as a guide to the interpretation and application of Brazil's Constitution.[67]

Nevertheless, in *Jacobson v. Massachusetts*, the U.S. Supreme Court squarely held that the preamble added no extra substance to the Constitutional text and thus to individual rights or governmental powers:

> Although that preamble indicates the general purposes for which the people ordained and established the Constitution, it has never been regarded as the source of any substantive power conferred on the government of the United States, or on any of its departments. Such powers embrace only those expressly granted in the body of the Constitution, and such as may be implied from those

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[67] *See* S.T.F.J., HC No. 109277/SE, Relator: Min. Ayres Britto, 22.02.2012, Diário Oficial da União [D.O.U.] (Braz.); S.T.F.J., ADPF 186/DF, Relator: Ricardo Lewandowski, 09.01.2011, Diário Oficial da União [D.O.U.] (Braz.). French law also considers the preamble operative constitutional text, leading François Luchaire to affirm that: "Or, le Préambule fait bien partie de la Constitution; celle-ci comence avant les de la loi au Préambule c'est donc bien faire respecter la Constitution." FRANÇOIS LUCHAIRE, LE CONSEIL CONSTITUTIONNEL: TOME I—ECONOMICA: PARIS 164 (2d ed. 1997). As a counterpoint, the great Austrian jurist and philosopher Hans Kelsen disagrees and argues that these preambles do not carry sufficient normative density, and therefore lack legally binding content. *See* HANS KELSEN, GENERAL THEORY OF LAW AND THE STATE 254-55 (Luís Carlos Borges trans. 2d ed. 2005). Raul Modero and Pablo Lucas Murillo de la Cueva agree and note that, due to its introductory nature, a preamble does not comprise the constitutional text, though it is inseparable from the constitutional text. For this reason, it does not carry normativity to demand the satisfaction of a legal provision from the State. At most, they offer the Legislative Branch a program to direct what is and what is intended to be achieved in terms of society and government. OSCAR ALZAGA VILLAAMIL, COMENTÁRIOS A LA CONSTITUCIÓN ESPAÑOLA DE 1978 71-73 (Madrid Cortes Generales eds. 1996). Argentine jurist Gregorio Badeni espouses this same understanding. In a comparative analysis of the preambles that accompany the Argentine Constitution of 1853 and the United States Constitution of 1787, he notes that the causes, nature, and purposes of its conformation are not part of the constitutional text itself. Because of this characteristic, they are not legally enforceable. RUBÉN FLORES DAPKEVICIUS, TRATADO DE DERECHO CONSTITUCIONAL 108 (1st ed. 2004).

> so granted. Although, therefore, one of the declared objects of the Constitution was to secure the blessings of liberty to all under the sovereign jurisdiction and authority of the United States, no power can be exerted to that end by the United States, unless, apart from the preamble, it be found in some express delegation of power, or in some power to be properly implied therefrom. 1 Story, Const. § 462.[68]

As such, it seems unlikely that the preamble will provide much support for a right to civil counsel.

Some have placed hope in international treaties. Like Brazil, the United States is a signatory to the Charter of the Organization of American States, and that treaty has been interpreted as requiring a right to civil counsel for the poor.[69] The U.S. has also signed the International Covenant on Civil and Political Rights ("ICCPR") and The International Convention on the Elimination of All Forms of Racial Discrimination, both of which require some form of civil representation for the indigent.[70]

Faced with a similar set of international obligations the EU has decided that the right to civil counsel is fundamental and guaranteed. In 1979 the European Court of Human Rights decided *Airey v. Ireland* and held that due process is only ensured when the parties are on equal terms and strength.[71] *Airey* involved a divorce, wherein the plaintiff, an Irish woman, could not afford to hire a lawyer while her ex-husband could.[72] The plaintiff asked the Irish judiciary to appoint a lawyer to her case, which the court denied. The plaintiff brought the matter to the attention of the European Court of Human Rights, who interpreted Article 6 of the European Convention on Human Rights to require Ireland to appoint a lawyer

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68 197 U.S. 11, 22 (1905).

69 Davis, *supra* note 39, at 182-83.

70 See Sarah Paoletti, *Deriving Support from International Law for the Right to Counsel in Civil Cases*, 15 TEMP. POL. & CIV. RTS. L. REV. 651, 652-62 (2006).

71 Airey v. Ireland, 32 Eur. Ct. H.R. (1979).

72 *Id.*

to the plaintiff.[73] As one Swiss court aptly stated: "poor people could not be 'equal before the law' in the regular courts unless they had lawyers just like the rest of the citizenry."[74]

Nevertheless, the United States has never been shy about disregarding the European example on human rights, nor its treaty obligations, especially when these obligations contravene Supreme Court holdings.[75] In 2011, for example, the United States filed a report claiming full compliance with the ICCPR despite not guaranteeing a lawyer in civil cases.[76] Interests groups objected, but a change of heart seems unlikely.[77]

III. REGARDLESS OF RIGHTS, THE LIVED EXPERIENCE IS LACKING

We've established that Brazil and the United States have different constitutional approaches to access to justice issues. Brazil, like many other countries, offers more robust constitutional protections to its citizens than the United States does, especially regarding the civil right to counsel.

Here we ask a different, more concrete question: regardless of these guarantees, what are the Brazilian and American experiences in

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73 *Id.* As proclaimed in Article 6 of the European Convention on Human Rights, "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within reasonable time." Convention for the Protection of Human Rights and Fundamental Freedoms, art. 6, Nov. 4, 1950, E.T.S. 5, 213 U.N.T.S. 221.

74 *Schefer gegen Appenzell A. Rh. Ragierungsrat*, Oct. 8, 1997, BGE 63 la 209 (explaining this concept in Swiss federal court).

75 *See* Joel R. Paul, *The Rule of Law is Not for Everyone*, 24 BERKELEY J. INT'L L. 1046, 1060 (2006) (arguing that "[d]espite the Constitution's Supremacy Clause, the United States has found treaty obligations to be inconvenient and often has refused to honor them").

76 *Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights*, U.S. DEPT. OF STATE (Dec. 30, 2011), https://2009-2017.state.gov/j/drl/rls/179781.htm#i.

