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## **Access to Justice: Theory and Practice from a Comparative Perspective**

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*Special Issue*  
*Indiana Journal of Global Legal Studies*

**ACCESS TO JUSTICE  
AND LIBERAL DEMOCRACIES  
GLOBAL, REGIONAL AND NATIONAL  
SOLUTIONS TO A WORLDWIDE PROBLEM**

**Introduction**

**Access to Justice: Theory and Practice from a  
Comparative Perspective**

COLIN CRAWFORD AND DANIEL BONILLA MALDONADO\*

As economic growth has increased worldwide, so has inequality—economic, social, legal, and political.<sup>1</sup> In Latin America, socioeconomic inequality is especially severe.<sup>2</sup> Brazil, Colombia, and Guatemala, for example, are some of the most socioeconomically unequal countries in the world.<sup>3</sup> In the United States, this inequality has been growing

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1. *See generally, e.g.*, GLENN-MARIE LANGE, QUENTIN WODON & KEVIN CAREY, *THE CHANGING WEALTH OF NATIONS 2018: BUILDING A SUSTAINABLE FUTURE* (2018) (explaining that although global wealth has grown between 1994-2014, per capita wealth has not increased).

2. *See, e.g.*, Jeronimo Giorgi, *Latin America: The Most Unequal Region in the World*, FOCUS ECON. (June 6, 2017), <https://www.focus-economics.com/blog/inequality-in-latin-america>; *see generally Latin America and Caribbean Register Middle Class Growth. Child Poverty and Inequality Problems Persist*, INTER-AMERICAN DEV. BANK (Oct. 24, 2016), <https://www.iadb.org/en/news/news-releases/2016-10-24/latin-american-middle-class-has-nearly-doubled,11611.html> (noting persistence of inequality and child poverty in Latin America and Caribbean region despite increases in middle class wealth).

3. *See, e.g.*, FACUNDO ALVAREDO ET AL., *WORLD INEQUALITY REPORT: EXECUTIVE SUMMARY* 5-7 (2018).

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rapidly over the course of the past two decades, even though it has diminished elsewhere, such as in the European Union.<sup>4</sup>

Socioeconomic inequality, however, is not only a problem in itself. It is also troublesome because it fosters poverty; reducing inequality is a key step towards reducing poverty.<sup>5</sup> Conversely, income inequality and consequent poverty hinders robust economic growth.<sup>6</sup> Similarly, inequality results in the inefficient distribution of resources like education and bank loans, undermines the solidarity and political stability needed for articulating and implementing the redistributive policies needed to reduce poverty, and obstructs the realization of the poor's fundamental rights.<sup>7</sup> Institutional change, including changes in legal institutions, constitutes part of the necessary response to poverty, inequality reduction, and economic redistribution.<sup>8</sup>

The effects that inequality and poverty have over fundamental rights of the poor are particularly negative to their right to access justice. The socioeconomic obstacles faced by the poor prevent them from hiring lawyers to protect their interests and from simply understanding or using the legal order. Poverty and inequality also negatively affect the autonomy of the poor, they do not allow the poor to interact directly with the State in order to solve their conflicts. Instead, the poor can interact with the State only through lawyers. Thus, the persistence and growth of inequality and poverty should cause concern about the poor's access to justice: a right which is a central component of democratic, liberal states.

The papers gathered in this volume analyze access to justice in Latin America, Europe, and North America from a philosophical, legal, and sociological perspective. In these three regions of the world, as in the rest of the globe, liberal democracies face a troubling gap between the normative and the descriptive: the access to justice promises made by the legal and political system are not fully realized in practice. The studies collected here, therefore, share two baseline assumptions. First, the right of access to justice is fundamental in a liberal state. Access to justice ensures that citizens are able to defend their interests in court and achieve full inclusion in the political community. Access to justice,

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4. *Id.* at 12-14.

5. Francois Bourguignon, *The Poverty-Growth-Inequality Triangle* 22 (Feb. 4, 2004) (unpublished manuscript), [http://siteresources.worldbank.org/INTPGI/Resources/342674-1206111890151/15185\\_ICRIER\\_paper-final.pdf](http://siteresources.worldbank.org/INTPGI/Resources/342674-1206111890151/15185_ICRIER_paper-final.pdf).

6. *Id.*

7. *See, e.g.*, LANGE ET AL., *supra* note 1, at 87.

