

Access to Justice as a Moving Frontier

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I. ACCESS TO JUSTICE AND ITS COMPANIONS

The phrase "access to justice," entered the language in its current meaning in the late 1970s.¹ Earlier it had referred to access to the government's judicial institutions. But in the late 1970s it acquired a new and broader meaning: the ability to avail oneself of the various institutions, governmental and non-governmental, judicial or non-judicial, in which a claimant might find justice. This vision of justice in many modalities and diverse institutional settings arrived in the 1970s with the flourishing of the Florence Access to Justice Project. A scholar of vast imagination and entrepreneurial energy, Mauro Cappelletti, presided over the project, which was sponsored by the Ford Foundation, the Italian Research Council (CNR) and the Italian Ministry of Education. The work of the Florence project is embodied in the massive multi-volume series *Access to Justice* published in 1978 and 1979² and in a number of satellite volumes.

Building on programs and experiments in many locations, the Florence project codified a broadened notion of access beyond the lack of lawyers and beyond courts as the site of

justice-seeking. Looking back at the end of the seventies, Cappelletti himself saw the development of the access to justice notion as comprising three "waves" exemplified by a series of institutional developments particularly marked in the United States:

"The first wave, beginning in 1965 with the Office of Economic Opportunity's neighborhood law firms program, involved the reform of institutions for delivering legal services to the poor. The second wave sought to extend representation to "diffuse interests" such as those of consumers and environmentalists: it commenced in the United States with the development of foundation-supported "public interest law firms" in the 1970s. The third wave followed in the 1970s with a shift in focus to dispute-processing institutions in general, rather than simply on institutions of legal representation; less formal alternatives to courts and court procedures...emerged in bold relief..."³

Access to justice did not arrive on the legal scene unaccompanied. It was one of a set of intellectual triplets that appeared in the 1970s. Its siblings were the dispute perspective in legal studies and the Alternative Dispute Resolution (ADR) movement. At their start the three infants were very close, almost inseparable, but as they grew they experienced a kind of 'big bang' sending them in different directions. As they retreated from one another, they were adopted by different parents, and matured in very different environments with different companions.

These triplets were the progeny, born late in life, of a remarkable movement of expansion of accountability and remedy fostered by courts and legislatures in the years between the end of World War.

Two and the mid-1970s.⁴ An enlargement of remedies, an expansion of standing, abolition of old immunities, and the promotion of civil rights provided ordinary people with new occasions for using the courts and more chance for success when they did. There was a proliferation of programs for affording legal representation to poor and unrepresented

groups. An increasing number of legal professionals viewed such expansion as the test of professional achievement.

The first of the triplets to gain prominence was the dispute perspective in legal studies. By this I refer to a body of work⁶ arguing that the study of law should focus on the construction of disputes as well as on rules and courts. The dispute perspective envisioned adjudication in courts as only one among various ways that society dealt with disputes – and a relatively infrequent one at that. The central intellectual construct of the dispute perspective was the dispute pyramid – the notion that any sector of the legal world can be envisioned as a pyramid in which a base of troubles or injuries underlies a layer of perceived injuries, which leads in turn to successively smaller layers of grievances (that is, injuries for which some human actor is viewed as responsible), claims, and disputes. A portion of these disputes are brought to lawyers and courts and successively smaller portions are the subject of trials, appeals, and published judicial opinions.⁷ In one of the classics of the dispute literature, Felstiner, Abel and Sarat show how the lower layers of the pyramid are constructed – by naming, i.e., recognition and identification of an injury; blaming, i.e., the identification of a human agent responsible for that injury; and, finally, claiming i.e., the pursuit of a claim against that party.⁸

The dispute perspective provided a powerful stimulus for the broadening of the access agenda and a theoretical structure for depicting the range of access concerns. The pyramid model pointed to multiple possibilities of disconnection at every stage of the construction of adjudication. An injured party might fail to perceive injury; or might fail to attribute it to a human agency; ignorance or intimidation or cost barriers might inhibit making a claim or pursuing a dispute or obtaining legal help; lack of resources and staying power might undermine effective use of the courts, and so forth. Accordingly, access to justice was visualized as encompassing all of these linkages.

