ITINERANT JUSTICE AND PROACTIVE LEGAL SERVICES:

Origins, Achievements and Future Directions

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ABSTRACT: This article examines itinerant justice and proactive legal services serving remote areas and the distinction between these modes of legal service delivery. It examines foreign and historical precedents for mobile legal services and the lessons that emerge from this experience. The article also considers how these legal services should be evaluated and questions their present scope by asking whether in the future there should be a greater emphasis on collective legal action, or structural, as well as individual casework. Finally, the article looks at future planning and considers specific reforms that might enhance their contribution, particularly for those in remote or Indigenous communities.

KEYWORDS: Itinerant justice; proactive legal services; access to justice; remote areas; law reform

RESUMO: Este artigo examina a justiça itinerante e os serviços jurídicos proativos que atendem a áreas remotas, a partir da distinção entre esses modos de prestação de serviços jurídicos. Inicialmente, são analisados os precedentes estrangeiros e históricos para serviços jurídicos móveis, assim como as lições que emergem dessas experiências. O artigo também aponta como esses serviços jurídicos devem ser avaliados e questiona seu escopo atual ao perguntar se, no futuro, deveria haver uma maior ênfase na ação legal coletiva, ou no tratamento de casos estruturais, paralelamente aos casos de natureza individual. Por último, são apontadas algumas questões importantes para um futuro planejamento dos serviços jurídicos itinerantes de forma a contemplar reformas específicas que podem ampliar a atuação desses serviços em comunidades remotas ou indígenas.

PALAVRAS-CHAVE: Justiça itinerante; serviços jurídicos proativos; acesso à justiça; áreas remotas; reforma da lei

1. INTRODUCTION

Even though this webinar operates in virtual space as is customary in Australia, I begin by acknowledging the traditional owners of the land on which I live and work, the Kaurna people of the Adelaide Plains, and pay my respects to their elders: past, present and emerging.[1] It is an honour to deliver this opening keynote address at Brazil's first national conference dedicated to itinerant justice, also celebrating the life and work of the public prosecutor and scholar, Prof Miguel Lanzellotti Baldez, who died earlier this year and was a contemporary of another inspirational scholar, Prof Marc Galanter, who fortunately continues to focus our attention on the impact of law on society's 'have-nots' (GALANTER, 1974).[2]

Before I begin, allow me to pay tribute to Judge Gaulia's recent book, *A Experiência da Justiça Itinerante*, (GAULIA, 2020) that provides a solid intellectual foundation for this new conference series and builds on earlier studies

1 *Marni naa pudni Kaurna yarta-ana; Ngadlu Tampinthi Ngadlu Kaurna Yartangka Imparrinthi* (Transl: "Good you all came to Kaurna country; we acknowledge we meet on Kaurna land").
2 See also GALANTER (2010). For an appreciation of Miguel Baldez, see Luiz Otávio RIBAS (2020).

(IPEA, 2015; FERRAZ, 2016; FERRARI, 2017). Her study, supported by many visual images, explores how mobile courts advance the effective implementation of constitutional and procedural values that lie, or should lie, at the heart of Brazilian democracy (CARVALHO, 2013; HOLSTON, 2013). I suspect Prof Baldez would be pleased to see that judges today are deeply committed to maintaining the rule of law and to ensuring that the Brazilian justice system can effectively reach out, and touch, all citizens - and especially the 'have-nots'. But, given his political orientation and membership of the 'alternative law movement', Prof Baldez might also ask whether progress to date is sufficient, particularly in relation to collective legal action, and what alternatives need to be considered. (BALDEZ, 2005).[3] If I may, I too wish to raise questions about the future scope of itinerant adjudication, legal service provision and the role of judges in leading change.

2. ISSUES EMERGING FROM HISTORICAL AND COMPARATIVE PRECEDENTS FOR 'ITINERANT JUSTICE'

I begin by looking briefly at historical and foreign experience and explain my personal interest in legal service provision for remote areas. What lessons emerge that might inform future developments?

