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Access to justice research: On the way to a broader perspective

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Abstract

In this paper a baseline of contemporary access to justice research is established. The baseline clearly illustrates key features of the research field suggesting that while the field of research has become more multifaceted in the course of the last two or three decades, it is nevertheless very much dominated by law scholarship and structural analysis of legal service provision. Departing from this overview of access to justice research as of today, five calls for future research on access to justice explicated in the reviewed literature is presented and discussed. I argue that future research on access to justice should: 1) Reach a clearer understanding of the problem (of access to justice), 2) consider a multidisciplinary approach, 3) support and develop evidence-based policy by committing to empirical research, 4) study a wider variety of social realities and 5) look for quality. The reasonings of this paper are based on a scoping literature review.

Key words

Access to justice; literature review; legal aid; democracy; law and society

Resumen

En este documento se establece una línea de base de la investigación contemporánea sobre el acceso a la justicia. La línea de base ilustra claramente las características clave del campo de investigación, sugiriendo que, aunque el campo de investigación se ha vuelto más polifacético en el curso de las últimas dos o tres décadas, sigue estando muy dominado por los estudios de derecho y el análisis estructural de la prestación de servicios jurídicos. Partiendo de esta visión general de la investigación sobre el acceso a la justicia en la actualidad, se presentan y discuten cinco peticiones de investigación futura sobre el acceso a la justicia explicadas en la literatura revisada.

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Sostengo que las futuras investigaciones sobre el acceso a la justicia deberían 1) alcanzar una comprensión más clara del problema (del acceso a la justicia), 2) considerar un enfoque multidisciplinar, 3) apoyar y desarrollar una política basada en pruebas comprometiéndose con la investigación empírica, 4) estudiar una mayor variedad de realidades sociales y 5) buscar la calidad. Los razonamientos de este documento se basan en una revisión bibliográfica de alcance.

Palabras clave

Acceso a la justicia; revisión de literatura; ayuda jurídica; democracia; derecho y sociedad

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1. Introduction

The field of access to justice research is variegated; with regard to the themes in relation to which it has been studied as well as the disciplines involved. This is a somewhat recent development: In the course of the last 20–30 years, access to justice research has gradually emancipated from the narrow spectrum of pure law research and emerged as a topic within social and political sciences and to some degree humanities as well. In general, this has brought much life and nuance to the scientific debate on access to justice.

A less fortunate consequence of the many voices pulling in different directions is a widespread confusion as to what the problem more precisely is. Access to justice research is often explicitly motivated by the "access to justice crisis", i.e. the current and general societal state of affairs where especially vulnerable or marginalized groups suffer critically from having various unmet needs for access to justice. The situation is by many researchers illustrated with a figurative *gap* between a supply-side and a demand-side in an unbalanced market of justice, sometimes referred to as "the justice gap" (e.g. Hertogh 2012, Finger 2014, Sandefur 2015, Moss 2016, Neiman 2016, Schneider 2017, Bilson *et al.* 2018, Higgins 2018, Elliott *et al.* 2020, Hubbard *et al.* 2020, Woodbur 2020, Gao 2021). Thus, the confusion about the problem of access to justice often boils down to the question about whether some lack access to justice because the designated providers fail to deliver (alternatively because such organs do not exist in the specific context) or because the ones lacking access to justice are too demanding or simply fail to receive the delivery. In other words, is meeting the need for access to justice merely a question of improving the delivery structure by for instance enhancing legal aid facilities or is it first of all necessary to increase the democratic capacity and incite participation in the public by for instance empowering the general ability to understand and defend one's own legal rights?

On a more general note, researchers tend to agree that having "a justice gap" makes it impossible to invoke in reality one of the most central principles of modern democratic societies: "equal justice under law". When looked at from this perspective, "the justice gap" could just as well refer to a gap between ideal and reality, principle and practice, in our judicial systems that has consequences way beyond the courtroom (Rhode 2004b). Accordingly, even though access to justice research, in spite of the aforementioned recent developments, is still dominated by law scholars, it is recognized that the issue of access to justice cannot be reduced to an issue of access to courts, due process, solid legal representation and the like (MacDonald 2001, Albiston and Sandefur 2013, Wallat 2019). Access to justice research is multidisciplinary because access to justice is more than one problem: It is a series of problems operating in the space between law and society.

The purpose of this paper is to provide a map and a compass with which scholars from different schools and disciplines can navigate the motley field of access to justice research as well as to argue that researchers should aid the already ongoing broadening out of the access to justice research field; with regard to disciplines, methodologies and philosophies. In other words, this paper will provide an account of some of the most prominent figures, findings and structural characteristics in access to justice research as of yet as well as present five tangible recommendations for future research.

2. Methodology and material: A scoping review

The propositions made in this paper are based on an unpublished literature review that I conducted in 2017 when I was employed as a research assistant at the University of Aarhus, Denmark. The literature that was reviewed was collected via 11 different searches: five general searches and six searches made with special search lines.[1] The bulk of the literature for that original review was collected via the six special search lines which were based on pre-given interests of the members of the research group that I was assisting. Given the more general nature of the purpose of this paper, the material for the following investigations (sections 4 and 5 in particular) stems (almost) exclusively from the five general searches made in October 2017 as well as a follow-up search conducted in December 2021.

Whereas the special search lines and the succeeding analysis of the material to a large degree were made in accordance with the standard criteria for systematic literature reviews (cf. Lund *et al.* 2016, 123), one must admit some bias to the general searches insofar as they were not strictly pre-planned but formed *ad hoc*. They had been developed for the purpose of gathering *interesting and relevant* literature on access to justice and are not therefore designed to accommodate a *systematic* uncovering of the field of access to justice research.