The dispute perspective provides not only a taxonomy of access chokepoints, but also the basis for critical assessment of

legal arrangements. The dispute pyramid is useful for analyzing systems, like our own, in which there is much more promised than delivered. Indeed, (most?) modern democratic systems are designed so that if everyone with a legitimate claim invoked them, the system would collapse. Such systems depend on: (a) the efficacy of general effects⁹ – exerting control through communication of information rather than actual enforcement; (b) the availability of informal proxies for legal action,¹⁰ and finally (c) apathy, ignorance, cultural and cost barriers that inhibit the assertion of legal rights. They are inherently tokenist and symbolic – rules are there to be celebrated and cherished, not to be applied in every instance that they presumptively cover. Real steak, or something approximating it, is served to those who can make the matching investments required for successful legal action; most others must content themselves with some combination of real hamburger and symbolic sizzle.

Informed by the dispute perspective, access to justice implies a rich agenda of reform. But the same dispute perspective warns us that the most visible and dramatic reforms may do little or nothing to reduce the disparity between proficient users of the system and 'one-shotters'. Felstiner, Abel and Sarat pointed out that because there are great disparities at the earlier stages in which injurious experiences are transformed into claims and disputes, programs to promote access to justice in the upper reaches of the pyramid (typically by facilitating the transformation of disputes into lawsuits) "may accentuate the effects of inequality at the earlier, less visible stages, where it is harder to detect, diagnose, and correct..."¹¹

Access to Justice gained respectability and institutional presence very rapidly. Twenty-five years ago in 1978, while the Florence project was still at work, it was the "official theme" of the American Bar Association.¹² Since then, Access to Justice has become an accepted corner of the legal world, inscribed in scholarly and practitioner publications. For example, the Index to Legal Periodicals lists three hundred sixty-one books and periodicals with "access to justice" in their titles in the past

twenty-five years.¹³ The *Windsor Access to Justice Yearbook* commenced publication in 1981.

Twenty-five years on, access to justice has become a program of foundations, of non-governmental organizations (NGOs), of bar groups (like the Law Society of Upper Canada and the State Bar of California), of governments – in both domestic policy and in their foreign aid operations (e.g., the United States Agency for International Development, the United Kingdom's Department For International Development), and of international organizations (e.g., the United Nations Development Project, the Asian Development Bank). For many of these sponsors, Access to Justice is coupled and/or merged with its trans-national cousin, the Human Rights movement. Fiscal anxieties have led to curtailment of programs for providing legal services on a routine basis, but programs for court reform, special forums, legal literacy, and so forth have proliferated, while judicial intervention to vindicate and extend rights has multiplied.

Just as Access to Justice has been institutionalized in an array of bar, NGO and governmental programs, the dispute perspective has been institutionalized in academic programs, and a research community that includes the flourishing law and society movement¹⁴ (and overlaps with some regions of law and economics), and institutions like the RAND Institute for Civil Justice (founded in 1979).¹⁵ The proliferating research output of the law and society scholarship is found in dedicated publications¹⁶ and increasingly in ordinary law reviews. It has infiltrated mainstream legal scholarship, so that work inspired by and incorporating the dispute perspective passes without challenge as real legal scholarship.¹⁷

In its beginnings, the third triplet, ADR, was so close to Access to Justice that it was sometimes hard to distinguish them. ADR was also close to the dispute perspective, from which it borrowed its intellectual bearings.¹⁸ Foundation support established the National Institute for Dispute Resolution in 1983. From the mid-1980s, the William and Flora Hewlett