77 *Access to Justice: Response to the Fourth Periodic Report of the United States to the United Nations Human Rights Committee*, COLUM. L. SCH. HUM. RTS. CLINIC (Aug. 2013), http://civilrighttocounsel.org/uploaded_files/30/ICCPR_Shadow_Report.pdf.

three areas: (1) the effectiveness of legal aid/public defense, (2) pro bono services, and (3) filing in forma pauperis? Comparing these areas takes us beyond the theoretical and into the lived experiences of citizens of both countries.

A. The Brazilian Experience in Legal Aid/Public Defense

As noted above, the Constitution of Brazil emphasizes the indispensability of a lawyer for the administration of justice.[78] It also requires the creation of federal and state legal aid services with the aim of providing "judicial guidance, the promotion of human rights, and the full and free charge of defense, at all levels, both judicially and extra judicially, of individual and collective rights of the needy."[79] Still, the reality has not lived up to the promise. The country needs to walk a long, civilizing journey to fulfill the promise of equal justice under law,[80] that builds a free, fair, and unified society,[81] in which all individuals have legal protection against injuries or threats to their rights.[82]

Brazil remains cleaved by an abyss of social inequalities. To ensure the minimum access to justice the nation needs to overhaul its approach to public education to empower the Brazilian citizen with the awareness of being a subject—rather than an object—of rights. The informational deficit of the citizenry is deep, and its symptoms can be seen all through Brazil. A recent survey showed that more than 60% of respondents were not able to cite even a single right provided by law.[83] In this context, the researchers asked: "How can we expect people to claim their rights or seek support for conflict management in formal justice institutions, if they know little about these rights, and even the duties, of citizenship?"[84] The researchers concluded that "the obstacle, or the main barrier, in accessing justice

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78 Constituçião Federal [CF] [CONSTITUTION] art. 133 (Braz.).

79 *Id.* art. 134.

80 *See id.* art. 1.

81 *See id.* art. 3, § I.

82 *See id.* art. 5, § XXXV.

83 Fabiana Luci Oliviera & Luciana Gross Cunha, *Medindo o Acesso à Justiça Cível no Brasil*, 22 OPINIÃO PÚBLICA 318, 318-49 (2016); Maria Tereza Aina Sadek, *Acesso à Justiça: Um Direito e Seus Obstáculos*, 101 REVISTA USP 55, 64 (2014).

84 *Id.*

may be in the very recognition of the situation experienced as harmful."[85] Therefore, access to justice is not restricted to expanding its structural and human resources but also to the public's awareness of their rights.

Once Brazil finally succeeds in making its citizens aware of the rights they are already guaranteed, the next step is to give its citizens the means and resources to claim those rights. Brazil's Constitution boldly states the legal-institutional and political-social importance of Legal Aid Services, but more than thirty-three years after the promulgation of the Federal Constitution, Legal Aid is still moving slowly to fulfill its mission. The 1988 Constitution clearly demands the establishment of a legal aid office in each of Brazil's 27 federal units, and yet sadly, the last four were only organized in the 2010s; the final office was not opened until 2019.[86] In addition, more than 56 million inhabitants—of whom almost 52 million are economically vulnerable—do not have access to the legal assistance services offered by the state Public Defender's Office, while more than 86 million—78 million in a position of fragility—do not enjoy the services provided by the Legal Aid Office, exposing the many challenges Brazil faces in making its constitutional guarantees a reality.[87] In 2015, in the state of Sao Paulo, there were over 50,000 citizens in need of legal assistance for every Public Defender.[88]

America suffers from a similar deficit in both criminal and civil matters. Despite the high-minded rhetoric and the best intentions of the Supreme Court, *Gideon* is a shining example in theory rather than in practice, and the provision of a free, robust defense to the indigent is hardly uniform. The Brennan Center published a scathing report on *Gideon*'s fiftieth anniversary

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85 *Id.*

86 DIOGO ESTEVES ET AL., PESQUISA NACIONAL DA DEFENSORIA PÚBLICA 17 (2021).

87 Humberto Henrique Costa Fernandes do Rêgo & Victor dos Santos Maia Matos, *Ética Profissional e Advocacia Pro Bono: O Papel do Advogado na Conquista da Cidadania*, 129 REVISTA DO ADVOGADO DA AASP 47 (2016).

88 *Pro Bono Practices and Opportunities in Brazil*, LATHAM & WATKINS LLP, https://www.lw.com/admin/Upload/Documents/Global%20Pro%20Bono%20Survey/pro-bono-in-brazil.pdf (last visited Nov. 28, 2022).

concluding that underfunding and over-work meant that *Gideon*'s promise was more distant than ever.[89]

The report notes that in 2013, the United States held approximately 2.3 million people in jail.[90] The United States has only 5% of the world's population, but 25% of its prison population and one in four American adults now has been convicted of a crime.[91] How is this possible considering the guarantee of a lawyer for the indigent? The funding for public defense is radically less than the funding for prosecution. A 2007 U.S. Bureau of Justice Statistics study found the following:

> [S]tate prosecutors' offices were funded at $5.8 billion, while public defender offices were only $2.3 billion.[92] As a result, there are about 25,000 attorneys in state prosecutors' offices and 34,000 support staff, compared to 15,000 attorneys and 10,000 support staff in public defender offices.[93]

These disparities have serious effects. The Brennan Center Report notes the following:

> The ABA recommends that individual public defenders have a maximum of 150 felony cases or 400 misdemeanor cases per year. However, the average public defender's caseload exceeds that considerably. For example, in 2008, Miami defenders handled approximately 500 felony cases on average. Because

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89 Thomas Giovanni & Roopal Patel, *Gideon at 50: Three Reforms to Revive the Right to Counsel*, BRENNAN CTR. FOR JUST. (Apr. 9, 2013), https://www.brennancenter.org/our-work/research-reports/gideon-50-three-reforms-revive-right-counsel; *see also* Bryan Furst, *A Fair Fight: Achieving Indigent Defense Resource Parity* (Sept. 9, 2019), https://www.brennancenter.org/our-work/research-reports/fair-fight.

90 Giovanni & Patel, *supra* note 89, at 3.

91 *Id.*

92 Steven W. Perry & Duren Banks, *Prosecutors in State Courts, 2007 - Statistical Tables*, U.S. DEP'T OF JUST. (Dec. 2011), http://bjs.ojp.usdoj.gov/content/pub/pdf/psc07st.pdf.