But first I wish to be clear about the definitional issue of what exactly is meant by 'itinerant justice' (IJ). In Brazil, it seems no single, standard model for IJ prevails, which reflects the historical fact that mobile courts are creatures of individual judicial, and not executive, initiative.[4] For an audience of judges, IJ will no doubt be understood as being confined to mobile courts, but even here a number of different terms are in use: *Expresso da Alegria, Justiça das Comunidades, Justiça Rápida, Juizado Especial Volante* etc. (GAULIA, 2020, p. 199). That said, the concept of 'itinerancy' has in Brazil spread beyond the courts to include public defenders (some States now have a *Defensoria Pública Itinerante)* and also some, but not all,

3 See also CARVALHO (2005).

4 Such as judges José Luciano de Assis (Amapá), James Tubenchlak (Rio de Janeiro), Rosevelt Queiroz (Rondônia), Kiyochi Mori (Rondônia), Sueli Pini (Amapá), Erick Linhares (Roraima) and Ciro Darlan (Rio de Janeiro), who were the driving force behind the introduction of mobile courts (GAULIA, 2020).

law schools use itinerancy to promote experiential learning through legal clinics.[5] For the sake of clarity, I therefore propose that 'itinerant legal services' bifurcate into: (a) '*itinerant justice*' (IJ) which are mobile judicial/court services; and (b) non-judicial initiatives which could be labelled *'proactive legal services'* (PLS), and seen as complementary to mobile courts (IJ). PLS normally will be public sector legal services (including clinics provided by some law schools), though not exclusively so, as today some private law firms also engage in outreach to remote communities.[6] Both are required if citizen's rights are to be made more effective. It is interesting to note that the former Chief Justice of Australia, Robert French, started out his career as a lawyer serving a remote community and later became President of the National Native Title Tribunal, proving that at a personal level some judges have direct experience of both forms of itinerancy (FRENCH, 2011).[7]

There is a third related kind of justice I shall call '*remote justice*', which complements and possibly competes with, or duplicates, mobile courts that I shall not discuss in any depth here, which is becoming increasingly relevant in the aftermath of the Covid-19 pandemic.[8] Remote justice (which could include remote courts, conciliation and other ADR services) tend not to be mobile and usually operate from fixed locations in cities, but potentially could be based almost anywhere, including judges' or mediators' offices and homes, and have the capacity to reach remote geographical locations provided there is an internet or telephone connection. Unlike 'itinerant legal services', remote justice offers clients no direct, personal or face-to-face communication (apart from video hearings via Skype, Zoom or some other online platform) as here it is the virtual and distant nature of human contact, rather than geographical location of the service provider, that defines remoteness.

5 Not unlike the original Norwegian Jussbuss, or mobile clinics run by law students at Riga law school in Latvia, some Brazilian law schools also use vans and buses to take professors and students to peripheral locations and some law schools, I am told, have established agreements with State Courts to offer advice services alongside official itinerant justice. The Universidade Federal Fluminense (UFF) has a campus located in Oriximá (Pará) which also could be considered part of the itinerant movement (even though it operates from a fixed location) because it proactively brings legal advice services to remote clients.
6 Some private law firms in Canada are now specialising in 'remote work', e.g. REMOTE LAW CANADA (n. d.) and HART (2018).
7 Also worth noting is that the Chief Justice of South Australia is patron of the National Rural Law & Justice Alliance.
8 See further REMOTE COURTS WORLDWIDE (n.d.) and REMOTE JUSTICE STORIES (n.d.) projects.

