



Introduction. Access to justice from a multi-disciplinary and socio-legal perspective: Barriers and facilitators

OÑATI SOCIO-LEGAL SERIES VOLUME 13, ISSUE 4 (2023), 1198–1208: ACCESS TO JUSTICE FROM A MULTI-DISCIPLINARY AND SOCIO-LEGAL PERSPECTIVE: BARRIERS AND FACILITATORS

DOI LINK: [HTTPS://DOI.ORG/10.35295/OSLS.IISL/0000-0000-0000-1351](https://doi.org/10.35295/OSLS.IISL/0000-0000-0000-1351)

RECEIVED 27 MARCH 2023, ACCEPTED 28 MARCH 2023, VERSION OF RECORD PUBLISHED 28 JULY 2023

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Abstract

Since access to justice scholarship has gradually become a more multifaceted, international and empirical endeavour, this special issue illustrates a broader scope of contemporary access to justice research from a multi-disciplinary and socio-legal perspective. The issue gathers contributions from European and US scholars, representing different disciplinary backgrounds, such as law, sociology of law, political science, philosophy, social work, and criminology, yet with a common interest in access to justice. This includes the study of various contexts (apart from the courts) and actors (apart from lawyers) who make unilateral legally based decisions that have direct consequences for individuals, or in other ways facilitates or hinders access to justice in a (broader) democratic sense. Through its contributions, this special issue identifies and discusses a variety of barriers and facilitators in areas where access to justice is deemed problematic and therefore highly important for policy and practice development.

Key words

Access to justice; multi-disciplinary; socio-legal; barriers; facilitators

Resumen

Dado que los estudios sobre el acceso a la justicia se han convertido gradualmente en una tarea más polifacética, internacional y empírica, este número especial ilustra un ámbito más amplio de la investigación contemporánea sobre el acceso a la justicia desde una perspectiva multidisciplinar y socio-jurídica. El número reúne contribuciones de especialistas europeos y estadounidenses, que representan distintos

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ámbitos disciplinarios, como el derecho, la sociología del derecho, las ciencias políticas, la filosofía, el trabajo social y la criminología, pero con un interés común por el acceso a la justicia. Esto incluye el estudio de diversos contextos (aparte de los tribunales) y actores (aparte de los abogados) que toman decisiones unilaterales basadas en la ley que tienen consecuencias directas para los individuos, o que de otro modo facilitan o dificultan el acceso a la justicia en un sentido democrático (más amplio). A través de sus contribuciones, este número especial identifica y analiza diversos obstáculos y facilitadores en ámbitos en los que el acceso a la justicia se considera problemático y, por tanto, de gran importancia para el desarrollo de políticas y prácticas.

Palabras clave

Acceso a la justicia; multidisciplinar; socio-jurídico; barreras; facilitadores

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1. Introduction

While legal aid is an important means for welfare states to achieve important goals based on the rule of law (Cappelletti 1978, Rhode 2004a, Francioni 2007), there are many other factors that affect an individual's ability to access justice – not only restricted to the judiciary but in relation to a number of different authorities, organizations and actors that make decisions, practise advocacy, and hold power and authority, directly affecting individuals' social and economic situations. Not least among vulnerable groups, or groups who, for different reasons, have poorer opportunities to take advantage of their formal rights (or whose rights are questioned), it is important to investigate barriers and facilitators affecting the extent to which they are faced with access to judicial and administrative decision-making (cf. Palmer *et al.* 2016) as well as to justice in a broader sense.

In times of increasing migration, intensified globalization and organizational rationalization, it has not only become more difficult to finance access to relevant judiciary remedies (e.g. Flynn and Hodgson 2017), it has also become increasingly difficult for many individuals to understand their legal position (with its inherent complexity) and even to distinguish a problem as being a legal one in the first place.