The most important of the five general searches looked for peer reviewed[2] articles from 2016–2017 in which "access to justice" is mentioned in the title. This search identifies the most central articles of contemporary research on access to justice. The search returned 88 hits. Supplementing this is a "free text search" for books (monographs and anthologies) in which "access to justice" is mentioned. This search was meant to retrieve an overview of the main works within the research field. The search returned 55 hits. Skimming through the results from the first two general searches, it became clear that three scholars (surely there are more) are central figures in the contemporary debate on access to justice, namely, Dr. Deborah L. Rhode (former professor of Law at Stanford University), Dr. Francesco Francioni (professor Emeritus of International Law and Human Rights at the European University Institute in Florence) and Dr. Rebecca L. Sandefur (professor of Sociology at Arizona State University). Therefore, three searches were made in order to collect as many of their publications (books and articles) on access to justice as possible. The Rhode-search returned 16 hits and the other two returned seven hits each.

Much has happened in the field of access to justice research since the 11 searches conducted in 2017. Therefore, this publication of some of the findings from that review will be supplemented with results from a search replicating the first of the 2017-general searches presented above (i.e. the aforementioned "follow-up search"), namely, one looking for peer reviewed articles from 2018–2021 in which "access to justice" is

[1] The searches were all made within AU Library which is the official database with literary resources pertaining to Aarhus University, Denmark. It comprises all of the literature from a number of sub-databases within the university library and the Danish Royal Library (Aarhus), as of December 2017 that was approximately 3,000,000 physical publications, 500,000 e-material titles and 87,000,000 articles.

[2] Including "Law Reviews" published by local American Bar Associations and American universities, which are not necessarily conforming to standards of fully-fledged academic peer review.

mentioned in the title.[3] This supplementing search returned 238 hits all of which have been reviewed in a manner identical to the 2017-review.

Given these circumstances, the review delivering the material for this paper falls under the category called *the scoping review*, which is one out of 14 different types of review presented by Grant and Booth (2009). The scoping review is a "… preliminary assessment of the potential size and scope of available research literature. It aims to identify the nature and extent of research evidence (…)" (Grant and Booth 2009, 100–01).

3. A brief history of access to justice research

In 2009 Sociologist of law, Rebecca L. Sandefur, noted that:

> Around the World today, access to justice enjoys an energetic and passionate resurgence (…). Though the recent resurgence makes much seem new, in fact access to justice research has been a topic of policy advocacy and empirical research since the early 20th century (…). One legacy of early work is scholars' and practitioners' tendency to conceptualize access as a social problem that is faced by lower status groups, such as poor people. Another legacy is a penchant for reducing, in a whole variety of ways, questions of justice to matters of law. (Sandefur 2009, ix).

By tracing these two "legacies" in examples of "early work" on access to justice, I shall attempt to identify that which constitutes the old or classic approach to access to justice in relation to which recent manifestations of access to justice research supposedly is a resurgence. Not only will this enable me to draw a more adequate picture of what access to justice research amounts to today: Looking at the inner dynamics that have moved access to justice research in a special direction up until now will too qualify the prognosis of what it will (or should) look like in the future.

In 1919 Reginald Heber Smith (1889–1966), an American lawyer who had worked as chief counsel at the Boston Legal Aid Society, published a ground-breaking analysis of the need for legal aid in America called *Justice and the Poor*[4]. Smith's work was very important as it prompted the American Bar Association to establish the Special Committee on Legal Aid Work. Needless to explicate, this article, which was given the very informative subtitle *A study of the present denial of justice to the poor and the agencies making more equal their position before the law with particular reference to legal aid work in America*, is a clear example of the early preoccupation with the poor in relation to access to justice.

Later, in a four-volume piece from 1978–79 called *Access to Justice*, Mauro Cappelletti (1927–2004), who was an influential Italian scholar of law affiliated with Florence University, the European University Institute in Florence and Stanford University, takes this focus on legal aid to the poor to be the main characteristic of the first wave in the "access to justice movement". Legal aid was thought of as the main and most effective facilitator of access to justice and equal justice under law. However, it soon proved to be insufficient on its own as it became clear that not only the poor lack access to justice. The

[3] Since 2017 my university affiliation has changed meaning that the replicating search conducted in December 2021 was not made within AU library as was the first 11 searches but within LUBsearch. LUBsearch is the official database with literary resources pertaining to Lund university. It comprises all of the literature from a number of sub-databases within the Lund university library.

[4] Smith's work is not part of the material collected via the eleven literature searches.

second wave can be recognized as a shift in orientation away from the poor to the general public. Access to justice was now taken to be a much more diffuse interest that could not be sufficiently met by giving access to extra-courtroom legal advice: Giving access to justice must be tackled in a more radical sense by giving *access to representation*. The third wave, or "the access to justice approach", as Cappelletti puts it, distinguishes itself from the former two by regarding access to justice as a much broader concept and problem:

> This 'third wave' of reform includes but goes *beyond advocacy*, whether inside or outside of the courts, and whether through governmental or private advocates. Its focus is on the full panoply of institutions and devices, personnel and procedures, used to process, and even prevent, disputes in modern societies. (Cappelletti 1978, 49, vol. I, Book I)

The waves of the access to justice movement illustrate the way in which orientations (not only in academic research but even more so in practice and policy) have shifted away from the poor and gradually become general. Furthermore, whereas Smith represents especially the one legacy as he treats access to justice solely as a problem for poor people, Cappelletti might represent the other legacy as the four-volume piece, which clearly incorporates the ambition of being all-encompassing, treats justice predominantly[5] as a problem to be solved by law and legal institutions and facilities. Justice is to a very large degree "still" treated as a topic exclusive to law scholarship within the Cappelletian framework.