My interest in PLS began soon after I left Florence when I become involved, back in the UK, with launching a rural law centre to serve rural Devon. In the early 1980's, community law centres were confined to urban deprived areas and rural deprivation was almost invisible. I was part of a team that, almost 40 years ago, in September 1981, put forward a proposal for *A Rural Law Centre* to serve a rural area and published a paper setting out a number of potential models for rural legal service delivery, the last of which was the 'peripatetic' model that utilised "a mobile unit (a converted bus or van) which travelled around the catchment area in order to reach isolated villages and communities" (ECONOMIDES, 1999, p. 65). This proposal eventually led to a major research project, the ESRC-funded *Access to Justice in Rural Britain Project*, several articles and a book co-authored with two geographers, *Justice Outside the City*: *Access to Legal Services in Rural Britain* (BLACKSELL, ECONOMIDES & WATKINS, 1991; ECONOMIDES & BLACKSELL, 1987). By 2001 the Devon Law Centre (a community law centre) was finally established but this closed a decade later due to lack of stable funding (I was a director of the law centre from 2001 to 2006) and during this period a *Devon Law Bus* was proposed but never became operative, again due to a lack of funds (ECONOMIDES, 2003; ECONOMIDES, 2011, p. 50-51).

As my latest article documents, PLS have flourished all over the globe and modern itinerant public legal services – including legal advice as well as court and mediation services – had already began in Norway in 1971 with the *Jussbuss*.

Since the 1980s, PLS were developed in Latin America, Africa, Australia, North America, Pakistan, Timor-Leste and the Philippines all of which, in different ways, put "justice on wheels", but probably nowhere on the scale they have evolved in Brazil where buses, boats and aircraft are deployed to help deliver judicial (and other) services to remote communities (ECONOMIDES, TIMOSHANKO & FERRAZ, 2020, p. 51-58).[9] Itinerant legal services invariably reflect an imaginative response from a dedicated but disparate group - that may include participation by

9 For information on a Canadian itinerant court, see: CREE NATIONAL GOVERNMENT (n.d.). For a more behavioural explanation of the processes that determine how people enter the legal system, see BLANKENBURG (1984).

judges, lawyers, para-legals, social workers, legal academics, law students and community activists – determined to take law to the people, in order that the rhetoric behind the rule of law might become more of a reality and access is no longer solely dependent on one's postcode (COVERDALE, 2011). I see itinerant legal services as correcting imperfections in the legal services market and meeting legal needs that tend to be ignored by most judges and lawyers in private practice (REMOTE LAW CANADA, n. d.; HART, 2018).

As noted by Prof Mauro Cappelletti following his visit to the *11th Ibero-American Day of Procedural Law,* held in May 1988 in Rio de Janeiro,[10] we can also find much earlier precedents for IJ dating back to medieval times, as seen for example in the English circuits where circuit judges, or 'justices in eyre' (*justiciae errantes*),[11] in effect combined law and government, but often in a manner that struck fear in the population.

Itinerant judges initially aimed to centralise justice by harmonising local custom into one common law for the whole of England and in effect transferred power from local to central courts. Far from seeking access to these circuit courts, people often preferred to run away from them, as the legal historian Prof Sir John Baker[12] explains:

> The general eyres were not merely law courts; they were itinerant government. They begat fear and awe in the entire population…. and we learn of Cornishmen fleeing to the woods to escape the eyre of 1233. Popular reaction was to kill the general eyre in the mid--fourteenth century. (BAKER, 1979, p. 15)

So, while today we think of IJ as a well-meaning, at times almost evangelical, flexible initiative designed to extend the rule of law to commu-

10 Private correspondence between Professors Mauro Cappelletti and Hugo Jerke, 31 May 1988, in which Prof Cappelletti fully supports the introduction of itinerant justice in Brazil having learnt about developments from Prof Jerke: "The idea of facilitating access to justice through an itinerant justice system seems excellent to me, especially bearing in mind the geographical and social situation of a large and pluralistic country like Brazil. Moreover, it is an idea not without historical (for example, in England) and contemporary (for example, in Norway) precedents. I therefore warmly congratulate you and your colleagues for this interesting and useful initiative, and for the spirit in which you are making it."
11 The word 'eyre' could be derived from the Latin word 'iter' meaning 'journey', though another possible explanation is that it comes from the old French 'oyer' meaning 'to hear'.
12 See also COCKBURN (1972, p. 13-62).

nities deprived of law courts - so that they might feel the civilising effect (and practical benefits) of enjoyment of rights and fair process - , in the past not everyone saw law in this way.