8. *Understanding Effective Access to Justice* 11-12 (Nov. 3, 2016), [www.oecd.org/gov/Understanding-effective-access-access-justice-workshop-paper-final.pdf](http://www.oecd.org/gov/Understanding-effective-access-access-justice-workshop-paper-final.pdf) (examining, *inter alia*, the relationship between improved rule of law and justice access to poverty and economic inequality reduction).

as argued by social contract theory, is at the core of liberal democracies' normative projects. In the liberal democracies studied in this special issue—as in all others influenced by the post-Enlightenment modern project—contractualism and its commitment to access to justice is part of the of theoretical toolbox used to constitute and legitimize the political community. For all of these liberal democracies, access to justice is necessary for achieving peace and prosperity, and for the full inclusion of all citizens in the polity.

Second, the papers gathered in this volume agree that epistemological, socioeconomic, and legal market disparities obstruct the materialization of the right that citizens have to access courts and the administration to solve their conflicts. The key objectives pursued by liberal democracies cannot be fully realized because of poverty and inequality. Both variables have a causal relationship with the access to justice deficits faced by the countries studied in this special issue.

#### LIBERAL DEMOCRACIES, ACCESS TO JUSTICE, AND SOCIAL CONTRACT THEORY

In liberal democracies, lawyers have social obligations directly connected to the right of access to justice. Access to justice provides citizens with the ability to turn to the judicial and administrative bodies of the State to enforce their rights.<sup>9</sup> As the gatekeepers of these institutions, lawyers play a fundamental role in determining who has—and who does not have—justice access. The right of access to justice is multifaceted; it may include the ability to introduce and challenge evidence presented at trial,<sup>10</sup> to have a translator when necessary to understand trial proceedings, or to have a lawyer represent one's interests before state judicial and administrative bodies.<sup>11</sup>

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9. According to Mauro Cappelletti and Bryant Garth: “[T]he right to effective access [to justice] is increasingly recognized as a right of primordial importance . . . as the possession of rights makes no sense if there are no mechanisms for their actual enforcement. Access to justice can then be considered to be the most basic requirement—the most fundamental human right—in an egalitarian legal system that seeks to guarantee and not only proclaim the rights of all.” See MAURO CAPPELLETTI & BRYANT GARTH, *EL ACCESO A LA JUSTICIA: LA TENDENCIA EN EL MOVIMIENTO MUNDIAL PARA HACER EFECTIVOS los Derechos* 12-13 (1996).

10. See, e.g., Corte Constitucional [C.C.] [Constitutional Court], septiembre 8, 1998, Sentencia T-476/98, *Gaceta de la Corte Constitucional* [G.C.C.] (Colom.); Corte Constitucional [C.C.] [Constitutional Court], noviembre 17, 2005, Sentencia C-1177/05, *Gaceta de la Corte Constitucional* [G.C.C.] (Colom.).

11. These dimensions appear in various international treaties that recognize the right to access justice. See, e.g., G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948); International Covenant on Civil and Political Rights, art. 14, Sept. 8, 1992, S. Treaty Doc. No. 95-20 (1967); European Convention on Human Rights, art. 6,

The right of access to justice seeks to enable citizens to exercise their autonomy to choose, modify, and realize their life projects.<sup>12</sup> Liberal democracies rely on these rights to protect citizens' abilities to realize their individual autonomy.<sup>13</sup> The right of access to justice allows individuals to turn to an impartial third party to resolve conflicts,<sup>14</sup> and if individuals cannot access the administrative and judicial bodies created by the State for this purpose, the rights in dispute cannot be protected. If the design, procedure, and outcomes of these institutions are inefficient, then rights are reduced to rules and principles on paper, rather than in action. Access to justice, therefore, has consequences not only for the public sphere, but also for the private sphere in a liberal society. This right protects the capacity that all people have to create and materialize their individual and collective identities. Unresolved conflicts impede this process, and prevent people from realizing their potential as moral agents.

Access to justice also has the objective of guaranteeing that no member of the political community is excluded from or marginalized in the public sphere and that everyone is able to participate effectively in the political realm.<sup>15</sup> The contractualist tradition, a key part of the theoretical article upon which modern liberal democracies rest, makes this argument explicit.<sup>16</sup> In the state of nature, there is no certainty on how problems affecting the life, integrity, or property of individuals should be resolved. Problems are usually resolved through violence.<sup>17</sup> The creation of an impartial third party who can resolve conflicts peacefully is one of the main objectives of the move from the state of nature to the civil state.<sup>18</sup> The State, in the form of judicial and administrative bodies, has the power to resolve conflicts in a legitimate and definitive manner. The adjudication of rights by judges or

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Nov. 4, 1950, ETS No. 5, 213 U.N.T.S. 221; American Convention on Human Rights, art. 2, 7, 8, 1144 U.N.T.S. 143.