In conclusion, a significant part of the history of access to justice research is the story of how the academic study of the problem of the unmet need for access to justice gradually became a topic of interest for other sciences apart from law. "Society, not law, is where justice truly resides" (MacDonald 2001, 318)[6] as MacDonald somewhat famously puts it. Sandefur supplements: "Scholars and practitioners both must step back from law to see justice" (Sandefur 2009, xvi). Justice, then, is a matter of law in so far as law is approached as part of society. Accordingly, access to justice is a matter of access to courts, representation and legal aid in so far as these phenomena are approached not in clinical separation from the people that use and depend on them.

4. A baseline of contemporary access to justice research

In this section some of the most prominent structural characteristics found reviewing the literature is presented. The purpose with this section is to present an approximated structural overview of the field of access to justice as of today that integrates an estimation of in what thematic and methodological areas of academia access to justice research is concentrated and accordingly where it is not so present.

4.1. Structural characteristics (i): Horizontal lines

One way of attaining a preliminary structural overview is by systematizing the literature and subsequently by discerning the different kinds of study represented. Reviewing titles and abstracts of the articles and books collected via the six general searches, one may recognize at least four different categories of study.

[5] To be fair, Cappelletti does to some degree point beyond the scope of law as the fourth volume of Access to Justice (Cappelletti 1978 vol. IV) is dedicated to an anthropological perspective.

[6] MacDonald (2001) is not part of the literature collected via one or more of the 11 search lines.

1) *Subject relative studies*: Some studies focus primarily on marginalized and vulnerable societal groups or individuals such as immigrants (e.g. Jordan 2016, Meçe 2016, Silverman and Molnar 2016, Benjamin 2019, Krakhmalova 2019, O'Nions 2020), the poor (e.g. Meene and Rooij 2008, Reasoner 2016, Brown 2016, Novakovic 2016, Sigafoos and Organ 2021), victims (e.g. Letschert *et al.* 2010, Clarke *et al.* 2015, Cox and Godfrey 2019, Jassal 2020), the disabled (e.g. Cremin 2016, Harwood 2016, Davis and Isaacson 2017, Elder and Schwartz 2018, Wulandari 2018, Onuora-Oguno 2018, Idris 2021) and women, children and the elderly (e.g. Paré and Chong 2017, Woodrum 2017, Bradley and Gruber 2018, McNeil 2019, Fitz-Gibbon and Pfitzner 2021). Another and not necessarily vulnerable or marginalized societal group whose access to justice is often studied is consumers (e.g. Rickett and Telfer 2003, Cortés 2011, Yuthayotin 2015, Gill and Creutzfeldt 2018). Subject relative studies (except the consumer-oriented studies which are based in dogmatic law and economics) are often conducted within the "softer" social sciences, such as sociology (of law), psychology, social work or sociolinguistics.

2) *Context relative studies*: Closely related to the subject relative studies is a group of studies on the state of access to justice in a specific geographical context. Oftentimes, focus is on countries in transition, poor regions and nations troubled by corruption. Most of these studies are concerned with development countries (e.g. Thomas and Trachtman 2009; the voluminous anthology by Penal Reform International and Bluhm Legal Clinic of the Northwestern University School of Law, 2007) or somewhat newly industrialized countries in either Asia (e.g. Afriana and Fakhirah 2016, Akter 2017, Andaryuni 2018) or Africa (e.g. Kennedy 2012, Agbiboa 2015, Moyo 2018). Other studies within this category focus on well-developed countries in Asia (e.g. Murayama 2009, Li 2016, Tuck Leong 2018, He 2019, Zhou 2020, Thomas 2021), regions such as the Middle East (e.g. Karayanni 2014, Ullah 2018) and North America (e.g. Currie 2009, Todaro 2016, Sukaryavichute and Prytherch 2018, Molavi 2020). Context relative studies are to a large degree conducted within political science, anthropology and (yet rarely) history.

3) *Formal and structural studies*: The bulk of the studies in this review are concerned with the role played by legal and administrative institutions and systems (e.g. Cole and Flaherty 2016, de Souza 2016, Abazi and Eckes 2018, Gonzalez 2020) as well as by specific laws, legislation and rights (e.g. Goodwin 2016, Hawkins 2016, Eijkman 2018, Karageorgou and Pouikli 2021) (often Human Rights; e.g. Francioni 2007, Dupuy *et al.* 2009, Buryi 2018, Krämer 2019, Roberson 2020) and the legal profession (e.g. Ojelabi 2016, Aprile 2016, Hadfield and Rhode 2016, Barnett 2017, Zipursky 2018, Donaldson 2018, Marsden and Buhler 2018, Barbera and Protopapa 2020) in matters of access to justice. Apart from being the biggest of the three groups, it is as well the easiest one to discern. These studies look at structural problems within society's legal instruments and are conducted by scholars of law, sociology of law and economics.

4) *Theoretical and methodological studies*: The smallest group of studies comprises research and theoretic literature of meta-critical, historical and philosophical nature, such as investigations into the links between theory and practice of access to justice (Greiner 2019, Crawford 2020, Crawford and Bonilla 2020). Questions concerning the research approaches of access to justice research discussing the scientific validity, ethics and legitimacy of other studies or kinds of studies are prominent here (e.g. Sandefur 2009, Rhode 2013, Albiston and Sandefur 2013, Salem and Saini 2017, Liefaard 2019), and the

meaning of the key concepts ("access", "justice" and "access to justice") is often treated (Rhode 2004a, Albiston and Sandefur 2013, Heffernan 2018, Wallat 2019, Bonilla 2020).