But even today, Aboriginal communities, Amazonian Indians and First Nations peoples more generally often remain fearful of those who extend the reach of law, seeing it more as an instrument of colonial repression rather than a resource through which rights may be enforced. Civil justice is frequently invisible in the minds of ordinary citizens who, whenever they hear law mentioned, invariably think of criminal justice. First Nations people, as with Cornishmen in 12th century England, may well prefer to run away from the law rather than have access to it. This is in part because many Indigenous people, particularly in New Zealand and Australia, may not trust the law or lawyers, especially as they are overrepresented in prison. You may have heard stories about the 'Stolen generations', the children of Australian Aboriginal and Torres Strait Islander descent forcibly removed by Australian federal and state government agencies, and also by Church missions, that right up until the 1970s as part of a policy of assimilation, intended to erase their Aboriginality (LAVARCH, 2017; RANGIAH, 2019-2020).

When I visited the Australian outback on a cultural immersion tour to learn about how the Arabunna people experienced law, I was told how, in the mid-1990s, a mining company nurtured conflict between the Arabunna and Dieri Aboriginal communities about which had custodial rights over the land in order to facilitate a billion-dollar expansion of its Roxby Downs mine.[13] And, in early 2020, Rio Tinto destroyed a sacred, ancient Aboriginal site dating back 46,000 years.[14]

One hears similar stories told about the inhuman treatment of Brazilian Indians, particularly the Guarani and Yamomami, threatened by deforestation of Indigenous territory caused by large-scale mining, agricultural and livestock activities that degrades or destroys the natural environment.

My main observation here is that history, politics and culture are vital to understanding both the demand (latent and actual) for IJ. Itinerant judges

13 See FOE (1995).
14 See BBC (2020).

should be responsive and open to learning from those they serve. Of course, there are practical limits imposed on what proactive judges can achieve because their jurisdiction, time and resources are limited and, at a more fundamental level, some fear the erosion of democracy through 'juristocracy' (e.g. John SMILLIE (2006), who argues against extending judicial power at the expense of parliamentary democracy). But this is precisely why a co-ordinated, multi-disciplinary response is required and, as Marc Galanter knows from his involvement in the Bhopal disaster litigation in India in the 1980s, when he appeared as an expert witness for the Indian Government, 'repeat players' are skilful when it comes to avoiding responsibility (in this case tortious liability).[15] So who, if not judges, will hold 'repeat players' accountable, and to what extent can IJ move toward a different adjudicatory model that fully embraces public law litigation, such as that pioneered by Abram CHAYES (1976) back in the 1970s? IJ has limitations and should not be seen as a panacea, but to what extent do these limitations undermine the quality, value and impact of IJ and can these limitations be overcome? So, what are some of these limitations and are they shared with other itinerant experiences?

First, in situations where normal institutional support structures may be absent, there could well be a corresponding strain in maintaining ethical standards normally expected of judges, lawyers, and legal advisers. The most obvious example is confidentiality. Itinerant services are, by their very nature, conspicuous and therefore it may sometimes be difficult, if not impossible, to maintain adequate privacy for clients and service users. People with problems may fear being seen entering a bus parked on the village green and simply decide to "lump it" (avoid pursuing their dispute or claim). In close-knit, small-scale (*gemeinschaft*) communities, it may be hard to preserve confidential information.

There have been additional problems of a more technical nature. In the past mobile vans and buses were either too hot or too cold (due to inadequate air-conditioning), or had limited or irregular access to the internet (due to limited broadband coverage and internet speed) for legal advisors and adjudicators who need fast ac-

15 University of Wisconsin Law School Digital Depository (n.d.).

cess to high quality and up-to-date legal information. Early mobile services in the UK were often combined with library and information services, and key legal documents were frequently physically transported to rural and remote locations.