12. On the strong links between liberalism and access to justice see Daniel Bonilla Maldonado, *The Right to Access to Justice: Its Conceptual Architecture*, 27.1 IND. J. GLOBAL LEGAL STUD. 15 (2020). On the connections between autonomy and liberalism see Jeremy Waldron, *The Theoretical Foundations of Liberalism*, in EITCHE UND POLITISCHE FREIHEIT 226 (Julian Nida-Rümelin & Wilhelm Vossenkuhl eds., 1998).

13. Bonilla, *supra* note 12.

14. Jorge A. Marabotto Lugar, *Un Derecho Humano Esencial: El Acceso a la Justicia*, ANUARIO DE DERECHO CONSTITUCIONAL LATINOAMERICANO 291, 291 (2003).

15. Víctor Abramovich, *Acceso a la Justicia y Nuevas Formas de Participación en la Esfera Política*, REVISTA ESTUDIOS SOCIO-JURÍDICOS 9, 10 (2007) (Colom.).

16. John Charvet, *Contractarianism and International Political Theory*, in THE SOCIAL CONTRACT FROM HOBBS TO RAWLS 175 (David Boucher & Paul Kelly eds., 1994).

17. THOMAS HOBBS, LEVIATÁN 127-32 (Editorial Losada 2003); JOHN LOCKE, DOS ENSAYOS SOBRE EL GOBIERNO CIVIL 205-13 (Espasa Calpe 1991).

18. LOCKE, *supra* note 17, at 294.

administrative bodies allows individuals to protect themselves from the undue interventions of third persons in their private and public life.

If individuals cannot access an impartial third party to protect their rights, they will be, in practice, second-class citizens. For example, if individuals cannot exercise their political rights, they will not be able to participate effectively in the public life of the collective. If they cannot express their ideas, vote, or circulate freely, they cannot be full members of the political community. If they cannot access the basic material conditions that are necessary to exercise their autonomy, they will not be able to participate in the public sphere, and their ability to improve their lives in the private sphere may be compromised. Violations of these rights can only be legitimately curbed through the intervention of the judicial branch or administrative agencies. The right of access to justice, therefore, allows the individual to put the state apparatus in motion to stop these violations by means of an official statement declaring their existence, demanding that they be stopped, and punishing the offender or compensating the victim. In the event that the transgressor does not act in accordance with the legal mandate, the right of access to justice demands that the coercive apparatus of the State be put in motion. State power may intervene legitimately so that the decision of the judicial or administrative body becomes reality.

The right to have a lawyer is one of the key dimensions of the right of access to justice.<sup>19</sup> Legal representation serves an important role for both citizens and liberal democracies. The highly technical character of modern legal systems often, however, creates a sizeable distance between the law and the individual.<sup>20</sup> The majority of people do not have the knowledge or skills to manipulate legal tools or the specialized knowledge necessary to interact with the state judicial apparatus.<sup>21</sup> Nor do the majority of people have any familiarity with the substantive law or the procedures that would allow them to reach common, valuable results in a democratic and liberal State. For example, most people untrained in the law could not draft a contract, file a claim, or request that the relevant administrative bodies review a decision that adversely affects them.

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19. Deborah L. Rhode, *Essay: The Pro Bono Responsibilities of Lawyers and Law Students*, 27 WM. MITCHELL L. REV. 1201, 1203 (2000).

20. Shunko Rojas, *Acceso a la Justicia y Pobreza*, en 80 LECCIONES Y ENSAYOS 519, 522-23 (Universidad de Buenos Aires 2004).

21. Deborah Rhode argues that access to legal services is a fundamental need, because access to justice is the means by which all other rights are protected. In addition, the author argues that lawyers have a responsibility to help people with scarce resources, since the system is designed by and for lawyers, which means that if a person without legal training tries to fight against this reality, he or she will be at a disadvantage. See Rhode, *supra* note 19, at 1203.

