



Al Magnifico Rettore

**Al Direttore del Dipartimento di
Giurisprudenza**

**Al Coordinatore del Corso di Studi in
Giurisprudenza**

**Alla Coordinatrice del Corso di Studi in
Consulente del Lavoro e Scienze dei Servizi
Giuridici**

Università degli Studi di Messina

SEDE

Richiesta di congedo ai sensi dell'art. 8 della Legge n. 349/58

**(Art. 4, comma 78, della Legge 12.11.2011, n. 183 (Legge Stabilità) e art. 49, comma 2, del D.L.
5/2012 convertito, con modificazioni, nella Legge 35/2012)**

La sottoscritta Elena Militello, nata a Palermo il 18.12.1992, ricercatrice universitaria presso il Dipartimento di Giurisprudenza.

PREMESSO CHE

in data 01.02.2022 è stata ammessa come **Visiting Scholar** per l'a.a. 2022/2023 (per il periodo 01.09.2022-30.06.2023) dall'Università di **Harvard**, sita a Cambridge, Massachusetts (USA), in particolare presso il Minda de Gunzburg **Center for European Studies** (<https://ces.fas.harvard.edu/>), giusta lettera di ammissione che si allega alla presente **(All. 1)**,

CHIEDE

di essere collocata in congedo, **ai sensi dell'art. 8 della Legge 349/58**, per il periodo dal **01.01.2023 al 30.06.2023** per potersi dedicare ad esclusiva attività di studio e di ricerca scientifica presso l'Università di **Harvard**.

Si impegna, altresì, a comunicare alla S.V. ed al Consiglio di Dipartimento, con apposita relazione, i risultati della ricerca con le modalità di cui all'art. 18 del D.P.R. 382/80.

La sottoscritta dichiara di non aver compiuto il 35° anno di anzianità di servizio.

La sottoscritta dichiara, inoltre, di non aver usufruito in precedenza di altro congedo al medesimo titolo e che non percepirà corrispettivi di prestazioni professionali o impiegatizie.

Allega, altresì, alla presente il programma di ricerca (All. 2).

Messina, 16 marzo 2022

Firma Elena Mitello



February 1, 2022

Dr. Elena Militello
Researcher and Assistant Professor in Criminal Procedure
University of Messina
Piazza Pugliatti, 1
98122 Messina
Italy

Dear Dr. Militello,

I am very pleased to inform you that the Minda de Gunzburg Center for European Studies (CES) at Harvard University has accepted your application to its Visiting Scholars Program for the time period September 1, 2022, to June 30, 2023. The selection committee felt that your research project, together with your academic interests and accomplishments, will significantly add to the vibrant intellectual environment that CES aims to foster. Congratulations!

Below you will find some important preliminary information.

- 1) Laura Falloon, CES Program Coordinator, will be your main contact at the Center for visa and appointment questions. Her email is laurafalloon@fas.harvard.edu.
- 2) It is your responsibility to find local housing during your stay at Harvard. As a visiting scholar, you are eligible to apply for [Harvard University-owned housing](#); however, please keep in mind that there is limited inventory within Harvard, and other local arrangements may likely be necessary. In the event that you are able to locate Harvard housing, please let Carrie know, as a letter is required from CES confirming the specifics of your appointment.
- 3) You will be provided with a desk in a shared office at the Minda de Gunzburg Center for European Studies (CES), Adolphus Busch Hall, Harvard University, 27 Kirkland Street at Cabot Way, Cambridge, MA 02138.
- 4) As a member of the Harvard community, you will be asked to comply fully with all COVID-19 guidelines issued by the University, the Faculty of Arts and Sciences (FAS), and CES. Harvard has a vaccination requirement in place, and you should plan to be fully vaccinated and boosted with an FDA or WHO authorized vaccine for COVID-19 before coming to campus. Other guidelines may govern specific policies around regular surveillance testing for COVID-19; masking; eating and drinking in shared spaces; gatherings; travel; and more. Guidelines may shift as the pandemic evolves both locally and globally, and we will keep you apprised of relevant updates as your arrival approaches.
- 5) For scholars coming from outside the US, your appointment is pending University approval and confirmation that you have sufficient funding for the duration of the appointment, which is determined by the Harvard International Office (HIO). Visiting scholars are expected to be in residence locally for the entire period of their appointment, with only brief research and conference-related absences of not more than one week with prior written explanation. Inability to

meet these requirements may serve as cause to terminate and/or cancel appointments and participation in the Visiting Scholars Program.