Now, typologies such as the one suggested here are never perfect. Distributing research papers into categories may lead to some form of structural overview, but not without sacrificing important nuances of the individual contributions. Accordingly, one should neither think of the categories suggested in this paper as absolute nor exhaustive. Indeed, many of the above cited examples of studies within the different categories integrate aspects and deliberations that point in the direction of the characteristics of the other categories, and many studies not cited above fall in between the categories. Some studies are equally subject and context relative, e.g. Bajpai's (2016) study on marginalized and vulnerable groups in India, Mmbali's (2016) study of an indigenous girl in northern Kenya, Guedes *et al*.'s (2018) short discussion on access to justice for orthodontists' risking malpractice lawsuits and Mogapaesi's (2019) "lessons for Botswana from a South African perspective" regarding women's rights and sexual harassment in workplaces, while other studies treat specific subjects within a systematic law framework such as alternative dispute resolution (Creutzfeldt 2016), or lawyer secondary consultations (Curran 2017). Other still utilize a systematic law approach in studies concerned with specific geographical contexts (e.g. Francioni 2016, Liu 2016, Ma *et al.* 2016, Dadhich 2016, Mayanja 2016, Hill and Dalla 2017, Ojelabi and Gutman 2020, Noone and Ojelabi 2020). Finally, many studies combine all of these three characteristics by studying for instance the laws or systematic reforms dealing with refugees, asylum seekers or indigenous peoples in specific countries or regions (e.g. Beyani 2013, Bates *et al.* 2016, Burridge and Gill 2017, Brinks 2019, Bond and Wiseman 2020), by studying gender issues and women's and victim's rights within specific justice systems or in the face of new or insufficient legislation (Hatıpoğlu-Aydın and Aydın 2016, Listiningrum 2019, Naznin 2021, Niyonkuru 2021) or by investigating the legal conseqences for prisoners' access to justice of increasing political control over probation officers' discretion in a particular national justice system (Storgaard 2020).

Therefore, instead of taking these categories to be boxes within only one of which every study on access to justice treated in this review neatly fits, one should think of them as stipulated horizontal lines cutting naturally through the landscape of access to justice research. These lines are constructed in this article for the sole purpose of informing researchers about tendencies and outlooks within access to justice research up until now as it is probably way more interesting for a researcher to take note of the fact that recent access to justice research seems to involve inclusive outlooks and cross-cutting tendencies than that there, according to what is proposed here, seem to be four basic categories. Typologies are imperfect, as it were. They cannot capture individual logics and argumentative nuances. However, typologies when deployed thoughtfully may indeed be very useful. The categories suggested here paved the way for an initial scoping of an entire field of research not by forcing individual research pieces into abstract "boxes", but by providing a conceptual framework for assessing some of the endlessly many ways in which such abstract "boxes" are inadequate. The categories (or preferably the stipulated lines) are constructs – the tendencies in recent research on access to justice, to go beyond the scope of these categories are not.

4.2. Structural characteristics (ii): One vertical demarcation

Whereas the horizontal lines describe the field of access to justice research as of today by referring to the kinds of study it comprises, another demarcation that cuts down through the schematic in a vertical direction divides the studies in two according to the general take on the problem of access to justice. This distinction, which is more fundamental than the four horizontal lines, is described in some of the literature from the fourth of the aforementioned categories, namely in meta-critical ones among the *theoretical and the methodological* studies on access to justice.

When trying to grasp the logic of the vertical demarcation, one could benefit from thinking about the problem of access to justice in terms of basic market economy – an imagery not foreign to the literature (e.g. Rhode 2013). One could think of the presence of an unmet need for access to justice, the *raison d'être* of access to justice research, as an unbalanced market with a supply-side and a demand-side. Whereas the supply-side of the market is constituted by the legal professionals (for instance pro bono lawyers) and legal services (for instance legal aid facilities), the demand-side is constituted by the very heterogeneous group of people who need the assistance that the supplier supplies. Now, I shall argue that a vertical demarcation separates the studies into two groups: Whereas one group of studies takes it that the key to solving the problem of the unmet need of access to justice is a matter of improving the supply, another one views it as a question of diminishing the demand.

While discussing a new tendency towards qualitative approaches within law studies on access to justice, Jennifer Leitch refers to the two aforementioned positions as the *practical thesis* and the *democratic thesis*, respectively. There is, she argues, a:

> … basic policy debate about the overall ambitions for access to justice – is the goal to improve people's access to the legal process (through legal representation or an equivalent form of legal services) so as to increase their chances of achieving a more positive outcome (the practical thesis) or is it so as to enhance their participation and ultimately their ability to affect justice as an end in itself (the democratic thesis)?[7] (Leitch 2013, 229)

The idea that there are two fundamental "schools" on this matter can also be found elsewhere in the literature. While discussing the question about exactly what access to justice should give access to (i.e. the question of the meaning of justice or the kind of justice one may obtain), Deborah Rhode indirectly ventilates ways for solving to the access to justice crisis:

> One central problem in discussions about access to justice is a lack of clarity or consensus about what exactly the problem is. To what should Americans have access? Is it justice in a procedural sense: access to legal assistance and legal processes that can address law-related concerns? Or is it justice in a substantive sense: access to a just resolution of legal disputes and social problems? Participants in this debate have different conceptions of justice and of the strategies best able to secure it. (Rhode 2013, 532)

[7] Perhaps it should be noted that the notion of "democratic" applied by Leitch (2013) is very broad. Democracy, she more or less indirectly argues, is not merely a political model for societal governance. Rather, Leitch stresses the public condition of democracy, that is, that democracy is upheld by the public's awareness about individual rights and the individual's ability to participate in the realization of these.