This calls for researchers from different disciplines to jointly investigate access to justice in various socio-legal ways, with a view to including the often-stigmatized identities of the individuals who lack access, social constructions of impediments to justice, and perspectives on other (less obvious) suppliers of access to justice. On these grounds and as pointed out by Sandefur (Sandefur 2009, xvi, Albiston and Sandefur 2013), we argue that a greater presence of different disciplines within the social sciences and a socio-legal approach in access to justice research is valuable. In this way, this special issue aims to contribute to access to justice scholarship both theoretically and methodologically by engaging different disciplinary viewpoints in the investigation of dilemmas of access to justice, held together by a socio-legal approach and with a specific focus on both barriers and facilitators of access to justice.

2. A broadened scope of access to justice research

According to prominent access to justice researchers (Sandefur 2009, Rhode 2004b), the history of access to justice research can be summarized as a story of how the academic study has gradually become a more multifaceted, international and empirical form of engagement. Having largely been characterized by legally oriented American scholarship (e.g. Smith 1919/2008, Cappelletti 1978),¹ access to justice researchers now come from a wide array of disciplines, and they exchange ideas and data via global platforms such as the International Legal Aid Group (ILAG) and in regional networks such as AtJ-Europe. At ILAG conferences, topics of discussion have ranged from the significance of contingency fees for legal representation (Moorhead and Cumming 2009, Kilian and Kothe 2015) to that of technological aids (Staudt 2011, Zorza 2013, Smith 2017, 2019), and one can also discern a general openness to the idea that legal aid and access to justice may be advocated just as well by professions other than lawyers (McDermont

¹ To a certain extent, however, Cappelletti does point beyond the scope of law, as the fourth volume of *Access to Justice* (Cappelletti 1978, vol. IV) is dedicated to an anthropological perspective.

2015, Sandefur and Clark 2015 (see also Sandefur and Clark 2016), McQuoid-Mason 2017). This special issue aims to further contribute to contemporary research into access to justice in this direction and hopefully inspire new research efforts as well.

In order to both overview and illustrate the thematic diversity within contemporary access to justice research, much of the existing body of literature can be framed through a lens of supply and demand (Rhode 2013). Supply-oriented research investigates the routes through which people can attain access to justice and the potential obstacles to this, usually legal frameworks (e.g., Francioni 2007), policies (e.g., Palmer *et al.* 2016) and actors (e.g. Bajpai 2016, Dignan *et al.* 2017). Demand studies analyse the extent to which people understand their particular issue as a legal problem, i.e., consider it to be justiciable (Currie 2009b), and the extent to which they are aware of the potential legal remedies (Pleasence *et al.* 2004, Sandefur 2009).

At a conceptual level, it has been suggested that access to justice scholarship may be delineated into two distinct theses: *the practical thesis* and *the democratic thesis* (Leitch 2013). Whereas the former entails a focus on the concrete and sensible means through which people can achieve access to justice, the latter concerns broader questions regarding participation and ultimately the possibility for citizens to affect justice as an end in itself. Much research focuses on the practical aspects of access to justice, and this literature leans towards analysis of distinct problems and issues. One important exception to this is the “Paths to Justice” research, which has been influential in highlighting unmet legal needs. Since Genn and Beinart’s (1999) landmark survey of England and Wales in the mid-1990s, 26 large-scale national and subnational surveys of the public’s experience of justiciable problems have been conducted (in 2013) in at least 15 separate jurisdictions (Pleasence *et al.* 2013), for instance, in Australia (Coumeralos *et al.* 2012), again in England and Wales (Balmer 2013), in Taiwan (Chen *et al.* 2012) and in Canada (Currie 2009a).

In the introduction to an anthology called *Access to justice*, Sandefur (2009) argues, that while the field of access to justice research has undergone innovative turns and disciplinary broadening, the penchant for reducing matters of justice to matters of law is still strong within access to justice research. Furthermore, she identifies a tendency to view the problem of access to justice as mainly a problem for the poor. Most access to justice researchers naturally favour *practical* solutions based on restructuring and effectivization of the access *supply*, i.e., improved access to legal information, courts and legal representation. Not least, this concerns children. Age, maturity and vulnerability limit their rights and possibilities to participation, and their access to justice is especially hindered if the child’s guardian (most often a parent) is not acting in the child’s best interest. Appointing legal representatives or giving children the right to represent themselves in legal proceedings from a certain age, are examples of measures implemented to varying extent in different jurisdictions and legislations.² However, is the *gap* between supply and demand, that is “the justice gap” (Sandefur 2015, Neiman 2016, Schneider 2017), always generated by a lack of supply? Meeting the needs for access to justice is not seen simply as an issue of due provision of access to justice but also as a matter of democratic capacity, citizens’ ability to recognize a judicial problem