6) CES strives to ensure that the research experience for visiting scholars is fruitful and stimulating. As a visiting scholar, you are required to participate in the *New Research on Europe Seminar*, which takes place weekly during the academic year. This is a forum for each visiting scholar to present his/her research project as a “work in progress” and obtain feedback and comments from scholars who attend.

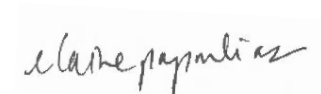
7) CES also seeks to integrate the research it facilitates with Harvard’s teaching and training mission. In accordance with this aim, visiting scholars should be receptive to meeting with Harvard graduate and undergraduate students, providing input on research, giving presentations in class, etc. should such requests arise. This cross-fertilization of ideas across disciplines and across Harvard populations is something that is highly valued and helps strengthen Harvard’s mission.

The Center endeavors to be a dynamic and welcoming institution for those engaged in scholarship on Europe. It also strives to foster a strong sense of community, and most of our visiting scholars find that the intellectual bonds and relationships they form here continue long after their stay concludes. CES hosts a robust series of seminars and lectures, and we hope you will attend as many as your schedule allows. Due to the pandemic, these are being held virtually at present; we do hope to pivot to in-person programming shortly, but this will depend on public health conditions.

Further information will be sent to you in the coming months to better prepare you for your time at CES. In the meantime, please review our useful [“Resources for Accepted Scholars”](#) link available on our website. Any additional preliminary questions can be directed to Carrie.

Thank you for your interest in CES and I look forward to welcoming you to campus.

Sincerely,



Elaine Papoulias
Executive Director, Minda de Gunzburg Center for European Studies (CES), Harvard University

cc: Laura Falloon
Program Coordinator, Minda de Gunzburg Center for European Studies (CES), Harvard University

ELENA MILITELLO

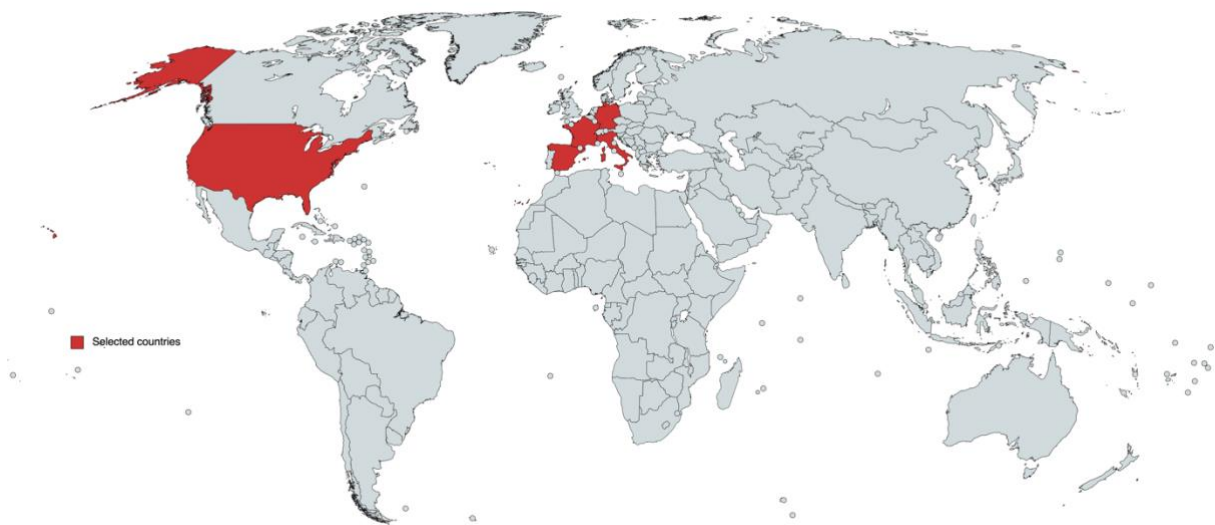
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Application to the German Kennedy Memorial Fellowship (for EU Citizens) and CES Visiting Scholars Program

Project Description

Title

An atlas of recent trends in negotiated criminal justice:
an evidence-based comparative analysis between selected European countries and the United States.