Foundation pursued a sustained program to build a base of academic "theory centers" and create "conflict resolution" as an academic field. But the great flourishing of ADR was outside the academy in the creation of new occupational groups of "neutrals"—mediators, arbitrators and other dispute processors. Corporate actors embraced ADR to address some high-end disputes with their peers, but even more avidly to create in-house forums to cabin disputes with employees and customers.¹⁹ Courts embraced ADR as a way to control burgeoning caseloads and to divert cases they regarded as undeserving of their attention.²⁰ As well, they have been broadly supportive of attempts by private parties to corral cases into ADR forums, some free standing but some captive.²¹ A steady diet of the anabolic steroids of corporate and governmental support has made ADR not only far larger than its siblings, but also increasingly distant from them.²² This is not the place to address the much discussed question of mandatory ADR proceedings, but I mention them to suggest that in developing along this technocratic path, ADR no longer enjoys the assumption of facilitating access to justice, but has become an object of suspicion and in some cases a direct rival.²³

II. THE EXPANDING FRONTIERS OF ACCESS TO JUSTICE

For the most part access to justice programs have focused on enabling people to achieve justice as it is defined – and promised – in their legal regimes (or with some elaborations borrowed from other regimes). Access has included programs to promote 'legal literacy,' to provide lawyers, to make courts more user-friendly and more efficient in delivering these existing rights at an affordable cost. It has meant, in short, filling 'unmet legal needs'.²⁴ The beneficiaries of these programs do not necessarily formulate the process in terms of justice; many may think of this as problem solving or achieving an appropriate adjustment (e.g., a divorce, a settlement) and may even

reject the notion that they are seeking justice.²⁵ Typically, such adjustment is achieved by informal negotiation or a truncated invocation of the formal legal process; full-dress adjudication is an infrequent means of pursuing justice.

ADR has taken another tack. Focusing on reducing the transaction costs and externalities (including frustration and lack of fulfillment) that accompany access to formal legal justice, it proposes to establish alternative forums or procedures that deliver something better or at least less costly and protracted. ADR may be promoted in terms of superior quality of process or results – increase in mutual satisfaction, achievement of win-win solutions, healing of ruptured relationships, and so forth. These features loom large in advocacy of ADR and they may occur in some programs, particularly up-market intercorporate dispute resolution. But most programs are adopted and justified because of factors of cost and timeliness. Whether the justification is in terms of quality or in terms of production, the justice that is to be equaled or surpassed is measured by the remedies presently prescribed (but frequently not delivered) by legal institutions. So both ADR and access to justice each hark back to the dispute perspective in positivist fashion: naming is perceiving an injury of a sort remedied by the existing practice of institutions; blaming is identifying an agent to be held accountable by those practices; and claiming is seeking remedies afforded by those practices – or by incremental adjustments of them. Access to justice has been concerned for the most part with removing the barriers to claiming what were already recognized as entitlements. Since all legal systems contain regions or even continents of vast underenforcement, this has left considerable territory for our expansionist ambitions.

I would like to direct attention to another dimension of access to justice. What happens if we take the justice in that phrase not as the vindication of rights and entitlements set out in the existing law and its best institutional practice, not as stable and determinate, but as itself a fluid, moving, and labile thing. This takes us back to naming and blaming – to the

perception of something as an injury and the attribution of responsibility for remedy of that condition. I would argue that change in this zone of unvindicated and unremedied troubles is the hidden but truly dynamic dimension of access to justice.

Let me put this another way: justice is the negation or correction of injustice. But there is not a fixed sum of injustice that is diminished by every achievement of justice. The sphere of perceived injustice expands dynamically with the growth of human knowledge, with advances in technical feasibility, and with rising expectations of amenity and safety.²⁶ The domain of unvindicated and unremedied injustice is growing – because it is indissolubly linked to the expanding realms of human knowledge and technical feasibility, and to the elevated expectations that they generate.

The search for justice is driven by the production of injustice. The discomforts and risks of everyday life have declined dramatically for most people and there is a widespread sense that science and technology can produce solutions for at least many of the remaining problems. Even so, we will not approach a problem-free world, for people are capable of identifying or inventing new problems as quickly as the old ones are solved. This is not a cynical observation about an insatiable appetite for a 'risk free world.' Rather it is premised on the notion that the very same human capabilities that create solutions for existing problems – by fulfilling existing needs and wants – discover or create new needs, new wants, and new problems. But in the process, as more things are capable of being done by human institutions, the line between unavoidable misfortune and imposed injustice shifts. The realm of injustice is enlarged. For example, at one time having an incurable disease was an inalterable misfortune; now a perception of insufficient vigor in pursuing a cure or distributing ameliorative drugs can give rise to a claim of injustice. As the scope of possible social interventions broadens, more and more terrible things become defined by the incidence of possible intervention. Thus famine or social subordination or a flawed appearance is not inalterable fate, but

a matter of appropriate interventions. What was seen as fate may come to be seen as inappropriate policy.²⁷ Advances in human capability and rising expectations result in a moving frontier of injustice. These advances seem to be accelerating. A group of leading bio-ethicists observe:

"As the possibilities for significant and large-scale genetic interventions on human beings come closer to becoming actualized, we may be forced to expand radically our conception of the domain of justice by including natural as well as social assets among the goods whose distribution just institutions are supposed to regulate".²⁸

There is another dimension to the moving frontier. Not only does concern about justice move to include new kinds of troubles, but it moves to the troubles of new sorts of people who were previously of little or no account – for example, people with disabilities and sexual minorities. Changing sensibilities among the advantaged and the spread of resources for mobilization to less advantaged groups, both closely linked with changing communication technologies, bring new injustice claims onto the social agenda.

What are the implications of recognizing the moving frontier? First, that increases in justice do not imply a corresponding decrease in the amount of injustice. In an expanding social and legal universe, justice/injustice is not a zero-sum game – but both grow together. Thus the total amount of injustice is not something we can reduce or should want to reduce, because injustice keeps growing with human inventiveness and knowledge – and very possibly faster than we can institutionalize justice. Hence symbolic acknowledgment of entitlements is likely to arrive before social arrangements change to make their vindication routine and ordinary.

Second, in a world of expanding capabilities and rising expectations, where claims of injustice proliferate, we cannot avoid the necessity of rationing justice. Justice is not free. It uses up resources – money, organization, and not least the limited supply of attention. And every expenditure of these

involves corresponding opportunity costs. And justice is not the only thing we want. Few would argue that the lowest priority claim for justice should enjoy a lexical priority over every other goal. Not all grievances can be addressed. In deciding which are worthy candidates for expending Access to Justice resources, we cannot rely on common sense, for common sense is an unstable residue of understandings being compromised by advancing technology and changing perceptions. What once were frivolous claims are now considered serious and legitimate – for example, emotional injury and sexual harassment. A frivolous claim is one that is clearly outside the boundaries of claims recognized under existing theory. But the moving frontier suggests that many claims that are presently seen as beyond the pale will eventually be located within the boundary of recognized claims. Consider such "outlandish" claims as a right to an attractive appearance. A right to have my rare disease researched. A right to protection from the seductions of fast and fattening food. A right to genetic manipulation to resist these seductions. A right to pleasant weather. A right to fashion "designer children." A right to a remedy for dishonor and deprivation of ancestors.²⁹ Which of these do we think will be reached by the moving frontier? Which do we feel safe in predicting will not? Contrariwise, are there cases where the present frontiers of protection and remedy will recede?³⁰

These new cutting edge claims, many at the high end in terms of the affluence of those who assert them and the high cost of vindicating them, will not supplant the staple claims of the most vulnerable – claims for divorces, representation in criminal proceedings, work injuries, consumer fraud. The staple access to justice claims will multiply while the new territories of complex and problematic claims are added to the agenda at an ever-increasing pace.

In these new territories, the problems of equal equipage and competence may be accentuated. For the moving frontier of justice involves a series of contests in which the conditions of equal participation are not present.³¹ For the most part the

advances in human capability and control that drive the justice frontier are located in or managed by artificial persons (APs) not by natural persons. These actors produce new injustice not because they are bad guys, but because they are good guys doing their thing. Thus the aspiration to access to justice leads us to the problem of contending with corporate actors, who we know are generally more proficient players of the law game than natural persons.³²