93 *Id.*

> public defenders have so many cases per year, they can spend only minutes on each individual case, compromising the level of defense provided. In New Orleans, defenders handled on average 19,000 cases in 2009, which translated into seven minutes per case. Minnesota defenders reported devoting an average of 12 minutes per case, not including court time, in 2010.[94]

This helps explain why such a significant percentage of American criminal cases end in a guilty plea.[95] Public defenders are so overburdened that they cannot thoroughly investigate, let alone try, each of their cases, so a plea bargain becomes the natural result.[96] Though, at least, indigent criminal defendants have a right to counsel.

The situation in civil courts, on the other hand, is even more dire. Litigation on American soil is an expensive endeavor. As a rule, each party is responsible for paying its attorney's fees. These, most of the time, are charged per hour worked. The average hourly rate for a small firm lawyer in America was $232 in 2016. The fees add up quickly for even a mildly complicated matter like a divorce or a contested child custody matter.[97]

Indigent Americans qualify for legal aid services, but like public defense the legal aid system is groaning beneath underfunding and the sheer volume of need. Created in 1974, Legal Services Corporation is now a private, non-profit organization, subsidized by the U.S. government.[98] Its purpose is to provide desperately needed civil legal services to America's indigent population.[99]

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94 Giovanni & Patel, *supra* note 89, at 4.

95 BARTON & BIBAS, *supra* note 15, at 20-30.

96 *Id.*

97 *2016 Legal Trends Report*, CLIO, https://www.clio.com/resources/legal-trends/2016-report/ (last visited Aug. 31, 2022).

98 Legal Services Corporation ("LSC") is "an independent nonprofit established by Congress in 1974 to provide financial support for civil legal aid to low-income Americans. The Corporation currently provides funding to 132 independent nonprofit legal aid programs in every state, the District of Columbia,

Yet, Legal Aid has proven insufficient, and the problem is getting worse. The Legal Services Corporation surveyed Americans in 2016 and found that 41% of the people who sought assistance were turned away for lack of capacity.[100] Twenty-one percent were partially assisted and only 28% were fully served.[101] Throughout 2016, 86% of financially vulnerable litigants received inadequate services or no services at all. Low-income Americans sought assistance from legal aid with approximately 1.7 million legal issues. A small portion obtained adequate assistance, and for most no assistance was provided due to the scarcity of human and financial resources.[102]

Part of the reason why both indigent public defense and legal aid are so ineffective in the United States is the insistence that the only answer to the access to justice crisis is individualized services by very expensive licensed attorneys.[103] There have been some cracks in the wall (notably in legal technology as discussed below), but the "more lawyers, more justice" fallacy is alive and well in the U.S.[104]

Naturally, the COVID-19 pandemic has worsened this picture. For example, Southeast Louisiana Legal Services reported a 670% increase in legal aid requests related to labor conflicts and eviction actions.[105] Legal Aid released its most recent Justice Gap Report in 2022, and unsurprisingly, all the trends have gotten

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and U.S. territories." *Get Legal Help*, LEGAL SERVS. CORP., https://www.lsc.gov/about-lsc/what-legal-aid/get-legal-help (last visited Sep. 2, 2022).

99 *Id.*

100 *2017 Justice Gap Report*, LEGAL SERVS. CORP. (June 2017), https://lsc-live.app.box.com/s/6x4wbh5d2gqxwy0v094os1x2k6a39q74.

101 *Id.*

102 *Id.*

103 BARTON & BIBAS, *supra* note 15, at 97-109.

104 *Id.*

105 "These data show that the health and economic crises have expanded the justice gap into a justice canyon—particularly as to housing and evictions." LEGAL SERVS. CORP., *LSC Estimates Grantees Would Need $2.5 Billion to Address Eviction Surge*, LEGAL SERVS. CORP. (Aug. 4, 2020), https://www.lsc.gov/press-release/lsc-estimates-grantees-would-need-25-billion-address-eviction-surge. To consult the statistical data that LSC relied on, *see LSC Estimates $2.5 Billion Cost for Grantees to Address Eviction Surge,* LEGAL SERVS. CORP. 1-3 (Aug. 2020), https://lsc-live.app.box.com/s/e01nu7f4tz5vkygbkad3402m6jnqe8g0.

worse.[106] Demand is increasing while the resources are maintained at the same level or shrinking.[107] As a result, America's courts are packed with confused *pro se* litigants. For example, in housing court for the District of Columbia "[95%] of the tenants are unrepresented and [90%] of the landlords are."[108] Serious matters such as divorce, custody, eviction, labor conflicts, and consumer debt are regularly decided without a lawyer's help.[109] In August 2016, the American Bar Association formed the Commission for the Future of Legal Services in the United States in response to these acute needs. The Commission's Report revealed that more than 65 million people lack basic access to legal knowledge or services.[110] The deprivation is due to the lack of financial resources to hire private lawyers and to the lack of knowledge in understanding a given problem as legally relevant.[111] Like Brazil, America has a legal education problem as well as a legal supply problem.

The United States has fewer legal guarantees than Brazil does, but the United States does spend a significant amount more on public defense and legal aid. For example, the United States government spent almost $1.3 billion on Federal Defender Services in 2020.[112] State governments spent $2.3 billion in 2012 on indigent

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106 *The 2022 Justice Gap Study*, *supra* note 18.

107 *Id.* Legal Services Corporation conducted a study and verified the need for a $2.5 billion budget to meet the demands related to eviction actions.

108 Rebecca Buckwalter-Poza, *Making Justice Equal*, CAP (Dec. 8, 2016), https://www.americanprogress.org/article/making-justice-equal/.

109 Jon Laramore, *The Future of Access to Justice*, 51 IND. L. REV. 19, 22 (2018) ("Millions of individuals go to court each year without a lawyer, and that adversely affects all litigants, including those who have lawyers.").

110 *Report on the Future of Legal Services in the United* States, ABA COMM'N ON THE FUTURE OF LEGAL SERVS. 14-15 (Aug. 2016), https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf. Survey data also points out that "[71%] of low-income households experience at least one legal need in any given year," and many experience more than one. *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans,* LEGAL SERVS. CORP. 21 (2017), https://lsc-live.app.box.com/s/6x4wbh5d2gqxwy0v094os1x2k6a39q74.