² For examples from a Swedish context, see the Act on Special Representatives for Children and the Care of Young Persons (Special Provisions) Act.

and their willingness to seek a remedy accordingly. Measures have, for example, increasingly been taken to strengthen children's rights through what is often called "child-friendly justice" – a conceptualization of justice more sensitive to children's needs (see e.g. Council of Europe 2010) and with the potential to consider both the children's vulnerability and strengthening of their agency (Eriksson *et al.* 2023).

An example that captures a more multifaceted idea of justice is the Barnahus model, implemented in the Nordic countries, inspired by the US Children's Advocacy Centres (CACs) and under diffusion in Europe (see <https://www.barnahus.eu/en/>). The idea of Barnahus is based on a one-door-principle in a child-friendly locality and a multi-professional approach to cases of violence and abuse against children. By coordinating a criminal investigation of the suspected crime and a social investigation of the child's need for protection and support, child-friendly justice in this context aims to entail both access to criminal justice and a broader sense of justice related to the protection, recognition, recovery and support of the child's welfare and life situation. However, the Barnahus model can be translated and implemented differently in various contexts, subsequently leaning towards varying dimensions of justice. Likewise, children's understandings and experiences of justice can differ. The multiple investigative mandates permeating the Barnahus model imply several potentially conflicting legal obligations and rights related to the (often) parallel investigative processes. This hybridity and inherent tension between the criminal justice and recovery mandates have been identified as complex, challenging and as creating dilemmas, power dynamics and difficult balancing acts. Coordination and multi-professional collaboration between involved professionals have shown to be vital, yet not easy (Johansson 2017).

A macro-structural view of policies and laws may lack nuance when not supplemented by a focus on how an unmet need for access to justice is individually experienced, constructed, justified and repressed, as well as how the "gate" to justice can quite often be kept by professionals other than attorneys. With this special issue, we aim to represent the thematic and disciplinary pluralism of current access to justice research, as well as support certain ongoing developments in terms of moving towards greater integration of different socio-legal oriented perspectives.

3. Outline of the special issue

We argue that explicit promotion of this research agenda will entail a more inclusive notion of the "deprived" and the deserving of access to justice, a notion that moves beyond the obviously marginalized and the poor. Indeed, the problem of impeded access to justice is a general problem within society (cf. Sandefur 2009). The special issue, therefore, comprises contributions on impediments other than those constituted by unaccommodating policies, lack of funding and unequal delivery structures, as well as contributions on remedies other than legal aid administered by lawyers and legal experts.

This special issue will illustrate the broader scope of contemporary access to justice research from a multidisciplinary and socio-legal perspective in various national contexts. Since the contributors of the collection of articles come from different disciplinary backgrounds (law, sociology of law, political science, philosophy, social work and criminology), the special issue aims to contribute to access to justice

scholarship both theoretically and methodologically. The special issue sets out a socio-legal oriented approach and concepts for studying not only the prevalence of certain people's access (or lack of access) to justice, but also to develop explanations as to why this is so and to find patterns in the situations in which there are deficiencies in access to justice for particular groups of people. The concept of "barriers of access to justice" as introduced by Cappelletti and Garth in their classical work from 1978 is complemented and further developed. They elaborated on economic, geographical and psychological barriers. We are discussing a number of additional forms of barriers (such as political, cognitive and bureaucratic) and deficiencies in terms of knowledge, information, insights and abilities. Furthermore, the special issue will also discuss contributing factors or facilitators in connection with access to justice, initiated in this introduction.