Abstract

The project focuses on a comparison of five legal systems in regards to the pressing issue of negotiation in criminal justice cases. It builds upon existing literature both on the many shortcomings of negotiated justice (and, especially, plea bargaining) and on the quantification of criminal procedure to attempt an unprecedented interdisciplinary connection of the two. The work will describe the traditional and current approaches of the selected countries, both in books and in action, as well as the migration of the plea-bargaining model from one side of the Atlantic to the other. Its final goal is a policy-making contribution to navigate through the safeguards that European countries put in place when adopting a negotiation model. It designs an evidence-based guideline on minimum “fair trial” safeguards that should be granted in any plea-bargaining instance.

Description

In the United States, plea bargaining is ubiquitous, it is the linchpin of the criminal justice system and it is virtually unbridled. Anyone dealing with the American criminal justice system perceives this reality, be it from the inside, as a practitioner, or from the outside, as an activist, a journalist, or a scholar, even a foreign researcher. The risks inherent in such a widespread use of pleas are blatant. On the one side, the prosecution might be tempted to indulge in excessively lenient offers to inflate its conviction rates, thus mining the overall deterrent function of punishment. On the other, innocent people might accept

a deal if they think there is a risk of a higher sanction at trial, with the consequent detriment of the public interest to the acquittal of innocents. The cost of retaining a lawyer for a full trial in the United States is unaffordable for most defendants, and this system disproportionately affects minorities and vulnerable groups in U.S. society (Alexander, 2010). In the face of such grave and obvious risks, however, the system shifted inexorably to today's figures of pervasive plea agreements. Several civil law European countries, lured by the economies and effectiveness promised by such negotiation models, proceeded with a "legal transplant" and introduced the notion of plea agreements with some corrective implementation norms.

The proposed research project shall analyze the history of the different forms of negotiated criminal justice in four European countries in a critical comparison with the United States, where the idea of negotiation was born. It combines legal comparison methods with an evidence-based approach, by harnessing available judiciary datasets on negotiated justice and leveraging available big data (Maltz, 2010). This study attempts to map and visualize criminal procedure models in the form of an "atlas" of negotiated justice in order to underline the spatial dimensions of criminal justice policies (Kurgan, 2013). The research focus covers both individuals and corporations trapped in a criminal investigation, in the belief that trial itself is already a form of punishment. It also dwells on the role of victims in negotiations and into the realm of restorative justice (Freiberg et al., 2020). Eventually, it aims to draw a minimum set of "fair trial" safeguards, needed to grant a safe negotiation (Alschuler, 1983; Langer, 2021). Crucially, these safeguards will come at the expense of some efficiency and frequency of pleas but it is essential to ensure that the rights to a fair trial and equality of arms can prevail.

Through comparative lenses, the project analyzes corrective actions introduced by legislative bodies wishing to transplant Anglo-Saxon plea agreements in systems that have not historically used them (Italy, France, Spain, Germany). Some of these actions relate intrinsically to defining features of civil law cultures; thus, they would not fit well within the U.S. framework. Others, instead, would not clash with the U.S. written and unwritten constitutional tradition.

The project lies at the intersection of law and public policy as these "guidelines" might represent a model cluster to steer public debate and agree on a minimum set of "fair trial" safeguards in the plea context. Policy guidelines should include, first, a careful redesign, or "reshape", of the outer contour of prosecutorial discretion. Second, the defense should have pre-plea access to the prosecution investigation file, which should be complete. Third, there should be a strengthening of preventive judicial checks. On the one hand, the assessment of the factual basis for the plea, now often a mere "rubber-stamp", should be implemented. On the other, judicial oversight should not be limited to passively endorsing whatever may have led to the offer; it should also involve a determination of grounds to dismiss and an assessment of the evidence collected up to that moment. Last, there should be an *ex-post* remedy: a chance to later appeal or petition for *habeas corpus* on voluntariness grounds or factual innocence claims.