111 *Id.*

112 *The Judiciary Fiscal Year 2021 Congressional Budget Summary*, ADMIN. OFF. OF U.S. CTS. 37 (2021), https://www.uscourts.gov/sites/default/files/fy_2021_congressional_budget_summary_0.pdf.

defense.[113] The 2020 budget for the Legal Services Corporation was $440 million.[114] These amounts are clearly insufficient to meet the needs of America's poorest, nevertheless, they are much more than Brazil (a relatively less wealthy country) spends on similar services. According to the Annual 2021 "Justice in Numbers" Report, provided by the National Council of Justice in Brazil, the Judicial System in its entirety cost approximately $20 billion a year in 2020.[115] As for the public defenders, Brazil spends approximately $121.6 million, much less than America. It is predicted that more than 33 million people will be denied access to Justice in 2022 due to a lack of resources.[116]

B. Pro bono Advocacy in the United States and Brazil

If government provision of legal services is failing to meet the need in Brazil and America, perhaps pro bono work is filling the gap. Derived from Latin, the expression pro bono means "for the public good" or "for the benefit of the public."[117] Pro bono advocacy typically consists of the voluntary practice of legal services for the poor or needy.[118] Pro bono legal advocacy is not mandatory in the United States. For example, the American Bar Association's Model Rules of Professional Conduct encourages a minimum of 50 hours

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113 *State Government Indigent Defense Expenditures, FY 2008-2012* – Updated, U.S. DEP'T OF JUST. (July 2014), https://bjs.ojp.gov/content/pub/pdf/sgide0812.pdf.

114 *Legal Services Corporation Latest Developments*, ABA, https://tinyurl.com/4bfb3294 (last visited Dec. 20, 2022).

115 *See Justice in Numbers 2021*, NAT'L JUST. COUNCIL, https://tinyurl.com/3wed45ck (last visited Dec. 1, 2022) (USD figure provided based on *Brazilian Real to US Dollar Spot Exchange Rates for 2020*, EXCH. RATES UK (Dec. 1, 2022), https://www.exchangerates.org.uk/BRL-USD-spot-exchange-rates-history-2020.html)).

116 *Defence's Low Budget Leaves 33 Million People Without Legal Support*, CONGRESSO EM FOCO (APR. 5, 2012), https://congressoemfoco.uol.com.br/cf-premio-e-analise/premio-congresso-em-foco/cortes-no-orcamento-da-defensoria-poem-em-risco-acesso-a-justica-diz-anadef/.

117 *Pro Bono,* FREE DICTIONARY, https://legal-dictionary.thefreedictionary.com/Pro+bono+publico (last visited Nov. 28, 2022).

118 *Id.* As described in The Free Dictionary, pro bono is "[t]he designation given to the free legal work done by an attorney for indigent clients and religious, charitable, and other nonprofit entities."

per year of pro bono services "as a goal to which a lawyer should aspire, not a duty enforceable through disciplinary process."[119] Even this aspirational goal is likely unmet. In practice, American lawyer pro bono hours are relatively paltry. As the great Deborah Rhode noted: "A majority of the bar does [no pro bono work] at all; the average for the profession as a whole is less than a half hour a week."[120]

Nevertheless, the United States has seen an uptick in pro bono work following the founding of the Law Firm Pro Bono Challenge in 1993 and the publication of Deborah Rhode's *Pro Bono in Principle and in Practice*.[121] In 2010, Rhode and Scott Cummings published an empirical study of big firm pro bono work and reported that, even in a global recession, law firms "managed to devote more hours than ever to public service."[122] It worked out to a per lawyer average of "over sixty hours of pro bono contributions per year" and contributions were "up among participants [in the] Law Firm Pro Bono Challenge."[123] Pro bono has made further progress from then: large law firms performed over 5.4 million hours of pro bono work in 2020 and more than three-quarters of law firm lawyers performed some pro bono work.[124] Deborah Rhode also played a critical role in establishing pro bono work in legal education in the United States. As President of the AALS in 1998, she created a Commission on Pro Bono and Public Service Opportunities to help law schools improve their pro bono programs and helped found the AALS Section on Pro

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119 MODEL RULES OF PRO. CONDUCT r. 6.1 (AM. BAR ASS'N 1980).

120 Deborah L. Rhode, *Pro Bono in Principle and in Practice*, 53 J. LEGAL EDUC. 413, 429 (2003).

121 *Law Firm Pro Bono Challenge Signatory Law Firms,* PRO BONO INST., https://www.probonoinst.org/projects/law-firm-pro-bono/law-firm-pro-bono-challenge-signatory-law-firms/ (last visited Nov. 28, 2022); *see generally* DEBORAH L. RHODE, PRO BONO IN PRINCIPLE AND IN PRACTICE: PUBLIC SERVICE AND THE PROFESSIONS (2005).

122 Scott L. Cummings & Deborah L. Rhode, *Managing Pro Bono: Doing Well by Doing Better*, 78 FORDHAM L. REV. 2,357, 2,359 (2010).

123 *Id.*

124 *2021 Report on the Law Firm Pro Bono Challenge* Initiative, PRO BONO INST., http://www.probonoinst.org/wp-content/uploads/www.probonoinst.orgwppswp-contentuploads2021_Challenge-ReportV8june15-FINAL.pdf (last visited Nov. 28, 2022).

Bono.[125] Roughly 30 American law schools now require some amount of pro bono hours to graduate.[126] A majority of ABA-accredited law schools now have formal pro bono programs to encourage their students to serve the needy.[127] The United States has also been trying to export this renewed commitment. The Pro Bono Institute has a global project and released its fourth *Survey of Pro Bono Practices and Opportunities in 84 Jurisdictions* in 2019.[128]

Nevertheless, pro bono cannot begin to address the access to justice issues in the United States.[129] The needs are too many and the services are too few.[130] This does not mean pro bono is useless. On the contrary, it does help some indigent clients and exposes American lawyers to what "justice" looks like for those who cannot afford a lawyer.

In Brazil, despite not having a long tradition of pro bono advocacy, some great historical lawyers dedicated much of their lives to action on behalf of the needy and other defenseless groups. Perhaps, the most illustrious figure is that of Luiz Gama (1830-1882),[131] a former slave who became one of the greatest abolitionists in the country and provided his services of working to free captured slaves at no cost.[132] Gama attained several notable successes in this

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125 Sande Buhai, *Tribute to Deborah Rhode*, AALS SECTION ON PRO BONO (Jan. 25, 2021), https://www.sectiononprobono.org/index.php/2021/01/25/tribute-to-deborah-rhode/.