Lawyers' social obligations emerge from the epistemological, socioeconomic, and legal market inequalities that exist in modern liberal democracies. Epistemological inequalities refer to the fact that only some individuals have access to the knowledge necessary to put legal discourse to work.<sup>22</sup> Lawyers have access to a formal education that trains them in the knowledge, practices, rites, and structures that constitute the law. Not all citizens can access this knowledge—some because their life plans direct them towards other disciplines, others because they don't have the means to cover the costs of a university education or did not have access to the basic education that would have allowed them to enter a university. Regardless of the reason for the epistemological distance that exists between law and the majority of the people in a political community, this distance creates obstacles for protecting the rights and guaranteeing the full inclusion of those without legal training in the public sphere of their community.

Epistemological inequalities intersect socioeconomic inequalities.<sup>23</sup> The right to have a lawyer has particular relevance in liberal democracies, given the material inequalities that exist between their citizens.<sup>24</sup> Socioeconomic inequalities determine who has indirect access to legal knowledge through a lawyer.<sup>25</sup> Middle- and upper-class citizens have the financial resources necessary to hire a lawyer while members of lower socioeconomic classes often cannot.<sup>26</sup> Inability to hire a lawyer can mean exclusion from important legal processes: modern liberal democracies have decided that, as a general rule, only those who have

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22. Daniel Bonilla Maldonado et al., *El trabajo jurídico pro bono en Argentina 2000-2014*, in *LOS MANDARINES DEL DERECHO: TRASPLANTES JURÍDICOS, ANÁLISIS CULTURAL DEL DERECHO Y TRABAJO PRO BONO* 135, 166-67, 170-75, 189 (2017). In the words of one of the partners interviewed for the Argentina Report, "This obligation [to do pro bono work] is justified based on the fact that lawyers have the key of access to justice, because in our system, if you don't have a lawyer, you can't access the courts." Interview No. 31, Pro Bono Coordinator, (July 3, 2014). Another of the interviewees similarly indicated: "those of us who are lawyers have a tool that can help; [law] is the key to special knowledge." Interview No. 34, Junior Lawyer (July 3, 2014). Another lawyer states, "We have a license to access justice and that creates an obligation. This is an essential service of a civilized society and must be instrumental to opening the door; this should therefore be an ethical obligation." Interview No. 39, Associate (July 4, 2014).

23. See Deborah L. Rhode, *Access to Justice: Again, Still*, 73 *FORDHAM L. REV.* 1013, 1014-15 (2004); see generally, GERMÁN SILVA GARCÍA, *EL MUNDO REAL DE LOS ABOGADOS Y DE LA JUSTICIA*, VOL. I AL IV (2001).

24. Rojas, *supra* note 20, at 524-25.

25. See Joseph R. Thome, *New Models for Legal Services in Latin America*, 6 *HUM. RTS. Q.* 521, 527 (1984). But see María Inés Bergoglio, *Cambios en la Profesión Jurídica en América Latina*, 5 *ACADEMIA: REVISTA SOBRE ENSEÑANZA DEL DERECHO* 9, 12 (2007).

26. See, e.g., Deborah Rhode, *Access to Justice: Connecting Principles to Practice*, 17 *GEO. J. LEGAL ETHICS* 369, 387 (2004) ("Money may not be the root of all evil in our justice system, but lack of money is surely responsible for much of it.").



obtained the title of lawyer can interact with judges and administrators with powers to adjudicate rights, and lawyers are the only ones who can act in the majority of judicial or administrative proceedings.<sup>27</sup>

Finally, inequalities in the legal market mean that, as a general rule, only lawyers can make use of legal discourse before the courts and administrative bodies that adjudicate rights.<sup>28</sup> The State, or the entities to which it delegates, determines the criteria that allow an individual to obtain the title of lawyer, practice his or her profession, and demand payment for services provided.<sup>29</sup> The monopoly that lawyers have in the legal services market means that citizens cannot put the legal system to work even if they have the knowledge to do so.<sup>30</sup> Although some liberal democracies allow citizens to represent themselves at trials or administrative proceedings, in practice this happens very rarely.<sup>31</sup> Moreover, the technical character of legal discourse, as mentioned above, means that few citizens decide to do so.<sup>32</sup> Thus, the probability that their interests will be adequately defended is low.

These three kinds of inequalities intersect with moral and political principles to justify the idea that lawyers have social obligations. Thus, for some people, the principle of solidarity requires lawyers to contribute to the realization of the right of access to justice;<sup>33</sup> for this group, distributive justice principles demand it. For others, this obligation is justified by moral principles of a religious order, such as the command to be charitable; divine justice mandates it.<sup>34</sup> For yet others, this obligation is a consequence of the principle of compensatory justice: lawyers must compensate society in return for the benefits they receive for their monopolistic control of legal knowledge and practices.<sup>35</sup>

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27. See Rojas, *supra* note 20, at 523-24.