Based on a scoping literature review, Asbjørn Storgaard dissects the current landscape of access to justice literature, sketches out a structure of contemporary research motivations and orientations, and establishes a baseline of access to justice research as of today. Storgaard argues that regardless of the growing methodological, topical and disciplinary pluralism within the field of access to justice research, it is still very much dominated by dogmatic law scholarship and macro-structural perspectives. Accordingly, the policy-solutions suggested are to a large degree framed within the structures and discourses of traditional legal remedies to the justice gap, such access to courts and legal aid. Finally, Storgaard presents five calls for future research on access to justice explicated in recent literature, that jointly illustrates an inherent motivation among leading scholars in access to justice for a conceptual broadening of both the research field and the political solutions projected.

The special issue hereafter includes empirical studies of various actors and aids who apply legislation or by other means affect decision-making processes and access to justice, such as social workers, prison administrators and civil servants in governmental or cross-sector organizations.

In her article, Svensson studies one remedy to the justice gap, a potential facilitator of access to justice, which is less researched in the access to justice literature, namely social workers. By analysing cases that are presented as best practices by European social workers, Svensson illustrates how social workers' advocacy can facilitate access to justice not by simply *servicing* justice to those who lack it, but by democratically engaging them, that is, promoting the worth and dignity of human beings in society.

Then follows an article in which Pedersen and Johansen investigate the relationship between corruption and public perceptions of access to justice. Corruption is generally overlooked in the macro-structural analyses on barriers for access to justice. However, in this statistical analysis, where data from 113 countries from around the globe is included, the authors conclude, that corruption has a negative influence on a given judicial system's ability to supply justice and, accordingly, that enforcement of anti-corruption policies are likely to improve access to justice on the global scale.

By applying George Ritzer's theory of McDonaldization to the case of digitization in public administration in Denmark, Kristiansen brings nuance to the distinction between barrier and facilitator by discussing whether digitized facilitation of access to justice (such as automated decisions and internet-based self-service) may in fact constitute a barrier for access to justice. Inspired by Ritzer, Kristiansen compares Denmark to a

McDonalds restaurant (cf. McDenmark) and argues that while digitization may bring about fast and uniform decisions these may indeed come at the expense of a holistic approach, certain procedural rights for the client to be heard, and traditional client participation.

Graebisch and Storgaard present a focus on prisoners. Through a comparative analysis between Germany and Denmark, the authors identify particular barriers for accessing justice that prisoners face as they are resettling in society having served their sentences. Regardless of structural differences between the countries, such as the fact that prisoners in Germany have a legally prescribed right to access courts, Graebisch and Storgaard identify many similarities regarding justice related obstacles that the prisoners from the countries are faced with. This leads the authors to question, whether access to courts actually does entail remarkably better access to *justice* for prisoners, and to introduce a new concept that they term “genuine justice” in order to pave the way for more radical remedies for the lack of access to justice.

The outset of the special issue is to identify and discuss barriers and facilitators for access to justice from a multi-disciplinary and socio-legal lens, acknowledging the importance of different contexts and actors. In line with this overall argument, Sandefur and Burnett finally discuss how we may take things forward from here, regarding both research and practice as well as the constructive relationship in-between. Founded upon the fact that the contemporary field of access to justice research has attained such vivid diversity, their contribution aims to explore how knowledge from single case studies can be compared with findings produced in other contexts, and with other problems or actors in focus, and ultimately be more effectively and credibly translated into “actionable intelligence”.

4. Conclusion

Through different approaches and disciplinary perspectives, the collected articles thus illuminate both facilitators and barriers in various contexts. Non-lawyers have proven to be important professions to advocate democratic commitment for individuals to be able to safeguard their rights themselves. This is indeed an example of facilitating access to justice. Another article has shown that also anti-corruption policies is likely to facilitate access to justice. The development of internet-based self-service has on the other hand proven to be a barrier to access to justice. Likewise, it has been shown that for inmates in prison, the right to go to court does not necessarily facilitate access to justice. Hopefully, the broader scope of access to justice research illustrated in this special issue, will stimulate further multi-disciplinary and socio-legal oriented research on access to justice. A broadened perspective on access to justice could potentially help policy makers and professionals who, for example, address issues of access to justice related to legal aid work, advocacy or social work, to find new ways to challenge barriers and facilitate access to justice in a broad, democratic and empowering sense.

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