Curiously this vast horizon for access to justice unfolds just as law, lawyers and legal institutions are the object of suspicion and disdain by many elite groups (business, political, academic, media), who are persuaded that society is suffering from "too much law."³³ Optimism about solving problems and a great flowering of interest and energy in innovative schemes for corrective justice (international prosecution of war criminals and brutal dictators, righting old wrongs, compensating victims of terrorism), exists side by side with pessimism about forward looking distributive justice (deterioration of the universal safety net). Although access to justice began as a matter of the enlargement of opportunities for corrective justice, the moving frontier collapses the distinction between corrective and distributive justice. The choice of which corrective initiatives to pursue is a distributive "political" decision. The rationing and prioritizing of opportunities for distributive justice lifts the veil of being technically legal and non-political. Politically diverse and competing institutions and agendas are already a familiar feature of the world of public interest law. We should be neither surprised nor unhappy to see a similar diversity of access to justice programs.

Endnotes

- ¹ Earlier the stock phrase "access to the courts of justice," which dates at least as far back as 1840 (*Lessee of Pollard's Heirs v. Kibbe*, 39 U.S. 353 (1840) (WL); *Cary v. Curtis*, 44 U.S. 236 (1845)) (WL) was occasionally abbreviated to "access to justice"—as in *Ex parte Allis*, 12 Ark. 101 (Ark. 1851) ("every citizen should have convenient access to justice" at *6) (WL); *State ex rel. Clark v. Hillebrandt*, 244 La. 742

- (La. 1963) (WL). The noun phrase 'access to justice' surfaces in Morton Mintz, "Coalition Seeks Hill Aid to Widen Access to Courts," *Washington Post*, Jan. 30, 1977, A24.
- 2 M. Cappelletti, ed., *Access to Justice* 4 vols. in 6 (Milan: A. Giuffrè; Alphenaaenderijn: Slithoff & Noordhoff, 1978-79). A follow up volume, M. Cappelletti, ed., *Access to Justice and the Welfare State* was published in 1981.
 - 3 M. Cappelletti, "Introduction" in *Access to Justice and the Welfare State* (1981) at 4.
 - 4 On this expansion see Marc Galanter, "The Turn Against Law: The Recoil Against Expanding Accountability" (2002) 81 *Tex. L. Rev.* 285 (Lexis, WL) [Galanter, "Turn Against Law"]. See also, William E. Nelson, *The Legalist Reformation: Law, Politics and Ideology in New York 1920-1980* (Chapel Hill: University of North Carolina Press, 2001) at 185-87.
 - 5 Mauro Cappelletti, James Gordley, & Earl Johnson, *Toward Equal Justice: A Comparative Study of Legal Aid in Modern Societies* (Milan: Dott. A. Giuffrè Editore; Dobbs Ferry: Oceana Publications, 1975).
 - 6 Richard L. Abel, "A Comparative Theory of Dispute Institutions in Society" (1974) 8 *Law & Soc'y Rev.* 217; Bliss Cartwright, Marc Galanter & Robert Kidder, eds., "Special Issues on Litigation and Disputes Processing" Part I (1974) 9 *Law & Soc'y Rev.* & Part II (1975) 9 *Law & Soc'y Rev.*; Laura Nader & Harry F. Todd, Jr., eds., *The Disputing Process - Law in Ten Societies* (New York: Columbia University Press, 1978) at 9.
 - 7 The virtues and vices of the dispute paradigm are analyzed in several of the papers in "Special Issue on Disputes Processing and Civil Litigation" (1980-81) 15 *Law & Soc'y Rev.*; see especially Robert L. Kidder, "The End of the Road? Problems in the Analysis of Disputes" (1980-81) 15 *Law & Soc'y Rev.* 717 and David M. Trubek, "The Construction and Deconstruction of a Disputes-Focused Approach: An Afterword" (1980-81) 15 *Law & Soc'y Rev.* 727.
 - 8 William L.F. Felstiner, Richard L. Abel & Austin Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming..." (1980-81) 15 *Law & Soc'y Rev.* 631 [Felstiner & Abel].
 - 9 Jack P. Gibb, "The Deterrence Doctrine: Theory, Research and Penal Policy" in Leon Lipson & Stanton Wheeler, eds., *Law and the Social Sciences* (New York: Russell Sage Foundation, 1986) 319; Jack P. Gibb, *Crime, Punishment and Deterrence* (New York: Elsevier, 1975); Marc Galanter, "Adjudication, Litigation and Related Phenomena" in Leon Lipson & Stanton Wheeler, eds., *Law and the Social Sciences* (New