28. See Deborah Rhode, *Access to Justice: An Agenda for Legal Education and Research*, 62 J. LEGAL EDUC. 531, 543 (2013).

29. Fiona McLeay, *The Legal Profession's Beautiful Myth: Surveying the Justifications for the Lawyer's Obligation to Perform Pro Bono Work*, 15 INT. J. LEGAL PROF. 249, 259-60 (2008).

30. See Rhode, *supra* note 23, at 1015.

31. See *id.* at 1016.

32. See *id.*

33. See, e.g., Daniel E. Bonilla Maldonado, *El Trabajo Pro Bono en Colombia 2009-2012*, in LOS MANDARINES DEL DERECHO 207, 216-22 (2017).

34. See, e.g., Daniel E. Bonilla Maldonado, *El Trabajo Pro Bono en Chile 2000-2014*, in LOS MANDARINES DEL DERECHO 285, 298-04 (2017).

35. See Elissa Madeline Stoffels Ughetta, *La Responsabilidad Social y el Trabajo Pro Bono: El Abogado Como un Agente de Cambio en Negocios Ganar-Ganar en el Siglo XXI*, DERECHO EN SOCIEDAD, July 2013, at 1, 9.

## ACCESS TO JUSTICE AND THE INSTITUTIONS THAT PROTECT IT

Modern liberal democracies have developed four institutions to fulfill the State and lawyers' joint obligations to all members of the political community to access a lawyer: public defenders' offices, court-appointed counsel, legal clinics, and pro bono work. These institutions aim to eliminate the access to justice deficit that exists, to varying degrees, in all modern liberal democracies. The first institution, the public defenders' office is created, administered, and financed directly by the State.<sup>36</sup> Through this entity, the State offers free legal services to people from low socioeconomic strata.

Court-appointed counsel and legal clinics are institutions that are developed and put into practice from the interaction between the State and lawyers and between the public and the private spheres. Through court-appointed counsel programs, courts and administrative bodies appoint members of the legal community as representatives of people with few socioeconomic resources in judicial or administrative proceedings.<sup>37</sup> In principle, lawyers have the obligation to accept the assignment and protect the rights of their appointed clients as competently and ethically as they do with clients who pay for their services.<sup>38</sup>

University-operated legal clinics allow law students, under the supervision of their professors, to represent or advise citizens from low socioeconomic strata.<sup>39</sup> In some liberal democracies—for example,

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36. *¿Qué es Defensoría Pública?*, DEFENSORÍA DEL PUEBLO, <http://www.defensoria.gov.co/es/public/atencionciudadanoa/1475/Defensor%C3%ADa-P%C3%BAblica.htm> (last visited Nov. 15, 2019).

37. Defensoría del Pueblo. *Investigación Defensa de oficio*. Oficina en Colombia del Alto Comisionado de las Naciones Unidas para los Derechos Humanos. Defensoría del Pueblo. *XX Informe del Defensor del Pueblo al Congreso de la República. 20 de julio de 2013*.

38. Sometimes, court-appointed counsel receive some kind of compensation from the State as recognition of their labor. These kinds of free legal services are generally provided in various areas of law, including family law, criminal law, civil law and labor law. See generally LA JUSTICIA GRATUITA: GUÍA DEL ABOGADO DE OFICIO (Lex Nova 2010) (guiding legal counsel in the difficult task of combining good professional work with the administrative and bureaucratic management that is required in the processing of free justice).

39. Erika Castro-Buitrago et al., *Clinical Legal Education in Latin America*, in THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE 60, 70 (Frank S. Bloch ed., 2011); Frank S. Bloch, *Access to Justice and the Global Clinical Movement*, 28 WASH. UNIV. J.L. & POL'Y 111, 126-27 (2008); Felipe González, *La Enseñanza Clínica en Derechos Humanos e Interés Público en Sudamerica*, INSTITUTO DE INVESTIGACIONES JURIDICAS 315, 315 (2004), <http://biblio.juridicas.unam.mx/libros/5/2466/19.pdf>.

Colombia and Chile—legal clinics are mandatory.<sup>40</sup> Universities must create these kinds of academic units and students must perform this social service. In these cases, States regulate and supervise the activities of legal clinics. In some other liberal democracies—for example, Argentina and the United States—legal clinics are optional.<sup>41</sup> Universities create them, and students participate in them on a voluntary basis.