126 Michael Hunter Schwartz, *Pro Bono Service: How Common are Mandatory Requirements?*, WHAT GREAT L. SCHS. DO (Aug. 14, 2018), https://www.whatgreatlawschoolsdo.com/2018/08/pro-bono-service-common-mandatory-requirements/.

127 *Directory of Law School Public Interest & Pro Bono Programs*, ABA, https://tinyurl.com/3ppa9uts (last visited Nov. 28, 2022).

128 *A Survey of Pro Bono Practices and Opportunities in 84 Jurisdictions*, LATHAM & WATKINS (Dec. 2019), https://tinyurl.com/yc4m237m.

129 *See generally* Scott L. Cummings & Rebecca L. Sandefur, *Beyond the Numbers: What We Know – and Should Know – About American Pro Bono*, 7 HARV. J. L. & POL. REV. 83 (2013).

130 BARTON & BIBAS, *supra* note 15, at 69.

131 ELCIENE AZEVEDO, ORFEU DE CARAPINHA: A TRAJETÓRIA DE LUIZ GAMA NA IMPERIAL CIDADE DE SÃO PAULO ch. 4 (1999).

132 *See generally* LUIZ CARLOS SANTOS, LUIZ GAMA: RETRATOS DO BRASIL NEGRO (2010).

mission.[133] Also a member of this shortlist, the great criminalist Evandro Lins e Silva (1912-2002) defended more than a thousand political prisoners during the "Estado Novo"—also free of charge.[134]

While many take initiatives to assist the needy on an individual basis, a culture of pro bono advocacy has not developed in the country as part of the daily life of lawyers. In fact, historically some Brazilian bar associations banned pro bono work for potentially adversely affecting the earnings of lawyers.[135] To promote pro bono advocacy, the Vance Center launched the Pro Bono Declaration for the Americas in 2008, which recognized the responsibility of members of the legal professions to provide pro bono services by virtue of the "purpose of the profession in society, and in its implicit commitment to a fair and equitable legal system."[136] The declaration also sought to establish objectively measurable goals, such as "providing, annually, at least 20 hours or three days of pro bono legal services per lawyer, or, in the case of law firms, institutions or other groups of lawyers, an average of more than 20 hours per lawyer per year."[137]

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133 *Id.*

134 Estado Novo was a dictatorial period in force in Brazil between 1937 and 1945, triggered by a coup of Getúlio Vargas and characterized by traits such as nationalism, authoritarianism, and centralization of power. Camila Vian de Jesus et al., *Estado Novo (1937–1945): A Concepção do Desenvolvimento, o Funcionamento Estatal, as Políticas Económicas e o seu Legado para o Desenvolvimento do Brasil*, https://tinyurl.com/2tswjjzf (last visited Nov. 28, 2022).

135 *A Survey of Pro Bono Practices and Opportunities in 84 Jurisdictions*, *supra* note 128, at 96-97.

136 *Declaração Pro Bono para as Americas*, DIREITOS HUMANOS NA INTERNET (Jan. 1, 2008), http://www.dhnet.org.br/direitos/deconu/a_pdf/declaracao_probono_para_as_americas.pdf.

137 LULU RAMSEY, LATIN LAWYER AND THE VANCE CENTER'S 2018 PRO BONO SURVEY 35 (2018).

> Fast forward to today and the declaration has more than 560 signatories from 21 countries, including two-thirds of the firms that completed this year's survey. (Of the firms that have not, a third say they are considering doing so.) In the 10 years since the PBDA's launch, it is fair to say that great swathes of the Latin

At the legislative level, these efforts took hold in Brazil in the mid-2010s, through Resolution No. 02/2015, when the New Code of Ethics and Discipline of the Brazilian Bar Association ("OAB") was approved, which (1) ratified the concept of pro bono practice,[138] (2) described the parties governed by the OAB's New Code of Ethics,[139] and (3) the limits to its use.[140] OAB later clarified some of these points through Provision No. 166/2015.[141] These rules do not require pro bono work, but defining and formalizing the practice alone led to increased pro bono work.[142]

It is also important that the New Code of Ethics requires lawyers to use "the usual zeal and dedication [required by the profession], so that the party assisted by [the lawyer] feels supported and trusts in his sponsorship."[143] That is, the popular saying "beggars can't be choosers" does not apply to lawyers providing pro bono services in Brazil.[144] Indeed, assistance by a lawyer is something so exalted by the jurisprudence of the Brazilian Supreme Court that it constitutes an inalienable right.[145] More than that, the New Code of Ethics requires that the lawyer is not a mere sham who may behave

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American legal profession have embraced the concept of pro bono, helped in part by the objectives set out in the declaration.

138 ORDER OF ATTORNEYS OF BRAZIL, PROVIMENTO NO. 02/2015 art. 30, § 1 (2015).

139 *Id.*

140 *Id.* at art. 30, § 2.

141 *Provimento No. 166/2015*, ORD. OF ATT'YS OF BRAZ. (Nov. 9, 2015), https://www.oab.org.br/leisnormas/legislacao/provimentos/166-2015.

142 *A Survey of Pro Bono Practices and Opportunities in 84 Jurisdictions*, *supra* note 128, at 96.

143 *New Code of Ethics and Discipline for the Brazilian Bar*, ORDEM DOS ADVOGADOS DO BRASIL (Feb. 13, 1995), https://www.oab.org.br/content/pdf/legislacaooab/codigodeetica.pdf.

144 In Brazil, it is known by the expression "cavalo dado não se olha os dentes." In English, "don't look a gift horse in the mouth."