Now, what remedies to the access to justice crisis do these fundamentally different notions of justice allude to? Basically, the same ones, I should say! Regardless of whether one understands access to justice in the procedural sense or access to justice in the substantial sense as more desirable, one tacitly assumes means such as wider networks of better professionals and more accessible courts so that justice (in whatever sense intended) may be *served*. Thus, whereas there is an almost complete correspondence between Leitch's *practical thesis* and Rhode's *procedural sense*, on the one hand, an affinity between Leitch's *democratic thesis* and Rhode's *substantive sense* on the other hand is less plausible. In order to attain a systematic overview of the difference between the demarcation proposed by Leitch and the fundamental distinction in access to justice research suggested by Rhode, one can compare their ideas on the following three points.

First, one should recognize a difference in context. Leitch is discussing the motivation for access to justice research, and Rhode is discussing different kinds of justice in terms suggested by policy. *Second*, the alleged correspondence between the practical thesis and the procedural sense is based in the fact that both positions, according to a slightly simplified interpretation, take access to justice to be a matter of actual access to courts or other facilities or professionals. And *third*, the cause for the less clear affinity between Leitch's democratic thesis and Rhode's substantive sense lies in the fact that whereas the democratic thesis places the power of gaining access to justice in the hands and minds of the people with the need, access to justice in the substantive sense still seems to think of legal experts or other legal facilities as irreducible gatekeepers of justice.

It seems that what we have here are descriptions of three ideas that all take the solution to the problem of access to justice to be a matter of enhancing and enlarging the supply-side of the market and only one description of an idea that sees it as a matter of stimulating public participation. Justice then, according to the latter is neither procedural nor substantive. According to the democratic thesis justice is not something to be served, but a dynamic entity that is configured in and through citizens' engagements with the courts. Therefore, one may argue that a fundamental demarcation cuts through the field of access to justice research separating studies into two groups according to whether they take the problem to be of legal nature (as suggested by the practical thesis and as indicated by the procedural as well as the substantive sense of justice) or in essence democratic (as suggested the democratic thesis).

As in the case of the horizontal lines such vertical demarcation is not a clinical separation of all studies. However, the bulk of the studies under review here subscribe fairly clearly to the former of the two aforementioned positions. On other words, many studies subscribe to the practical thesis and to a concept of justice in either the procedural sense or the substantive sense. Among the most obvious studies subscribing to the practical thesis and at the same time invoking a concept of justice in the procedural or the substantial sense are the very many studies which explicitly or implicitly argue as to the need for improved legal aid and legal clinics infrastructures such as Akter's (2016, 2017) studies on legal aid in Bangladesh, Adebayo and Ugowe's (2019) investigations of legal aid in Nigeria in the face of a somewhat new legal aid act, Glover's (2016) study on online legal services as a possible buffer of access to justice, Erugo's (2016) argument that students can get legal training by helping those who cannot afford fully educated representation, Gurmessa's (2018) analysis of how university-based legal aid centers

help ensuring access to justice in Ethiopia and Jean-Louis' (2021) argument stressing pro se litigants' need for legal technicians' assistence in family court case proceedings in order to improve access to justice. Furthermore, Francioni's (e.g. 1997, 2001, 2007, 2009, 2016) works and Rhode's (e.g. 1996, 2004a, 2009, 2014) own works do mainly pertain to this group of studies as well.

Many studies investigate the demand-side of the market, i.e. for instance the majority of the subject and context relative studies. However, only very few studies subscribe clearly to the democratic thesis. In other words, apart from merely unfolding the problem of access to justice as it is faced by people who suffer from it, only very few of the studies investigating the demand-side of the market are motivated by the idea that *decreasing the demand by inciting public participation is a worthwhile effort*.

Nonetheless, there are studies which seem to represent some of the thinking that lies behind the democratic thesis. Whereas law clinics educate the law school students on how to deliver fair outcomes in court, advocacy often integrates the purpose of mobilizing civic engagement and facilitating democratic empowerment. We might therefore include the studies that highlight the potential of advocacy such as for instance a study on feminist rights groups in Tunisia and the role played by their information work in bringing access to justice to women in an Arab context (Arfaoui and Moghadam 2016) and the report on how The Convention on the Elimination of All Forms of Discrimination against Women raised general awareness on abortion rights in Ireland (O'Rourke 2016). Carrington *et al*.'s (2020) study on "How Women's Police Stations Empower Women, Widen Access to Justice and Prevent Gender Violence" and Durojaye *et al*.'s (2020) "Legal Empowerment as a Tool for Engendering Access to Justice in South Africa" are quite clearly examples of research subsribing to the democratic thesis. Also, the work of Rebecca Sandefur and the research presented in the 2009-anthology that she edited manifest in general the democratic thesis. Finally, one could perhaps think of the numerous research pieces on the "new" forms of conflict resolution and their ability to improve access to justice for the involved parties as instances of the democratic thesis. Consider for instance works on alternative dispute resolution (Nolan-Haley 2020, Noone and Ojelabi 2020), online dispute resolution (Wing 2018, Fornasier and Schwede 2021), family dispute resolution (Ojelabi and Gutman 2020), mediation (Marques de Medeiros and Nunes 2019, Jiukoski da Silva *et al.* 2020), as well as the introduction of some forms of tech designed to mend the access to justice gab by stimulating citizens' participation (Cortes 2018, Davis 2019). Many of these contributions indeed consider the public to be basically capable of affecting "justice as an end in itself" (Leitch 2013, 229) and view this as key to achieving justice.