Today this is no longer necessary and while technology has improved, particularly for the urban middle classes, serious problems of access to the internet remain for the 'have-nots' and those residing in remote areas. But with online courts and legal services becoming ever more sophisticated and a reality, and the 'digital divide' separating the technological 'haves' from the technological 'have-nots' shrinking (though many poor still have no mobile phone), technophiles may ask whether itinerant legal services, which maintain face-to-face human contact, is really worth the expense and effort. Could resources, both intellectual and material, currently invested in IJ be better deployed elsewhere (most obviously in technology)? Should we not shift our attention from geographical to technological barriers to justice, perhaps by getting judges and lawyers to detach from working in offices that occupy a particular physical space - whether this be in an urban, rural or mobile setting - in order that they can function more flexibly, and perhaps one day exclusively from home, and in cyberspace?[16] If so, would this work for all categories of client, and for all categories of legal problems?

To answer such questions, we need further research both to evaluate objectively achievements to date, but also to assist with future planning in order that the full potential of IJ can be realised. Let me now turn to evaluating the contribution of IJ within the broader legal system. How should success be measured?

3. EVALUATING THE CONTRIBUTION OF ITINERANT JUSTICE

Policymakers, and especially funders, typically measure the success of procedural reform with reference to quantifiable metrics, such as the impact on reducing caseload, costs and delay. These variables may be visible but not always easy to measure accurately (ECONOMIDES, HAUG & MCINTYRE, 2015). But we should remember too the value of dispute prevention and those cases that avoid going to court because of accurate

16 See the REMOTE COURTS WORLDWIDE (n.d.) project which reports a number of initiatives in Brazil and elsewhere.

legal advice or sound judgments that establish clear precedents so that litigation becomes unnecessary.

Client satisfaction is yet another possible measure of success, but here we should bear in mind the problem of asymmetry of information: most clients are 'one-shotters' and not 'repeat-players' or legal experts, and they therefore are not in a position to make an informed judgment about the quality or accuracy of legal decision-making or professional legal advice, though client feedback on this advice could well tell us something valuable about the communication skills of their adjudicator or legal advisor. But, perhaps, not much more than that.

And we should not forget some court cases benefit broader interests beyond those of the parties most directly involved and, furthermore, that enforcing collective rights through 'mega-litigation' that targets the underlying causes of injustice can be highly efficient, both for courts and parties, when compared to correcting minor, perhaps trivial, individual claims. Where reformers limit themselves to the resolution of small claims, this sometimes does little to empower individuals or enhance citizenship and, as more radical critics of the justice system might argue, simply applies a 'band-aid' solution that in the long-run does little more than reinforce, firstly, professional power and status; and secondly, a fundamentally unequal and unjust social order (BANKOWSKI & MUNGHAM, 1976, p. 72-79).

At this point, it is instructive to remember Abel's analysis of the politics of informal justice (ABEL, 1981). Abel recognises that informal processes can produce 'creative conflict', particularly if they empower and transform parties, and equally that not all forms of legal formalism are repressive.

So, we might ask, to what extent does IJ do more than secure individual documentation (marriage, birth certificates etc) that may confirm citizenship - though not necessarily access to essential services relating to health, education or housing - and deal with the collective needs of Indigenous and non-Indigenous remote communities, or environmental protection, and so engage with 'structural', rather than just 'individual' casework?

(GARTH, 1980, p. 171-202). Does reform connected with IJ in any way enhance 'party capability' or support 'creative conflict'? Should it?

There is some evidence that in Brazil it can do so, including with First Nations people. The State of Roraima established a project in the Indigenous community of Maturuca (Raposo Serra do Sol) which was a "*Polo Indígena de Conciliação*" and sixteen Indigenous conciliators were trained in family issues, debts and domestic violence. Over 80% of these cases were successfully resolved through conciliation and this initiative received an award in the "*Conciliar é legal*" project held by the National Justice Council (CNJ). According to Judge Aluizio Vieira the benefits were mutual:

> This pre-trial conciliation project is good both for Indigenous people as well as the Judiciary because it recognises conciliation by Indigenous communities, which is vital for respecting cultural diversity, while at the same time lowering judicial caseloads and administrative costs through diverting cases to informal conciliation mechanisms. (VIEIRA, 2019)