145 S.T.F. HC 102019/PB, Relator: Min. Ricardo Lewandowski 22.10.2010, DIÁRIO OFICIAL DA UNIÃO [D.O.U.], (Braz.); *see* S.T.F. RHC 104723/SP, Relator: Min. Dias Toffoli, Primeira Turma, 22.02.2011, DIÁRIO OFICIAL DA UNIÃO [D.O.U.], (Braz.); S.T.F. HC 99330/ES, Relator: Min. Ellen Gracie, 23.04.2010, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] (Braz.); S.T.F. RE 459131/RS, Relator: Min. Marco Aurélio, 12.09.2008, DIÁRIO OFICIAL DA UNIÃO [D.O.U.], (Braz.).

passively during the process, requiring that the lawyer take an active role in the defense of his client, under the consequence of a violation of the due process clause.[146]

C. Petitioning in forma pauperis

The petition *in forma pauperis* has its roots in British law from the time of King Henry VII. In 1495, a law was published (known as the Statute of Henry VII) allowing the appointment of a lawyer, free of charge, to the less-fortunate population and exempting them from the payment of procedural costs and expenses.[147] At first, the law only applied in common-law courts but was soon extended to courts of chancery.[148]

In Forma Pauperis is "[a] Latin term meaning 'in the manner of a pauper.'"[149] In the United States most states allow an indigent litigant to petition to proceed *in forma pauperis*, i.e. without having to pay court fees in their case.[150] This power is typically found in either a statute, the rules of civil procedure, or the common law inherent powers of the court.[151] In finding an inherent power to waive fees, American courts have relied upon the common law powers of the English courts.[152] For example, in 1919, the Supreme Court of the State of California cited the Statute of Henry VII in *Martin v. Superior*

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146 S.T.F. HC 71961 SC, Relator: Min. Marco Aurélio, Dec. 6, 1994, DIÁRIO OFICIAL DA UNIÃO [D.O.U.], Feb. 24, 1995.

147 Annie Prossnitz, *A Comprehensive Procedural Mechanism for the Poor: Reconceptualizing the Right to In Forma Pauperis in Early Modern England*, 114 NW. U. L. Rev. 1673, 1676-77 (2020).

148 Justice Earl Johnson, Jr., *Equal Access to Justice in the United States and Other Industrial Democracies*, 24 FORDHAM INT'L L. J. S83, S88 (2000).

149 "Allowing a poor person to bring suit without liability for the costs of the suit." Legal Information Institute, *In Forma Pauperis*, CORNELL L. SCH., https://www.law.cornell.edu/wex/in_forma_pauperis (last visited Nov. 28, 2022).

150 *Legal Definition of Forma Pauperis*, UPCOUNSEL, https://www.upcounsel.com/legal-def-forma-pauperis (last visited Nov. 28, 2022).

151 *See, e.g.*, William F. Johns, *California's Civil Appeal in Forma Pauperis—An Inherent Power of the Courts*, 23 HASTINGS L.J. 683, 683-85 (1972).

152 *Id.*

Court trial, while recognizing a court's *in forma pauperis* right to waive court fees and costs for indigent litigants.[153]

Nevertheless, the *in forma pauperis* "right" is often discretionary on the part of a district court, and there are few Constitutional guarantees in this area.[154] Moreover, in most courts the "right" must be exercised with a motion, which makes it hard for an indigent claimant to handle without a lawyer.[155] As such, while *in forma pauperis* offers some relief to the American poor, it is hardly much protection.

Brazil has a more powerful version of this right, the "free justice claim" expressly guaranteed in Article 5, subsection LXXIV, which states that "the State shall provide full and gratuitous legal assistance to anyone who proves that he has insufficient funds." Brazil thus provides the right to free justice to the natural or legal person, Brazilian or foreign, with insufficient resources for payment of costs, procedural expenses, and attorney's fees.[156] In general, the total income cannot be more than three times the minimum wage.[157] The waiver of costs is up to the discretion of the judge, after a motion made by the indigent litigant. The opposing party has an opportunity to object but bears the burden of proof to establish why the motion should not be granted. If not proven, the indigent party is granted free access to justice. Because the *in forma pauperis* right is guaranteed by the Brazilian Constitution, it is much better protected than the patchwork of authorities underlying the American approach.

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153 Martin v. Superior Court, 176 Cal. 289, 292-94 (1917).

154 One exception to this rule is an appeal of a termination of parental rights. *See* M.L.B. v. S.L.J., 519 U.S. 102 (1996). But this right has not been extended very widely. *See generally* Eric K. Weingarten, *An Indeterminate Mix of Due Process and Equal Protection: The Undertow of In Forma Pauperis*, 75 DENV. U. L. REV. 631 (1998).

155 *Cf.* Kenneth S. Geller & Mark I. Levy, *Rules for the 90s*, 76 A.B.A. J. 70, 74 (1990) (describing the process for proceeding in forma pauperis in Federal court).

156 Constituçião Federal [C.F.] [CONSTITUTION] art. 5, § LXXIV (Braz.).

157 Oscar Vilhena Vieira, *Public Interest Law: A Brazilian Perspective*, 13 UCLA J. INT'L L. & FOR. AFF. 219, 242 (2008).

IV. THE UPSHOT AND ONE POSSIBLE SOLUTION

One reason we wanted to write this comparative treatment of American and Brazilian law was to draw attention to the difference between legal rights, legal spending, and legal realities. Brazil's modern Constitution offers much more explicit protections to indigent litigants in court than America's does, and Brazil's inquisitorial judges theoretically make it easier for the unrepresented to receive justice. A paper review of the laws and constitutions of the two countries would suggest that Brazil is miles ahead of the United States on access to justice, and yet, the lived experience of the Brazilian people does not suggest the country is such a paradise. Likewise, based on expenditures, one might expect the United States to be a world leader in access to justice. But, like America's very expensive health care system, expenditures alone certainly do not guarantee fairness or efficiency in America's courts, especially for the poor and working class.

In fact, neither Brazil nor the United States have much to brag about in this regard. The United States sits at 27th in the 2021 World Justice Project ("WJP") Rule of Law rankings and Brazil sits at 77th.[158] The WJP also ranks countries regionally and with their peers. The United States' peer region is North America and Western Europe, and the U.S. is 20th among its 30 peers. Brazil's region is Latin America and the Caribbean, and Brazil sits at 16th out of its 32 peers.[159] The WJP also separately ranks a measure of civil justice for each country, and the news here is even worse for the United States, which comes in at 41st among 139 countries studied.[160] Brazil ranks 75th.[161] These numbers are an embarrassment to both countries. Brazil proudly and correctly considers itself a world leader and dominant force in Latin America. The United States' (sometimes overweening) claims to exceptionalism and world leadership are without peer, regardless of whether they are deserved or not. Neither

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158 *Rule of Law Index 2021,* WORLD JUST. PROJECT 10-11, https://worldjusticeproject.org/sites/default/files/documents/WJP-INDEX-21.pdf (last visited Nov. 28, 2022).