The last institution, pro bono legal work, emerges from within the legal profession.<sup>42</sup> Lawyers are the ones who structure pro bono service and put it into practice; as a general rule, the State does not intervene in how it is developed.<sup>43</sup> Lawyers organize themselves voluntarily to create entities and processes that allow the provision of free legal services<sup>44</sup> to people with fewer financial resources.<sup>45</sup> Unlike the free legal services that lawyers have historically provided, pro bono work is not provided in a sporadic, individual, or informal manner. Pro bono services are free legal services that have been institutionalized in the legal communities of modern liberal democracies.<sup>46</sup>

Pro bono legal discourse and practices have spread widely in the last twenty years. The United States has been a pioneer in its creation and development.<sup>47</sup> However, a few initiatives have been developed in Europe and Latin America, which aim to create and institutionalize a pro bono culture within their respective territories.<sup>48</sup> The European Pro Bono Alliance has been a pioneer in the promotion of pro bono work in

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40. In Colombia, law students have the obligation to do pro bono work in law schools' legal clinics. See L. 583, junio 12, 2000, Diario Oficial [D.O.]; Castro-Buitrago et al., *supra* note 39, at 78.

41. Jorge Witker, *La Enseñanza Clínica Como Recurso de Aprendizaje Jurídico*, 5 ACADEMIA: REVISTA SOBRE ENSEÑANZA DEL DERECHO 181, 187-88 (2007).

42. Rhode, *supra* note 19, at 1203-05.

43. Only rarely does the State require lawyers to do this kind of work. The state of New York in the United States obligates its lawyers to do 50 pro bono hours per year. See *The Legal Profession - Pro Bono*, NYCOURTS.GOV, <http://ww2.nycourts.gov/attorneys/probono/baradmissionreqs.shtml> (last visited Nov. 8, 2019).

44. Lucie E. White, *Pro Bono or Partnership? Rethinking Lawyers' Public Service Obligations for a New Millennium*, 50 J. LEGAL EDUC. 134, 140 (2000).

45. Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1, 4 (2004).

46. Scott L. Cummings, *Access to Justice in the New Millennium - Achieving the Promise of Pro Bono*, 32 HUM. RTS. 6, 6 (2005).

47. See DEBORAH L. RHODE, ACCESS TO JUSTICE 145-84 (2004) (discussing pro bono practices in the United States); Marlene Coir, *Pro Bono and Access to Justice in America: A Few Historical Markers*, 90 MICH. B. J. 54, 54 (2011).

48. THE COMMITTEE ON INTER-AMERICAN AFFAIRS, THE ASSOCIATION OF THE BAR OF THE CITY OF NY, *Report on the Buenos Aires Conference on Pro Bono and Access to Justice*, in 57 THE RECORD 479, 479 (2002). For an analysis of the institutionalization of pro bono in the United States see Scott L. Cummings & Deborah L. Rhode, *Managing Pro Bono: Doing Well by Doing Better*, 78 FORDHAM L. REV. 2357, 2364-65 (2010).

its region.<sup>49</sup> In Latin America, the experiences of Brazil,<sup>50</sup> Argentina,<sup>51</sup> Chile,<sup>52</sup> and Colombia<sup>53</sup> are the oldest and most noteworthy. Nevertheless, in other countries such as Peru,<sup>54</sup> Mexico,<sup>55</sup> and the Dominican Republic,<sup>56</sup> initiatives have formed that seek to promote pro bono work. In each country, pro bono services developed through elite law firms, which created organizations to promote the institutionalization of free legal services within their communities.

#### AIMS AND STRUCTURE OF THIS ISSUE

This special issue of the *Indiana Journal of Global Legal Studies* has two principal aims: to provide a contextual framework that supports the issue's aim and to explore the concrete ramifications of uneven and unequal access to justice. First, it intends to explore critically the theoretical foundations of the right to access to justice. This right has been widely examined from a constitutional and an empirical perspective. The specialized literature has studied, for example, the meaning that national or regional courts have given to the right; the connections between access to justice and other fundamental rights, like freedom of expression or freedom of association; and has offered solid normative interpretations of the right to access to justice. The specialized literature has also examined empirically the obstacles that impede the realization of this right. It has gathered and examined data that explains why there is a gap between the right and its materialization in many contemporary liberal democracies.