I wish to suggest that the real contribution of itinerant legal services, such as IJ (and also small claims courts) and PLS, is likely to be seen in their role as a 'legal laboratory' (ECONOMIDES, 1980), a space in which creative legal minds can experiment and improvise with new forms of adjudication, and new forms of legal service delivery, while also offering future lawyers (and sometimes clients too) the opportunity, quite literally, to learn about 'the law in action'.[17]

Here in Australia, IJ is sometimes known as 'bush courts' and illustrates the flexibility, adaptability and creativity of judges, though - because of the racist history I alluded to earlier - some sceptics call these courts 'apartheid courts' (SIEGEL, 2002; MARCHETTI & DALY, 2004).[18] These courts may be held in very remote locations, and often are not housed in a court building, sometimes they operate in a simple tent. Cases frequently

17 While these initiatives invariably benefit law students' education, one can question just how useful they are for clients, both in terms of the quality of legal advice (how is the accuracy of student advice guaranteed?) but also in terms of whether they can meet the demand or need for legal advice, which is so great that the mobile clinic could never be more than "a drop in the ocean" (a criticism I heard made of the mobile student legal advice service offered by the University of Latvia Law Faculty in Riga in 2004).

18 See also ECONOMIDES (2016, p. 158).

concern native title, do not necessarily follow standard procedures, or the conventions of court etiquette, and translators may be required. Normal rules of evidence may be suspended or adapted, but without compromising core values of the judicial process. Quite apart from resolving local disputes between parties, from a more anthropological standpoint these bush courts can raise deeper questions about what exactly is a court, and what is really required in the just resolution of disputes. The legal process frequently relies on frills and formalism, which often come with an expensive price tag, and these mobile courts force us to focus on what is essential in adjudication.

To that extent, I think we can see IJ (and itinerant legal services more generally) as a kind of 'legal laboratory' where we have the freedom to experiment with new forms of more accessible justice. So while some, particularly those fixated on technology, might argue that IJ is today obsolete, if not moribund, because they will soon be replaced by online court and dispute processing services, we should not ignore their ongoing contributions across a number of different fronts: from helping citizens navigate obscure bureaucratic and legal processes, through helping the next generation of lawyer connect with real people (and real legal problems) by exposing law students to formative clinical experiences that shape their professionalism and, finally, to helping reform the mainstream legal system itself by allowing judicial and other innovators the freedom to experiment. So, what are the future priorities and options for those wishing to strengthen IJ?

4. FUTURE PLANNING: GEOGRAPHY, DIAGNOSTICS AND COMPETENCIES

In my final comments, I want to suggest it may be time to take itinerant justice to the next level by developing another delivery model, one that goes beyond improvised solutions advanced by courageous, creative individual judges acting on impulse and initiative, toward a more strategic approach in which legal service delivery is guided by rigorous research and better planned through regional legal services committees on which stakeholder interests are represented, including Indigenous communities and

other remote consumers of legal services. Experimentation and innovation should continue, but within a new framework that can transcend individual legal needs, important as these are. New legal problems and new litigation targets need to be identified, but how?

My comments draw upon ideas for the reform of rural justice first advanced in *Justice Outside the City* (BLACKSELL, ECONOMIDES & WATKINS, 1991, p. 188-200) that call for integrated regional and central planning with a focus on policy implementation and, most recently, the 'counter-wave' that seeks greater recognition for Indigenous and environmental rights (ECONOMIDES, TIMOSHANKO & FERRAZ, 2020). As time is limited, I shall briefly highlight just three areas for further discussion: introduction of geographical 'location-allocation' models; consultative structures designed to facilitate and inform resource allocation and strategic planning for the enforcement of collective rights; and future training (continuing professional development) for judges and lawyers engaged in IJ and PLS. All three areas could have a positive and immediate impact on future policy by making itinerant legal services truly proactive, and in more than just a geographical sense.