- York: Russell Sage Foundation, 1986) 151, 215-220; Marc Galanter, "The Radiating Effects of Courts" in Keith O Boyum & Lynn Mather, *Empirical Theories About Courts* (New York: Longman, 1983) 124-127.
- 10 Stewart Macaulay, "Non-Contractual Relations in Business: A Preliminary Study" (1963) 28 *Am. Soc. Rev.* 55.
- 11 Felstiner & Abel, *supra* note 8 at 637.
- 12 President Jimmy Carter, American Bar Association President William B. Spann Jr. & United States Supreme Court Chief Justice Warren Burger, "President Carter's Attack on Lawyers, President Spann's Response, and Chief Justice Burger's Remarks" (1978) 64 *A.B.A.J.* 840 at 844. Twenty-five years before that, in 1953, before the rights revolution and the landmark decision, *Brown v. Board of Education*, such a theme would have been unimaginable.
- 13 (2003) 96 *Index to Legal Periodicals and Books*, online: The Index to Legal Periodicals <WilsonWeb <<http://www.hwwilson.com/databases/legal.htm>>.
- 14 The Law and Society Association was founded in 1964; its first national meeting was held in 1975. The Canadian Law and Society Association was founded in 1982.
- 15 Institute for Civil Justice, A Report on the First Four Program Years April 1980-March 1984 (1984). See Richard C. Reuben, "Focus on the RAND Report: Perspectives on the RAND Report: The Dialogue Continues" (1997) 3 *Disp. Resol. Mag.* 3 (WL).
- 16 See *e.g.*, the long-established *Law & Society Review* (1966) and *Law and Social Inquiry*, the *Canadian Journal of Law and Society* (1985) and the *Journal of Empirical Legal Studies* (2003).
- 17 A recent and massive example is Margo Schlanger, "Inmate Litigation" (2003) 116 *Harv. L. Rev.* 1555 (Lexis, WL). See also Kevin Clermont & Theodore Eisenberg, "Plaintiphobia in the Appellate Courts: Civil Rights Really Do Differ from Negotiable Instruments" (2002) *U. Ill. L. Rev.* 947 (Lexis, WL); Theodore Eisenberg, "Testing the Selection Effect: A New Theoretical Framework with Empirical Tests" (1990) 19 *J. Legal Stud.* 337; Michael Heise, "The Past, Present and Future of Empirical Legal Scholarship: Judicial Decision Making and the New Empiricism. *Symposium: Empirical and Experimental Methods in Law*" (2002) *U. Ill. L. Rev.* 819 (Lexis, WL). In view of this widespread but unremarked infiltration we should be skeptical of Richard Posner's triumphalist contrast of the glorious success of the law and economics movement with the modest accomplishments of the sociology of law (as he calls it). See Richard A. Posner, "The Sociology of the Sociology of Law: A View from Economics" (1995) 2