159 *Id.* at 24-25.

160 *Id.* at 34.

161 *Id.*

country is leading in this area. Americans should collectively be ashamed.

Thus, the first takeaway is that neither explicit and world-leading constitutional protections, nor massive expenditures can cure this problem. Brazil and the United States have taken different paths to their current sad state of affairs, suggesting that a blend of new approaches is needed.

The second takeaway is that due to the gaping need in both countries, help may be on the way in the form of technology and court reform. Examples abound in the United States, so we will present just a few promising developments. While America remains a laggard in government-sponsored access to justice, it remains a leader in legal technology. The most well-known companies are *LegalZoom* and *Rocket Lawyer*, but computerized legal services (online or via cell phone apps) for the consumer market are expanding at a dizzying rate. *LegalZoom* was founded in 2001 and started as an online provider of legal forms.[162] Over time, it has created interactive programs that take users through a series of questions in order to complete the forms.[163] *Rocket Lawyer* has a similar system, and both companies also offer subscription services; for a monthly fee, subscribers get some legal advice and unlimited access to legal forms.[164] The subscription model has caught on because, as in other internet business contexts, the downward pressure on the price is brutal.[165] This is especially so in American legal contexts in which a majority of state supreme courts have created Access to Justice Commissions that have placed many forms online for free.

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162 Catherine J. Lanctot, *Does LegalZoom Have First Amendment Rights?: Some Thoughts About Freedom of Speech and the Unauthorized Practice of Law*, 20 TEMP. PL. & CIV. RTS. L. REV. 255, 257-58 (2011).

163 *Id.*

164 Jeremy B. Tomes, *The Emergence of Group and Prepaid Legal Services: Embracing a New Reality*, 16 TRANSACTIONS: TENN. J. BUS. L. 25, 61-63 (2014).

165 *Form S-1 Registration Statement*, LEGAL ZOOM 25 (June 21, 2021), https://investors.legalzoom.com/static-files/f7a039f9-7fe7-48de-80dd-bc5bc3751dcb.

Other sites like *Avvo* offer free legal advice from lawyers.[166] Potential clients ask a short question and lawyers volunteer to answer.[167] The lawyers do this in the hope that some of the answers will lead to actual paying clients and also because Avvo is a lawyer rating service and answering questions can help boost their ratings.[168] In short, online entrepreneurs are working hard to bring law to the people through interactive forms and free or low-cost advice.

LegalZoom, *Rocket Lawyer*, and *Avvo* are just the tip of the iceberg. Felicity Conrad, one of the founders of the pro bono tech platform *Paladin*, recently launched a database that lists "justice tech" startups.[169] Conrad describes the "justice tech" sector as "a new breed of legal tech – instead of focusing on modernizing the existing legal services market (i.e. contracts, practice management, legal research, etc.), their goal is to leverage technology to *directly* scale legal services to the billions of people underserved by the existing market."[170]

Some courts are also leading the way, especially those that have the most contact with America's poor, like tribunals that focus on landlord/tenant issues, family law, child support, or consumer debt. Many judges and court administrators have recognized that technology and process reforms can help the poor and provide fairer results, all while increasing efficiency. One great example is the National Center for State Courts' Eviction Diversion Initiative

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166 Benjamin H. Barton & Deborah L. Rhode, *Access to Justice and Routine Legal Services: New Technologies Meet Bar Regulators*, 70 HASTINGS L.J. 955, 969-71 (2019).

167 *Id.*

168 *Id.*

169 Felicity Conrad, *Meet the 27 Startups Pioneering the Justice Tech Market*, PALADIN (Jan. 27, 2021), https://medium.com/join-paladin/meet-the-27-startups-pioneering-the-justice-tech-market-dfd4795763aa.

170 *Id.* I will not try to describe all twenty-seven listed entities (as of January 2021), but if you want to read some good news about access to justice in America (and eventually the world), I encourage you to check out the list. It includes for-profits, non-profits, and public benefit corporations. It covers areas from the do not pay app for challenging corporate fees and parking tickets, to apps for reporting police misconduct and recording police interactions, to eviction, divorce, and immigration.

("EDI").[171] During the pandemic, many courts froze eviction proceedings. In the pandemic's aftermath, the EDI now seeks to transform eviction courts from an eviction assembly line into problem-solving courts that emphasize community-driven and holistic resolutions to housing problems. The EDI provides funding for dedicated staffing and technical assistance for the computerization of processes. EDI courts are located all over America including in Alaska, Indiana, Kansas, Michigan, Nevada, New York, Tennessee, Wisconsin, and Washington, D.C. The pandemic itself has helped, as online court went from a theoretical idea to a necessity.[172] Some courts will naturally return to business as usual, but many are seeking to apply and build on the lessons learned during the pandemic.[173]

The trend towards online dispute resolution ("ODR") has likewise accelerated. ODR is often pitched as an efficiency measure, but when used in these courts, it is also an access to justice effort because these programs are often designed to be used by ordinary people and not lawyers.[174] Some of these applications are relatively basic. For example, *Matterhorn* helps streamline issues like suspended driver's licenses, parking or speeding tickets, family court orders, and small claims issues.[175] To cite one project, *Matterhorn* has automated searching for outstanding warrants and then allows some citizens to reschedule court appointments to avoid arrest and others to negotiate a settlement of whatever fines they owe.[176] If this seems

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171 *About the Eviction Diversion Initiative*, NCSC, https://www.ncsc.org/information-and-resources/improving-access-to-justice/eviction-resources/eviction-diversion-initiative-grant-program (last visited Nov. 28, 2022).

172 Zach Zarnow & Danielle E. Hirsch, *Inflection Point: Can Courts Use Technology to Spur Transformational Change or Will They Return to the Traditional Way of Doing Business?*, 5 GEO. L. TECH. REV. 135, 136-38 (2021).

173 *Id.* at 140-47.

174 Noam Ebner and Elayne E. Greenberg, *Strengthening Online Dispute Resolution Justice*, 63 WASH. U. J. L. & POL'Y 65, 69-71 (2020).

175 *About Us*, MATTERHORN, https://getmatterhorn.com/about-us/ (last visited Nov. 28, 2022).

176 *Warrant Resolution*, MATTERHORN, https://getmatterhorn.com/odr-solutions/warrants-pleas/warrant-resolution/ (last visited June 27, 2022).

straightforward, it is; you do not need complicated artificial intelligence (AI) knowledge to handle this sort of issue.