However, paradoxically, given the relevance that access to justice has for all liberal democracies, there are relatively few publications that explore the theoretical foundations of this right. If we want to explore the meaning, political relevance, and efficacy of the right to access to justice—compelling issues throughout the world—we must then

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49. See EUROPEAN PRO BONO ALLIANCE, <http://www.europeanprobonoalliance.org/> (last visited Nov. 9, 2019).

50. See INSTITUTO PRO BONO, <http://www.probono.org.br/> (last visited Nov. 9, 2019).

51. See Comisión de Trabajo Pro Bono e Interés Público, PRO BONO, <http://www.probono.org.ar/> (last visited Nov. 9, 2019).

52. See FUNDACIÓN PRO BONO, <http://www.probono.cl/> (last visited Nov. 9, 2019).

53. See FUNDACIÓN PRO BONO COLOMBIA, <http://probono.org.co/> (last visited Nov. 10, 2019).

54. See FUNDACIÓN PRO BONO PERÚ, <http://www.probono.org.pe/> (last visited Nov. 10, 2019).

55. See APPLESEED MEXICO, <http://www.appleseedmexico.org/> (last visited Nov. 10, 2019).

56. See FUNDACIÓN PROBONO RD, <http://www.probonord.org/> (last visited Nov. 10, 2019).

examine the theoretical elements that constitute it. In order to describe the central role of access to justice in contemporary polities and find possible solutions for its lack of realization, we have to understand the role this right plays in the modern liberal imagination.

To do so, we must examine the place that this right occupies in one of the paradigmatic ways of founding modern liberal democracies, namely, social contract theory. The three articles that constitute the first part of this special issue, therefore, examine critically the strong links and tensions between the right of access to justice and Hobbes's and Locke's versions of contractualism.

In the first article, Daniel Bonilla offers a cultural analysis of the right of access to justice. Bonilla presents a descriptive and analytical reading of the normative role access to justice plays in Hobbes's and Locke's theories. Amnon Lev, in the second article, moves away from the normative narrative offered by social contract theory and makes explicit how Hobbes's and Locke's versions of contractualism create the conditions that would make the realization of the right very difficult, if not impossible, for most members of a liberal political community. In the last article of this section, Colin Crawford connects social contract theory with one of the most relevant issues confronting liberal democracies today: access to justice and collective and diffuse rights. Crawford explores the tensions between social contract theory's individualism and the collective character of rights like those of a healthy environment and the rights of consumers. Crawford also offers a reinterpretation of Hobbes's and Locke's theories that would begin to identify the aspects of contractual theories that are compatible with rights that were not part of the authors' legal and political imagination.

This first part of the special issue provides a theoretical framework that supports the issue's second aim, which is to explore the concrete ramifications of uneven and unequal access to justice. Because access to justice is a globally relevant issue, the national and regional studies gathered in section two explore concrete, current examples of the reality of persistent, unequal justice access in epistemological, socioeconomic, and legal market terms. As such, the articles in the second part make explicit both the relevance that access to justice actually has for liberal democracies and the epistemological, socioeconomic, and market inequalities that hamper its realization. The papers that constitute this section of the special issue aim to show the ways in which the right is politically and legally relevant for Latin America, the United States, and Europe, as social contract theory argues that it should be. The historical and comparative analyses that these articles offer contribute to understanding the conceptual structure of liberal democracies. These papers also show how the unequal distribution of legal knowledge,

socioeconomically unjust hierarchies, and the monopoly that lawyers have over the legal services market make it very hard for large segments of the populations of liberal democracies to solve their conflicts through courts or administrative bodies. The articles of the second part, explore the specific character and impacts that these inequalities have in different countries. The papers explore these broad issues by examining three of the strategies articulated by liberal democracies to contribute to the realization of the right to access to justice: legal pro bono, legal clinics, and public defender offices.

The first two papers of this section create a bridge between the theoretical pieces and the more empirically oriented papers that follow them. In the first piece of this section, Scott Cummings examines the emergence and development of movement lawyering in the United States as a reaction to liberal legalism and its legal aid, and individualistic strategies to confront access to justice problems. In the second piece, Daniel Bonilla offers a cultural study of the transnational pro bono discourse and connects these reflections to his analysis of pro bono practices in Argentina, Colombia, and Chile. Both Cummings's and Bonilla's articles examine the vertical relationship between lawyers and clients and explore the way in which epistemological, socioeconomic, and market inequalities negatively affect United States and Latin American lawyers' efforts to contribute to the realization of the right to access to justice through liberal legalism and pro bono.

