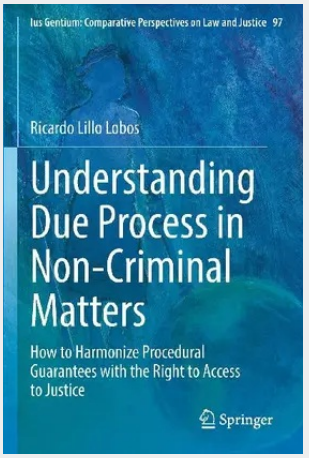
Lillo Lobos

# Understanding Due Process in Non-Criminal Matters

How to Harmonize Procedural Guarantees with the Right to Access to Justice




How we understand what procedure is due as a fundamental or constitutional right can have a critical impact on designing a civil procedure. Drawing on comparative law and empirically oriented methodologies, in this book the author provides a thorough analysis of how procedural due process is understood both in national jurisdictions and in the field of international human rights law.

The book offers a suitable due process theory for civil matters in general, assessing the different roles that this basic international human right plays in comparison with criminal justice. In this regard, it argues that the civil justice conception of due process has grown under the shadow of criminal justice for too long.

Moreover, the theory answers the question of what the basic requirements are concerning the right to a fair trial on civil matters, i.e., the question of what we can and cannot sacrifice when designing a civil procedure that correctly distributes the risk of moralharm while remaining accessible to people with complex and simple legal needs, in order to reconcile the requirements of procedural fairness with social demands for justice.

This book makes a valuable contribution to the field of civil justice, legal design, and access to justice by providing an empirically based normative theory regarding the right to a fair trial. As such, it will be of interest to a broad audience: policymakers, practitioners and judges, but also researchers and scholars interested in theoretical questions in jurisprudence, and those familiar with empirical legal studies, comparative law, and other socio-legal studies.

Introduction.- Part I. An Introduction of Two Ideal Types. The Checklist and Flexible Models of Procedural Due Process.- Due process as a subject of special jurisprudence. The Checklist and Flexible models of Procedural Due Process.¿- Part II. Legal Procedure as a Barrier for Access to Justice: Why Understanding Due Process and its Requirements Over Civil Procedure Matters.- The crisis of civil justice. Criticism from the access to justice movement and the reform movement in Latin America.- Preliminary exercise of a comparative perspective. Different approaches on how Due Process has been applied to common legal needs.- Part III. The Requirements of Fairness in Civil Procedure. Procedural Due Process in International Human Rights Law. Answers from Two Regional Systems.- A methodology to study two regional human rights protection systems.- The Inter-American Court of Human Rights case law on due process over civil matters.- TheEuropean Court of Human Rights case law on due process over civil or non-criminal matters.- A brief comparison between both regional systems.- Part IV. Procedural Due Process in the American Legal System.- Origins of the due process clause. The Magna Carta until its incorporation in the American Bill of Rights.- The path of procedural due process into the American Constitution. Scope of application.- Modern conceptions of procedural due process and the right to a fair trial in civil matters. Part V: Escaping from the Shadow. A Due Process Theory in Non-criminal Matters to Harmonize with Access to Justice Demands.- Why civil and criminal procedures require different theories on procedural due process.- .The right to a court as a key to understanding the right to a fair trial in civil matters.- A brief illustration of this framework. The legislative product of the Civil Justice Reform in Latin America. The case of Chile.- Conclusions.

**139,09 €**
129,99 € (zzgl. MwSt.)

*Lieferfrist: bis zu 10 Tage*

**Artikelnummer:** 9783030955366
**Medium:** Buch
**ISBN:** 978-3-030-95536-6
**Verlag:** Springer
**Erscheinungstermin:** 22.07.2023
**Sprache(n):** Englisch
**Auflage:** 1. Auflage 2022
**Serie:** Ius Gentium: Comparative Perspectives on Law and Justice
**Produktform:** Kartoniert
**Gewicht:** 458 g
**Seiten:** 281
**Format (B x H):** 155 x 235 mm



**Kundenservice Verlag Dr. Otto Schmidt KG**
Neumannstraße 10, 40235 Düsseldorf | kundenservice@otto-schmidt.de | 0221-93738-997 (Inland)