4.3. A structural overview

For the sake of summarizing the preceding investigations and hereby pave the way for a structural overview of the field of access to justice research as of today, the following table can be suggested.

TABLE 1

	The practical thesis	**The democratic thesis**
Subject relative	Moderately occupied	Moderately vacant
Context relative	Moderately occupied	Moderately vacant
Formal and structural	Occupied	Vacant
Theoretical and methodological	Moderately vacant	Moderately vacant

Table 1. Structural overview.
This table highlights the degree of scientific attention given to each of eight fields of research outlined by four horizontal lines and the vertical demarcation.

On the basis of the scoping review conducted I take it that one way of appreciating the field of access to justice as of today would be to split up the field of access to justice research into eight subfields according to the schematic suggested by the aforementioned four horizontal lines and the vertical demarcation. Furthermore, upon reviewing and categorizing the collection of literature included in the scoping review one may attain at least a reasonably grounded idea as to what kinds of studies have been more frequent as well as what topics and approaches that have received less academic attention. The concentration of the academic attention as of today, according to this scoping review, is indicated in terms of occupancy and vacancy in the table above. For the sake of simplicity and clarity, in this suggested schematic, any subfield has been rated as either occupied, moderately occupied, moderately vacant and vacant according to the degree of attention given.

As indicated in the table above, studies adhering to the practical thesis have received more attention than studies adhering to the democratic thesis, and formal and structural studies subscribing to the practical thesis are significantly predominant. This does not come as a surprise given the history of access to justice research and the high concentration of law studies promoting legal aid policy. That the slot concerning formal and structural studies adhering to the democratic thesis is vacant is probably due to the fact that it would transgress the standard (not necessarily the *scientific*) scope of dogmatic law and hard economy to conduct research on efforts to qualify the public's participatory capacity. However, if one considers articles on alternative dispute resolution, online dispute resolution, family dispute resolution and mediation as democratically inclined then perhaps some of these are rightly placed in the slot concerning formal and structural studies adhering to the democratic thesis.

Finally, it is quite remarkable that subject relative as well as context relative studies are still to this day concentrated within the ideological scope of the practical thesis. One could perhaps have expected that the relatively high representation of (soft) political science and social science, i.e. sociology (of law) within these categories, could entail a somewhat equal distribution of academic attention.

5. Calls for future research

In this section, five interrelated recommendations for future research on access to justice will be presented. The baseline established in the course of the preceding section and the gaps and fissures in the field of access to justice research disclosed will serve as an illustrative frame of reference in the discussion of these recommendations. However, granting the fact that vacancy and occupancy in any of the specific subfields does not in itself prove that there is a need or no need for further academic attention, the recommendations are not based exclusively on the baseline. The recommendations are primarily based on calls for future research on access to justice, which are explicated in the literature that underwent review.

5.1. Reach a clearer understanding of the problem

This call clearly relates to the friction between the practical thesis and the democratic thesis as well as a friction between various conceptions of justice.

When Leitch is concluding that "[i]f access to justice research and policy-making is to make important headway, it will require further and better attention to its underlying conceptual framework and methodological foundations (…)" (Leitch 2013, 255), and when Rhode is stating that "[o]ne central problem in discussions about access to justice is a lack of clarity or consensus about what exactly the problem is (…)", they are both, in spite of the technical discrepancies as to how one must exactly frame the problem of access to justice, drawing attention to the fact that it has not been precisely framed yet.

Reaching a clearer understanding of the problem entails that researchers must dedicate more time to clarifying the key concepts, access, justice and access to justice. Whether one takes the question of access to be a question of practical or geographical access on the one hand or cognitive or intellectual access on the other as well as whether one takes justice to be whatever is decided in the courtroom or something more fundamental will have deep implications for how future research must be conducted. Whereas for instance Rhode (2004a, 193–94, 2013, 532–33), somewhat crudely put, takes access to justice research to be investigations as to the cost-effectiveness of current state policy, Leitch (2013, 230) argues in favor of qualitative sociological studies. And whereas some of Rhode's (2004a, 185–88; 2013, 545–50) research suggests that we meet the need for access to justice by expanding the network of organized legal services and by first and foremost improving the quality of the education of lawyers, Leitch seems to suggest the facilitation of a synergy between legal aid and "people's capacity to participate more fully in the legal and political process" (Leitch 2013, 255).

Albiston and Sandefur take the discussion on the problem of access to justice research a bit further as they explicitly argue that not only must we come to terms with the problem, we must too be truly open to the possibility that there are more than one solution, and we must be prepared to develop solutions essentially different from the ones we already have: "Improving access to justice will require (…) a much better sense of both the problem and the potential solutions, including those we have not yet begun to imagine." (Albiston and Sandefur 2013, 120) Thus, it might not be enough to just expand the network of legal aid facilities. At any rate Albiston and Sandefur attempt to render probable the idea that researchers must be creative in order to meet the need for a more radical reform.

In summation, reaching a better understanding of the problem of access to justice is crucial. This is not only because research is motivated by what the researcher takes to be the solution, but also because policy on justice is so fundamentally guided by research.

The preceding structural investigation of access to justice research as of today indicates that not a lot of effort and attention has been put into theoretical and methodological studies. As it were, that there is "vacant space" within this category does not in itself prove a need, and the vacancy *per se* should therefore not prompt further research oriented towards theory and methodology building. Nonetheless, that there seems to be vacant space in this category does to some degree substantiate this first call and the need for conceptual clarifications.