That said, this program can make a massive difference in the lives of ordinary citizens. So, for example, if you missed a criminal court date in Grand Rapids, Michigan in the past, the court would likely issue a warrant for your arrest.[177] Then, the next time you are pulled over for a traffic infraction the police officer would run your license, find an outstanding warrant and arrest you, disrupting your schedule, and possibly impounding your car.[178] Such an arrest might deeply affect your employment or child care, and these consequences can multiply.[179] The *Matterhorn* process allows a user to get ahead of all of this without the cost, embarrassment, and other potentially life-destroying consequences of incarceration. Jails and the police are also saved the trouble and the expense. Matterhorn claims better compliance, more collections, happier court users, and less work for court employees.[180]

Modria specializes in more complicated AI-driven ODR.[181] *Modria* offers a tiered, computerized mediation program that can be used in areas as diverse as landlord and tenant disputes, family and custody, debt collection, and general civil matters.[182] For example, *Modira* has been used successfully to handle family court matters in Clark County, Nevada, as well as to cover debt payment cases in Yolo County, California.[183] Like David Engstrom's work on AI in government, courts present different, and in some ways more

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177 Benjamin H. Barton, *Rebooting Justice: ODR Is Disrupting the Judicial System*, 44 L. PRACTICE 32, 37 (2018).

178 *Id.*

179 *Id.*

180 *Warrant Resolution*, *supra* note 176.

181 *Online Dispute Resolution*, MODRIA, https://www.tylertech.com/Portals/0/OpenContent/Files/4080/Modria-Brochure.pdf (last visited Nov. 28, 2022).

182 *Id.*

183 *Client Case Study: Clark County, Nevada Family Mediation Center*, MODRIA, https://www.tylertech.com/successstories/courts-justice/Modria-Clark-County-Family-Mediation-Center-Case-Study.pdf (last visited Nov. 28, 2022); Nicole Wilmet, *California's Yolo Superior Court Launches New Online Dispute Resolution Program*, MEDIATE.COM (Oct. 25, 2019), https://www.mediate.com/californias-yolo-superior-court-launches-new-online-dispute-resolution-program/.

promising, use cases than legal work for individuals, and we have seen some exciting moves in this space.[184]

Other courts have created electronic portals, powered by artificial intelligence, which allow indigent users to identify their needs and the type of assistance that would best resolve the conflict. For example, Alaska and Hawaii have online portals aimed at helping *pro se* litigants navigate the court system.[185] Here's a brief overview of how the system works:

> An individual logs into the system and is walked through a series of questions aimed at learning as much as possible about the person´s legal problem. The portal then applies an algorithm that guides the individual. The person may be directed to a legal aid program; or may be provided a pro se packet that she can fill out herself and submit to court; or she may get an answer to a specific legal question. All of these choices are made by the computer based on the information provided by the person seeking help.[186]

These reforms seem simple by using technology to connect users to existing resources, but they can make a huge difference to the American poor. As Jon Laramore has aptly stated: "Courts should be accessible, user-centric, and welcoming to all litigants, while ensuring fairness, impartiality, and due process."[187] Another noteworthy development is the creation of self-help centers located in the atriums of U.S. courts. The State of California serves as an example. The centers are served by law students or lawyers who assist

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184 David Freeman Engstrom, et al., *Government by Algorithm: Artificial Intelligence in Federal Administrative Agencies*, REGLAB (2020), https://reglab.stanford.edu/publications/government-by-algorithm/.

185 Jon Laramore, *The Future of Access to Justice*, 51 IND. L. REV. 19, 33 (2019).

186 *Id.*

187 *Id.* at 30.

the underprivileged in generating certain documents, filling out forms, and clarifying doubts and internal court rules.[188]

Likewise, in Brazil, technology has been introduced in the court system to enhance access to justice. Online hearings have increased access to justice, especially in the Amazon region, plagued by great distances and social inequality. One good example is the Labor Court for the Fourteenth Circuit, where technology is transforming traditional ways to deliver justice.[189] Hearings and meetings are held via videoconference. The platform is called "the virtual counter," which is basically a permanent access link to a GoogleMeet room, available to the whole society and with daily appointments. In this way, the Labour Courts in Rondônia and Acre have entered the digital space. In addition, the Labour Court created its first virtual assistant, named Raíra, which, in native language, means "human," to facilitate access for those who do not know how to contact the judicial system.[190]

Brazil has also launched its Consumidor program, an ODR program aimed at settling consumer issues for self-represented litigants.[191] The program is paid for by the government, and 548 different companies have signed on to the program.[192] Since 2021, it has settled nearly a million complaints.[193] Consumidor resolved 81% of the complaints and consumers graded their satisfaction with the program at 3.3 out of 5.[194]

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188 Bonnie Hough, *Self-Represented Litigants in Family Law: The Response of California's Courts*, 1 CAL. L. REV. CIR. 15, 19-22 (2010).

189 Two of the authors are judges on this court, so all of this information comes from first-hand knowledge.

190 *See* Fernanda Junqueira, Labor Judge, Regional Labor Court of the Fourteenth Region, *Dispute Resolution in The Post-Covid Era Amazon Region/Brazil*, Presentation at the 2022 CCMA Annual Labour Conference 11-13 (2022) (PowerPoint available at https://tinyurl.com/bdewh3u5).

191 *Use of Digital Technologies in Judicial Reform and Access to Justice Cooperation*, HIIL 63 (2021), https://www.hiil.org/wp-content/uploads/2021/11/HiiL-Use-of-digital-technologies-in-judicial-reform-and-access-to-justice-cooperation.pdf.

192 *Id.*

193 *Id.*

194 *Id.*

In both Brazil and the United States, we are just scratching the surface of what technology and court reform can accomplish. It is obvious that both countries have much work to do on access to justice, but the good news is that innovative solutions are on the way.

Both Brazil and the United States have work to do to increase access to justice for the poor and middle class. We heartily agree with the observation of Bryan Stevenson: "[M]y work with the poor and incarcerated has persuaded me that the opposite of poverty is not wealth; the opposite of poverty is justice."[195]

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195 BRYAN STEVENSON, JUST MERCY: A STORY OF JUSTICE AND REDEMPTION 18 (2015).