- Eur. J. L. & Econ. 265; Marc Galanter & Mark Alan Edwards, "Introduction: The Path of the Law *And*s" (1997) Wis. L. Rev. 375 (Lexis, WL).
- 18 The most influential paper in the ADR movement was Professor Frank E.A. Sander, "Varieties of Dispute Processing" (Paper presented to the Pound Conference, 1976) 70 F.R.D. 111 (1976). Prof. Sander remarked to me (in the late 1970s or early 1980s) that the paper was inspired by work in the *Law & Society Review*. A recent account credits the Pound Conference as marking "the beginning of a concerted effort to stimulate court-connected mediation programs...." Dorothy J. Della Noce, "Mediation Theory and Policy: The Legacy of the Pound Conference" (2002) 17 Ohio St. J. Disp. Resol. 454 at 545 (WL).
- 19 Lauren Edelman & Mark Suchman, "When the 'Haves' Hold Court: the internalization of disputing in organizational fields" (1999) 33 Law & Soc'y Rev. 941 (Lexis).
- 20 James R. Holbrook & Laura M. Gray, "Court Annexed Alternative Dispute Resolution" (1995) 21 J. Contemp. L. 1 (Lexis, WL).
- 21 David S. Schwartz, "Enforcing Small Print to Protect Big Business: Employee and Consumer Rights Claims in the Age of Compelled Arbitration" (1997) Wis. L. Rev. 33 (Lexis, WL). Holly A. Streeter-Schaefer, "A Look At Court Mandated Civil Mediation" (2001) 49 Drake L. Rev. 367. (Lexis, WL)
- 22 For an account of the scale of ADR activity, see Thomas J. Stipanowich, "The Growth and Impact of 'Alternative Dispute Resolution' and Conflict Management Systems" [New York, prepared for the CPR Institute for Dispute Resolution, unpublished].
- 23 Schwartz, *supra* note 21; Jean Sternlight, "Is the U.S. Out On A Limb? Comparing the U.S. Approach To Mandatory Consumer And Employment Arbitration To That Of The Rest Of The World" (2002) 56 U. Miami L. Rev. 831 (Lexis, WL). For earlier critique of the ADR thrust to privatization, see Richard L. Abel, ed., *The Politics of Informal Justice* (New York: Academic Press, 1982).
- 24 Barbara A. Curran, *The Legal Needs of the Public: The Final Report of a National Survey* (Chicago: American Bar Foundation, 1977); Edward A. Dauer, "A Wider Notion of Unmet Legal Needs" in American Bar Association, ed., *Civil Justice: Agenda For The 1990s Papers of the American Bar Association National Conference on Access to Justice in the 1990s* (Chicago: American Bar Association, 1991); American Bar Association, Consortium on Legal Services and the Public, *Legal Needs and Civil Justice: A Survey of Americans*, 1 (1994) (presenting the major findings of the ABA's Comprehensive

- Legal Needs Study); William P. Quigley, "The Unmet Civil Legal Needs of the Poor in Louisiana" (1992) 19 S.U. L. Rev. 273 (WL); John C. Scully, "Mandatory Pro Bono": An Attack on the Constitution" (1991) 19 Hofstra L. Rev. 1229 (Lexis, WL).
- 25 Leon Mayhew, "Institutions of Representation: Civil Justice and the Public" (1975) 9 Law & Soc'y Rev. 401.
- 26 Lawrence Friedman, *Total Justice* (New York: Russell Sage Foundation, 1985).
- 27 Judith N. Shklar, *The Faces of Injustice* (New Haven: Yale University Press, 1990).
- 28 Allen Buchanan et. al., *From Chance to Choice: Genetics and Justice* (Cambridge: Cambridge University Press, 2000) at 63.
- 29 On the growing prevalence of such claims, see Marc Galanter, "Righting Old Wrongs" in Martha Minow, Nancy L. Rosenbaum, ed., *Breaking the Cycles of Hatred: Memory, Law, and Repair* (Princeton: Princeton University Press, 2002) at 107. Roy Brooks, ed., *When Sorry Isn't Enough: The Controversy About Apologies And Reparations for Human Injustice* (New York: NYU Press, 1999).
- 30 There may be contractions in the realm of injustice or at least of remediable injustice: e.g. decline of violations of honor, breach of promise to marry, etc.
- 31 Gillian Hadfield, "The Price of Law: How the Market for Lawyers Distorts the Justice System" (2000) 98 Mich. L. Rev. 953 (Lexis, WL).
- 32 We like to think of the legal system as a site of remedies and protections for the injured and disadvantaged. But the creation of specialized remedial institutions brings in its train different levels of capacity to use them and thus amplifies differences at the same time that it overcomes them.
- 33 Galanter, "Turn Against Law", *supra* note 4 at 293-99. Curiously, while everything else in the legal world is growing, and the world is becoming judicialized, as Cappelletti taught us – rights and court-like forums and hearings are everywhere – at the same time the core and quintessentially judicial activity, the conduct of determinative adjudication through trials, is shrinking, and occupying a smaller part of that expanded legal world.