Methods

The project adopts a highly multidisciplinary approach. Its most striking feature is the constant dialogue between law and public policy. It is divided into three main parts: an investigation on significant case studies; a theoretical study on their convergence; and a policy-making proposition.

The aim is to generate a dialogue between the two disciplines involved and to understand their specific interactions in the field of criminal procedure. To do so, firstly, this work will heavily rely on a series of

interviews with different judicial actors to assess the potential impact of negotiation on fair trial rights. Thus, real-life issues arising in judicial practice and critically reassessing the actions of investigators and judges will be underlined. Within the said framework, the reasoning of the different judicial actors in front of a potential plea agreement will be analyzed, while the most critical aspects of these experiences will be highlighted.

This first fieldwork phase is instrumental to the preliminary understanding of the relevant issues and the identification of which aspects are worthy of further theoretical analysis. Based on the outcomes of this first phase, the theoretical part will then be covered. There, the role of plea agreements in different judicial phases (pre-trial, preliminary hearing, trial, appeals) will be considered. The third phase will require the identification of the most suited model of criminal procedure in balancing plea agreements and fair trial rights through a “legal design” approach. Furthermore, the relationship between plea agreements and the principles of the free evaluation of evidence and the inner conviction of the judge will be analyzed. This is relevant because of its influence over evidentiary reasoning and the obligations to provide reasons for any judicial ruling.

The last phase of the research focuses on drafting suggestions for improving the respect of fair trial rights in criminal negotiations. Specific emblematic cases will be chosen, at first, through the gathered outcomes. Then, theoretical and practical criteria will be identified that should be followed when deciding which types of fair trial rights should be introduced and adopted. In such a context, best practices on the well-suited deployment of plea agreements in criminal proceedings will be identified. Finally, the best hermeneutic strategies will be suggested among both the already existing ones (*de iure condito*) and the potential future ones that could be the subject of appropriate legislative drafting (*de iure condendo*).

Expected results

All the main results are expected to have a significant social impact and can be summarized as follows.

1. The project will identify a model, in the framework of the legal design approach, for the main steps of a judicial proceeding, their logical connections, and the information flowing from one step to the other. The model will be as general as possible, but it will be focused on the steps involving plea agreements and identify how flaws in negotiation agreements may cause an unfair decision.
2. The project will promote the dissemination of a culture of quantitative analysis of statistical data, combined with visual representations of those data, together with interviews with each category of stakeholders.
3. A white book, available on open access, will be published to focus the attention of all involved subjects on how to properly deal with plea negotiations respecting fair trial rights throughout the whole criminal procedure. The white book will contain guidelines to manage uncertainty in criminal proceedings involving the assessment of a plea agreement, as well as future suggestions *de iure condendo*.

Several further beneficial effects to the local communities may be expected from the project, including:

- increased public trust in justice, since pursuing judicial truth through a more sound approach to plea agreements can ensure credibility;
- benefits to all involved parties, because the proposed approach favors the correct reconstruction of events, by providing as complete as possible information on the available evidence and reasons behind a plea agreement;

- the minimization of the risk of wrongful convictions, therefore ensuring a more efficient administration of justice, within a reasonable time;
- smoother international cooperation in criminal matters (included, but not limited, to the field of transnational gathering and exchange of evidence), because the use of a shared set of procedural safeguards also fosters mutual trust. It is well known that mutual trust is crucial for the smooth functioning of mutual recognition instruments, as requested by Justice programs of the EU Commission (JUST) supporting projects aimed at strengthening judicial cooperation in civil and criminal matters.

While the white book will represent the main tool for disseminating the project results, other more traditional dissemination tools will be considered during the activity, such as paper publication on qualified journals, both in the forensic science and in the public policy field, or in books. Also, presentations to qualified international conferences are planned, together with meetings and events specifically organized locally.