I Geographical 'location-allocation' models

It is clear that current coverage of IJ is not equal and that there are gaps in provision with some remote areas where there is no itinerancy program (ECONOMIDES, TIMOSHANKO & FERRAZ, 2020, p. 54). In fact, one consequence of IJ being the product of individual initiative is that coverage inevitably is sporadic and geographically uneven (IPEA, 2015, p. 7).[19] However, since 2004, following Art. 125 of the *Emenda Constitucioinal 45* which made IJ mandatory throughout Brazil, this coverage problem has become more pressing and remaining gaps need to be filled.

Human geographers have long been aware of this problem, but mainly in relation to the distribution of education, health and other

19 For an analysis of similar problems in Australia see: LAW COUNCIL OF AUSTRALIA (2017).

public services, and therefore developed mathematical models to guide public servants as to the optimal location for schools and hospitals relative to population density and communications infrastructure. In the 1980s, we applied such techniques to determine the optimal location for para-legal services in South-west England in order to maximise resource allocation (BLACKSELL, ECONOMIDES & WATKINS, 1991, p. 191-192). These techniques have been applied in the past to guide decisions on the location of courts and, I would suggest, should be applied to planning routes and centres for itinerant legal services in all of its variant forms, from IJ to itinerant public defenders and student legal clinics (THOMAS, ROBSON & NUTTER, 1989).

II Consultative structures to plan legal service delivery and apply research

While this more scientific approach to planning resource allocation is likely to be more efficient, this alone will not be enough. It is vital that legal service delivery is informed both by experts and ordinary citizens with local knowledge, and that service providers listen carefully to consumer views of potential clients, whether from Indigenous or remote communities.[20] State policy on legal service provision should ensure implementation of national minimal standards, but these standards must be applied flexibly, taking account of limited resources, local circumstances and legal cultures. Choices will have to be made and some regions and communities may well have quite different legal needs and priorities, depending on what most threatens the local economy or environment. Regional policy therefore will need to review local resources, infrastructure and monitor local performance but, more than this, the understanding and experience of legal needs of those at the periphery need to

20 There are also practical problems of conducting legal needs studies of itinerant populations, as Pascoe PLEASANCE (2020, p. 351) notes: 'Sometimes surveys are aimed at particular population groups of interest, such as those on low incomes, or living in particular localities or forms of housing. Identifying appropriate sample frames can be particularly problematic in the case of itinerant groups, or those living at the periphery of society. For example, a potential problem in Brazil, experienced in the conduct of the 2008 Australian survey … might be effective inclusion of indigenous people; or populations such as those living within favelas.'. Note also recent attempts in Ecuador to create laws to strengthen Indigenous rights in relation to oil and mining companies control over Indigenous territory but without seeking consultation or the consent of Indigenous peoples themselves (KOENIG, 2020).

be brought to the attention of those directing resource allocation from urban centres. Regional legal services committees could provide such a forum and, I suggest, could be an invaluable conduit through which the 'counter-wave' might travel (BLACKSELL, ECONOMIDES & WATKINS, 1991, p.196-198; ECONOMIDES, TIMOSHANKO & FERRAZ, 2020, p. 74-84).

In Australia 'Aboriginal Justice Agreements' (ALLISON & CUNNEEN, 2010, p. 645) have been introduced in a number of states and territories in order to bridge the divide that separates Indigenous people from the state legal system in order to facilitate:

> …strategic planning in relation to criminal justice issues affecting Aboriginal and Torres Strait Islander peoples, enabling the creation of joint justice objectives across departments and agencies. It facilitates partnerships between government and Aboriginal and Torres Strait Islander communities and organisations at multiple levels, including at the local level, to work together to develop, implement and evaluate responses to over-incarceration. It also improves accountability—setting out clear objectives and providing measurable action plans[21].

These models could be exported elsewhere.