5.2. Consider a multidisciplinary approach

One may plausibly argue that the proclamation that questions of justice cannot be reduced to merely issues of law implies the recommendation that research on justice (e.g. access to justice research) must attract and involve other disciplines as well: Access to justice research *must* be multidisciplinary in order to be able to mobilize a set of approaches coherent and sufficient for the study of justice.

Does it make sense to think of this recommendation as a call for future research? Maybe not in the explicit sense of the aforementioned call for fundamental conceptual clarifications. Furthermore, a call for multidisciplinarity indeed seems quite futile when taking into account that one of the main structural characteristics of access to justice research as of today is that even though law scholars play a key role, many other disciplines are already represented within the field of access to justice research.

Nonetheless, Sandefur seems to call for a multidisciplinary approach by prompting researchers to nourish the already ongoing tendency towards an inclusive conception of the problem of access to justice:

> Classical access to justice research was often highly compelling, but it was also often very myopic. Its narrow vision has shaped both understanding and practice, leading scholars to produce research that goes no further than documenting that law betrays someone's ideals, leading lawyers and others 'to think that' the only good solutions 'to social problems' are 'legal solutions,' and encouraging practitioners, researchers, and opinion leaders to join in a chorus of 'simplistic exhortations' about the importance of fulfilling 'the unmet legal needs of (…) vague categories' of people, like the disadvantaged. (…) New, more promising directions in access to justice research are reflected (…) by examining law's antecedents, complements, and alternatives, and conceptually, by drawing on the rich theories provided by the social sciences. (Sandefur 2009, xvi)

What she seems to argue is that even though access to justice research is not still exclusively law-oriented, it would be a step back and not add anything to the state of the art if research does not promote further "liberalization" of access to justice research. There is still a need for a greater presence of human and social sciences in access to justice research in order to secure an adequate examination of law in society and public conceptions of justice.

As in the case of the call for conceptual clarification, the baseline established in the preceding investigations of this review substantiates the call without itself calling it out.

It was indicated that the subfield comprised by structural and formal studies on laws, legal facilities/services and legal professionals is more occupied than any other subfield, which further indicates that much of the recent research on access to justice is still being conducted within a very law-dominated framework and discourse. Granting the belief that this is inadequate to the study of access to justice, there is a need for more disciplines, methods and theories within access to justice research.

5.3. Support and develop evidence-based policy by committing to empirical research

There is a very dynamic interplay between research and policy-making within the field of access to justice research. Especially in the North American context access to justice research is often explicitly driven by the motivation of being relevant and informative to politicians. Sometimes this is manifest in an ethical intention of "doing good" with one's research: "Access researchers are almost always motivated by a wish to improve the world." (Sandefur 2009, xvi) At other times the collaboration between a researcher and a political instance is more direct.

Having one's scientific research infiltrated by political agendas, one is often subject to criticism referring to the ideal that research should be free and uncorrupted. This, however, does not seem to be an issue for Rhode. She is neither unaware of the aforementioned interplay between policy agendas and her research, nor is she trying to hide it. On the contrary she is promoting such dynamic relationship between policy and research by calling for research which is directly engaged with policy issues and explicitly concerned with solving them:

> Although we do not lack for studies on certain topics, much of the data we have is too limited in scope and methodology to supply a rational basis for policy making. And much of what we know is not presented or disseminated in ways that adequately inform delivery structures or political debates (…). (Rhode 2013, 533)

Not only is she calling for research that establishes a closer and more dynamic infrastructure between academia and policy, she also recommends a specific route to take in order to be successful. She is more specifically calling for research that supports and develops evidence-based policy by committing to empirical studies:

> Our lack of adequate research on access to justice is partly attributable to structural problems in the market for legal scholarship. Compared with other work, empirical research has higher costs and lower rewards. It is typically more expensive and time consuming than doctrinal or theoretical scholarship, requires greater interdisciplinary expertise and risks dismissal in some circles as 'merely descriptive'. (Rhode 2013, 542)

5.4. Study a wider variety of social realities

Whereas Rhode's research is deeply concerned with the economy and the delivery structures of legal services, Albiston and Sandefur's (2013) is interested in the subjects lacking access to justice. And while Albiston and Sandefur agree that more empirical research must be done in order to overcome the "access to justice crisis", they supplement Rhode's call by explicating the need for a broader scope of study objects (and subjects) in access to justice research; in two related senses. Firstly, the authors: "(…) call for researchers to rethink the current focus on studying the effectiveness of legal representation by focussing solely on the poor" (Albiston and Sandefur 2013, 109).

What they suggest in stead is that access to justice researchers to a larger degree incorporate studies on the general public. Secondly, access to justice research should study also how a lack of access to justice is perceived by those affected.

The problem has also more recently been framed by Kathrine Wallat. In her 2019-article for *Marquette Law Review*, she states that a dominance of law scholarship within the academic access to justice debate has prompted a conceptual reduction (of sorts) of access to justice issues to issues of access to "legal" justice:

> When scholars and lawyers discuss this problem, they refer to a 'justice gap,' often defined as the amount of unmet legal need. The focus on needs that are 'legal' as attorneys and policymakers define that term is a fixture of the conversation about access to justice, and the solutions proposed flow from this focus. As a result, most empirical work has compared the availability of legal services to the number of people who seek them. (Wallat 2019, 584)

By focussing on economy in relation to the "access to justice crisis", one is at risk of reducing the issue of not having one's legal case tried at court to be a matter of being able or not being able to afford representation. However, research shows that large parts of the general public are not having their legal cases tried in court, sometimes also because they fail to see the legal nature of the problem, are unaware of their rights or simply do not bother (Currie 2009). And, "[i]f people do not take their justiciable problems to court, a good research question is what they do when faced with them." (Wallat 2019, 604) Accordingly, Albiston and Sandefur argue that:

> Researchers should consider how access to justice is impeded not only by lack of resources, but also by constructed social meanings, such as the stigmatized identity of rights claimants or the failure to understand a problem as a legal one. Finally, researchers should consider not only the demand for legal services, but also the many potential supply-side models for addressing civil legal concerns, *including* nonlegal approaches and service delivery models that may not yet exist. (Albiston and Sandefur 2013, 119–20)

This brings us to the second way in which the scope of study objects within access to justice research should be widened. If we wish to study the ways in which access to justice can be impeded by other obstructions than economic ones, we should supplement the study of the demand with investigations of subjective accounts, behaviour and local cultures and habitus of those lacking access to justice.

It might be important to take note of the fact that this call does not only apply to subject relative studies exploring the demand side of the market seeing as also the ways in which we approach the supply are empirically limited: Instead of just widening the existing infrastructure of legal service delivery by for instance multiplying the amount of legal aid facilities, i.e. increasing the effectivity of what we already have, research should be creative and try to come up with essentially new ideas.

5.5. Look for quality

The fifth call is closely related to the fourth. Whereas the fourth call expresses a need for a widening of the field of research, the fifth call encourages researchers to "dig deeper". This call, which is proposed by Leitch in her paper "Looking for Quality: the empirical

debate in access to justice research" (2013), recommends that researchers of access to justice to a larger extent engage in qualitative research.

Widening the study so as to include social meanings and social constructions entails that we should supplement the large scale and often randomized studies focusing on quantifiable measures naturally operating within the scope of a very limited concept of access to justice with a sensitivity towards qualitative data. Therefore, in an overall attempt to work in the direction of an widened sense of access and justice and convince access to justice researchers to take seriously the democratic thesis, Leitch argues in favor of empirical studies that look for quality:

> (…) I (…) advocate for the continuing need for more in-depth qualitative research that examines the experiences, views and perceptions of individuals engaged with the civil justice system. This is based on the belief that qualitative research, which takes account of the individual's experiences attempting to access justice, creates a space in which to think and debate meaningful participation. Indeed, I contend that this form of qualitative research is consistent with an expanded concept of access to justice that contemplates policies and initiatives that encourage democratic participation and citizen engagement. (Leitch 2013, 230)

The favoritism towards quantitative empirical studies in access to justice research that Leitch hereby opposes is nourished by the underlying idea that only by reference to an accurate measure, such as for instance case outcomes (i.e. the legal result reached in a particular case), one is capable of concluding as to the efficacy of a given legal service. Only then will research obtain clear results as to whether or not a given legal service is really beneficial and thus advise policy-makers as to its future existence or inform them as to how it can be more effective. However, Leitch agrees with Albiston and Sandefur (2013) by saying that efficacy is not the only parameter relevant to the study of access to justice:

> [I]t is important to continue to incorporate a variety of methodologies that, at a minimum, encourage ongoing discussion about how access to justice should be conceptualized and optimally are consistent with and support a broad conceptualization of access to justice goals, particularly as it pertains to advancing democratic values and interests. (Leitch 2013, 238)

In a way this refers this investigation back to the first two calls, namely the call for research that seeks to clearly frame the problem of the "access to justice crisis" and the call for multidisciplinarity, both of which according to Leitch are consequences of a still more frequent openness towards the democratic thesis.

6. Final remarks and conclusions

The findings of the scoping review that serves as the empirical source of this paper suggests that the field of access to justice research is dominated by legal scholarship. However, a developing undergrowth of political and social science in access to justice research can be identified, too. In different, yet interrelated ways, the five calls for future research suggest that researchers should explore and nourish the already ongoing methodological and empirical enrichment of the field of access to justice research.

A further conclusion to be drawn is that access to justice has been studied with reference to many different subjects and subject groups and in many different contexts. The

geographical contexts that access to justice research is most frequently engaged with are Africa and Asia. Here, however, we should include North America. Indeed, North America might very well be the most highly engaged with context in the material reviewed, but since the research engaged with North American states of affairs is so clearly legal and systematic in its methodology, theoretical outlook and overall scope, it has almost always been categorized as *structural and formal* instead of *context relative*. Therefore, this review has to a large degree treated the legal emphasis of these studies related to North American states of affairs rather than highlighting the context to which they are related. Aside from laws, rights, legal facilities and services and the legal profession relating to access to justice in general, the most common structures and formalities studied are women's rights and consumer law.

Lastly, the baseline of access to justice research as of today established in this paper shows that not much attention has been given to theoretical and methodological discussions. The fact that there has been only little attention to fundamental research does not in itself disclose a *need* for such research. Nonetheless, the five calls explicated in this paper are either motivated by a need for fundamental research or explicitly requesting fundamental research. The latter is clearly the case with regard to the first call, namely the call for clarifications as to the key concepts and problems underlying access to justice research. Furthermore, not without theoretical criticism of the field of access to justice is Sandefur (2009) able to discern a need for a multidisciplinary approach. This as well goes for Rhode's (2013) call for bridge-building between researcher and policy-maker, Sandefur and Albiston's (2013) and Wallat's (2019) call for a widening of the field of research and Leitch's (2013) recommendation that researchers should supplement "hard" empirical research with a sensitivity towards the qualitative aspects of the "access to justice crisis". Thus, while contributions on the fundamental nature and scientific scope of access to justice research are indeed rare, they are not non-existent.

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