The opportunity will be also considered to create a website to collect multimedia materials, such as conference registrations or maps and visual representations of collected data, and to ensure dissemination of the results as widely as possible.

Project Phases

In the phase of preliminary work, the first month of the project will be useful to draw the boundaries of the project scope and to prepare the preliminary section on the approach and the methods to be used.

In the second phase, the focus will be on identifying the main positive aspects and highlighting the main negative sides of negotiation in U.S. criminal justice, first by a study of the legal framework and relevant statistics and then by conducting semi-structured interviews with relevant actors from both the criminal justice system and the communities, especially those disproportionately affected.

Third, a convergent comparison approach will be adopted to statically map traditional approaches to plea negotiations, both descriptively and spatially, between the traditional common law favor towards pleas and the traditional civil law skepticism towards negotiation, together with a sample of non-traditional approaches and the case of restorative justice.

In a fourth phase, the approach will be dynamic in terms of the passing of time, exploring how legal transplant and reverse migrations in this field have worked, firstly from the U.S. towards Europe and then from Europe back to influence the U.S. debate.

The fifth and last phase will be devoted to the drafting of a proposal for a minimum set of “fair trial” safeguards in the plea-bargaining context, a sort of “white book” of policy proposals ranging from reshaping the outer contour of prosecutorial discretion to pre-plea discovery to preventive judicial checks, and *ex-post* remedies.

Essential Bibliography

- ALEXANDER M., *The new Jim Crow: mass incarceration in the age of colorblindness*, New Press, 2010.
- A. W. ALSCHULER, *Implementing the Criminal Defendant's Right to Trial: Alternatives to the Plea Bargaining System*, 50 *University of Chicago Law Review* 931 (1983).
- C. BERDEJÓ, *Criminalizing Race: Racial Disparities in Plea-Bargaining*, 59 *B.C. L. Rev.* 1187 (2018).
- A. M. CRESPO, *The Hidden Law of Plea Bargaining*, 118 *Columbia Law Review* 1303 (2018).
- A. FREIBERG, A. FLYNN, *Victims, and plea negotiations: overlooked and unimpressed*, Palgrave Macmillan, 2020.
- K. S. HENDERSON, E. N. FOUNTAIN, A. D. REDLICH, J. A. CANTONE, *Judicial involvement in plea-bargaining*, in *Psychology, Public Policy, and Law*, advance online publication, 2021.
- M. D. HOLMES, H. C. DAUDISTEL, W. A. TAGGART, *Plea Bargaining Policy and State District Court Caseloads: An Interrupted Time Series Analysis*, 26 *Law & Society Review* 139 (1992).
- C. KING, N. LORD, *Negotiated Justice and Corporate Crime. The Legitimacy of Civil Recovery Orders and Deferred Prosecution Agreements*, Palgrave Pivot, 2018.
- L. KURGAN, *Million-Dollar Blocks*, in ID., *Close Up at a Distance: Mapping, Technology, and Politics*, MIT Press, 2013, pp. 187-204.
- M. LANGER, *Rethinking Plea Bargaining: The Practice and Reform of Prosecutorial Adjudication in American Criminal Procedure*, 33 *American Journal of Criminal Law* 223 (2006).
- M. LANGER, *Plea Bargaining, Conviction Without Trial, and the Global Administratization of Criminal Convictions*, 4 *Annual Review of Criminology* 377 (2021).
- M. MALTZ, *Look Before You Analyze: Visualizing Data in Criminal Justice*, in A. R. PIQUERO, D. L. WEISBURD (EDS.), *Handbook of Quantitative Criminology*, Springer, 2010, pp. 25-52.
- R. SIMMONS, *Quantifying Criminal Procedure: How to Unlock the Potential of Big Data in Our Criminal Justice System*, *Mich. St. L. Rev.* 947 (2016).
- J. T. WALKER, G. R. DRAWVE, *Foundations of Crime Analysis. Data, Analyses, and Mapping*, Routledge, 2018.