III Training for judges, lawyers and community workers in IJ and PLS

Finally, I wish to allude to the issue of future training for lawyers and judges and developing a legal culture more conducive toward nurturing itinerant competencies and promoting citizenship through collective legal action.[22] Since the early 1980s, Brazil has, following pioneering research by Joaquim FALCÃO (1974), approved important judicial tools that facilitate the protection of diffuse and collective rights (Cappelletti's

21 Aboriginal Justice Agreements (AUSTRALIAN LAW REFORM COMMISSION, 2018, 16.28). See also the work of Leanne Liddle in promoting an Aboriginal Justice Agreement in the Northern Territory (LIDDLE, 2020).
22 I am currently working with a social anthropologist on a report that will draw lessons from the anthropological literature for judges, legal policymakers and practitioners. This will be published next year as part of the Global Access to Justice Project. (RAMSTEDT & ECONOMIDES, forthcoming, 2021).

second wave): first, the *ação civil pública* was introduced in 1985 and followed by the *mandado de ação coletiva*, later approved by the 1988 Constitution which moved Brazil's internal legal culture toward a more collective approach for adjudication.

Despite this, Brazilian judges, according to Prof Maria Teresa SADEK (2004), remain a detached elite with 'aristocratic vestiges' - a point noted also by Prof Miguel Baldez[23] who thought judges inhabited an abstract world - and perhaps this cultural background should be borne in mind when explaining judicial attitudes to informal justice. While those judges that initiated IJ reforms clearly left behind the abstract world of their colleagues, and remain deeply committed to further developing mobile courts (an adaptation from earlier small claims courts), it is far from clear that those who manage the wider justice system share this same commitment to IJ, or to the (neo)constitutional ideology that supports 'making rights effective' (FARINELLI, 2009; GAULIA, 2020, p. 201-211).

Is it time to now review jurisdictional constraints on IJ that prevent or inhibit the development of new approaches for public law adjudication along the lines proposed by Chayes in the 1970s? It would seem that empirical research by Rafaela MOREIRA (2017), backed up by the IPEA Report (2015), points to four potential problem areas: judicial recruitment (attracting suitable and adaptable judges), judicial attitudes and techniques (too formal or limited to individual casework), judicial caseloads (inadequate case management) and party capability (the ability of clients to recognise the relevance of itinerant justice for their legal problems due to poor marketing). Training should help overcome some of these limitations and, at least to an outsider, it seems that EMERJ has a vital role to play in leading the reform effort. Indeed, it is clear that Judge Gaulia has already provided a platform for exactly this kind of training through her "*Projeto Justiça Cidadã*" which started around 15 years ago. This offers a 3-month training course for community leaders on the justice system which involves meetings with judges, public prosecutors, public defenders, lawyers, police-

23 Interview with Miguel Baldez (SÁ, BERNARDO & RESENDE, 2010)

men, and other public servants that participate in justice system. After the course is over, there are periodic follow-up meetings so that trainees can expand and update their knowledge of the justice system.[24]

5. CONCLUSION

Itinerant justice in Brazil is in many ways the judicial equivalent of *Médecins Sans Frontières:* independent judges, acting on their own initiative, have responded as humane professionals to try to meet the most pressing legal (and other) needs articulated by those living in remote areas. In so doing, judges have shown, contrary to Miguel Baldez's belief that they lead a cloistered existence, that through their outreach they can adapt and rise to meet new challenges.[25]

As with Samba, and other Brazilian dance forms such as Carimbó, Capoeira and Forró, but also ginga in football (*futebol-arte*) and the modernist architecture of Oscar Niemeyer, one can detect a distinctive, creative almost playful spirit at work here that relies heavily on the improvisation, passion and imagination so characteristic of the wider Brazilian culture. But there is also a more serious, deeper commitment to (neo)constitutional values and the rule of law that drives forward this reform effort. The next challenge, as I see it, will be to better balance individual initiative with collective planning, if possible by retaining some of the dynamism, radicalism and idealism of reformers such as Miguel Baldez, without adopting too much of the complacency, caution and cynicism of those conservatives he sought to provoke and challenge.

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24 Email from Judge Cristina Tereza Gaulia to Kim Economides, 2 November 2020.

25 There is now an organisation Lawyers Without Borders (LWOB, n.d.) which has an international presence in many law schools, and also another Justice Without Borders (JWB, n.d.) which creates transnational access to legal assistance for victims of labour exploitation and human trafficking.

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