The third paper of this section, by Ana Bejarano, examines, through detailed and original empirical data analysis, the challenges that Colombia's legal community faces to create a true pro bono culture in the country and to make pro bono an effective tool to satisfy the legal needs of the country's vulnerable. The fourth and fifth papers, by Fernando Muñoz and Marzia Barbera, and Venera Protopapa, respectively, examine the history, foundations, and challenges legal clinics face in Chile and Italy. Muñoz offers a history of Chilean legal clinics that emphasizes their character as legal transplants. He examines in detail the paths through which legal clinics were imported by Chile from the United States, and the differences between access to justice clinics for individuals and legal clinics that seek to effect permanent, structural change. Muñoz analyzes how clinics were designed by both importers and exporters to confront the globally relevant issues of poverty and inequality. He also analyzes the obstacles that clinics in Chile have found to achieve their aims—obstacles that are very similar to those historically faced by other Global South liberal democracies, including lack of resources, legal formalism, and academically weak law schools.

Barbera and Protopapa connect Italian legal clinics with a rich history of social actors' efforts to contribute to the realization of the right to access to justice. They argue that the work of Italian legal clinics, as in most contemporary liberal democracies, is an example of the principle of subsidiarity. In their view, legal clinics, like Italian workers' unions and civil society organizations, have historically acted to confront the limitations of state actions directed to satisfy the legal needs of vulnerable populations. Barbera and Protopapa also explore the potential that legal clinics have to contribute to the realization of the right to access to justice, and the obstacles that the Italian political and economic context create for achieving this aim. Finally, Barbera and Protopapa examine the weaknesses of litigation to achieve social reform. As they note, individual and high-impact litigation strategies are used globally to satisfy the legal needs of vulnerable populations or to protect and promote the public interest. Both strategies, they argue, have important restrictions for long-term social transformation.

In the last two papers of the special issue, Alexandre Cunha and Manuel Iturralde examine the strengths and weaknesses of Brazil's and Colombia's public defender offices. Cunha describes the origins and strengths of the Brazilian public defender system. He argues that this system can be positively characterized as a national network of highly trained and independent public officials that is funded fully by the State. Conversely, and less positively, he also argues that there is a notable gap between this system's aims and the needs of the poor it, in theory, exists to serve. As he explains, the demand for free legal services by vulnerable Brazilian populations is greater than the volume of services that even a strong public defender system can actually provide. Cunha, therefore, focuses on the particular ways in which class inequalities found in all liberal democracies are manifest in the Brazilian context.

In the final paper of this section and the special issue, Iturralde examines the structural problems that cut across Colombia's criminal system and their effects on access to justice for vulnerable populations. Through the analysis of a life story, the examination of empirical data, and the use of sociological theory, Iturralde describes and analyzes the tensions between the legal needs of Colombia's vulnerable populations and the efforts of public defender offices to satisfy them. Iturralde argues that these tensions are an example of a punitive conservative turn, in Colombia and globally, that cuts across most contemporary liberal democracies. This in turn, Iturralde argues, constitutes an effort to exercise the coercive power of the state to confront global issues of poverty and inequality.

It is important to emphasize, however, that the studies in this issue also recognize that the global problems and the variables that explain them are locally concretized in distinct ways. Access to justice is a global challenge; the reasons that explain its existence and the strategies to confront them are also global. Yet, the ways in which they emerge, mutate, and operate are local. As the papers gathered in this volume make explicit, access to justice has challenges, social impacts, and solutions take different shapes locally. Poverty and inequality take dissimilar forms, as do pro bono initiatives, legal clinics, and public defenders' offices. These forms are context dependent. Brazil and Colombia, to cite two examples from the papers collected here, have levels of poverty and inequality that are notably different from those of the United States and Italy. Similarly, the structure and impact of pro bono in Chile, Colombia, and Argentina vary in important ways. The history and institutional design of Chilean legal clinics are very different from the history and institutional design of Italian legal clinics. The strengths of the Brazilian public defenders' office outweigh those of the Colombian public defenders' office: the economic, human, and infrastructural resources available for the former are much higher than those available to the latter. Both explicitly and implicitly, the studies assembled here address these differences.

In sum, this special issue attempts to offer a rigorous and transnational assessment of the right to access justice. The essays explore the right to access to justice's theoretical dimensions through an analysis of the centrality that this right has in social contract theory and presents national and regional studies that offer a detailed analysis of the obstacles that most, if not all, contemporary liberal democracies confront for the realization of the right to access to justice.