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legal professions in promoting and restricting that access. Traditionally, access to justice has meant at minimum the effective capacity to bring claims to a court, or to defend oneself against such claims. Although many courts allow parties to represent themselves, it is clear that effective access usually requires the services of a competent lawyer, since lawyers hold the monopoly of rights of practice in courts and the skills and experience that accrue from that practice. The costs of litigation, however, are very high – in court costs, administrative costs, witness fees, and lawyers' fees – so much so that even middle-class parties are foreclosed from using the courts for any but routine transactions unless they can tap into financing from some other source, such as contingent fees and attorney-fee awards paid by the adverse party, or state-subsidized legal services.

In the modern world, access to justice requires more than the capacity to litigate in courts. It requires help with navigating the mazes of bureaucratic government and filling out its forms, and with contesting adverse government actions. It requires help in planning for major life events, like founding a business, adopting a child, or divorcing a spouse. It requires effective assistance with challenging adverse actions of business corporations or professionals, say, as employees or customers. It requires access to powerful decision-makers, or agents in a position to influence them. Lawyers are not exclusive providers of such out-of-court services – they have to compete with accountants, financial consultants, and lobbyists, among others – but they tend to dominate.

In the last century, legal professions, governments, and charitable providers have taken small, partial steps to provide access to legal processes and legal advice to people who could not otherwise afford them. By doing so, they have inched closer to the ideals of universal justice. They have also, on occasion, acted to restrict access to law by the poor and powerless. Despite inspiring rhetoric – and more inspiring models and exemplars – that American lawyers use to trumpet their commitment to equal justice for all, they have generally served their own interests before those of the public, in particular the poor and economically struggling. They serve best the rich and powerful, serve some middle-class clients and interests to the extent that it generates adequate fees, and, with notable exceptions,

or volunteer counsel: there is no way to know how frequently. It is likely that most poor persons' disputes were heard in more informal courts like the Court of Requests, or manorial or borough courts. Before the early eighteenth century, middle-class litigants like tradesmen and well-off farmers appeared frequently in common-law courts. But as long ago as

their own professional standards with new educational and bar exam requirements. Among lawyers, Reginald Heber Smith of Boston became the most prominent advocate for legal aid with his Carnegie Foundation Report on *Justice and the Poor* (1919), an indictment of unequal access to justice that was the leading manifesto for the legal-aid movement for the rest of the century.[6] Smith maintained

and, eventually, automobiles. A specialized bar, mostly Jewish and night-school-trained, developed to serve the injured and their families. They took a contingent fee: 30 to 40 percent of any damages recovered, nothing if they lost. The elite lawyers who represented businesses like railroads and streetcar companies tried to close down the night schools. They used the new bar associations to restrict entry to practice, to draw up ethical codes targeting personal-injury lawyers with prohibitions on advertising and soliciting clients, and to discipline the lawyers for violating the codes.

to discovery; heightened plaintiffs' burdens of proof while enlarging defenses; severely cut back on punitive damages awards; and made it much harder for public interest plaintiffs to recover attorney's fees by denying fee awards if defendants agree to settle.[28] In an important string of recent decisions, the Court has approved the now widespread practices of mandatory arbitration clauses in employment and consumer contracts, by which employers require their employees, and consumer products and financial services sellers require their customers, to submit all of their disputes to arbitration and to forgo class actions. The Court has held that federal law preempts and invalidates many state laws that attempt to regulate such practices.[29] By denying plaintiffs the ability to aggregate claims, the Court effectively precludes them from addressing and trying to deter and remedy widespread small violations (such as imposing hidden fees). In some contexts – such as nursing homes that mistreat or neglect their vulnerable patients – that removes any incentive for lawyers to accept cases even to avert horrendous harms.

Criminal prosecution is the sharp end of the state, its most coercive process short of war. Lawyers have long been aware that having a good lawyer who can afford to challenge the state's evidence and sway a jury confers significant advantages on a criminal defendant. So important was the right to counsel considered that it was enshrined in the early constitutions. Yet the great majority of defendants are indigent. They cannot buy an adequate defense on the market. Nineteenth-century courts gave some recognition to the problem by appointing counsel in serious felony cases, especially capital cases. Some of the law reform–minded bar groups formed in the Progressive Era (not the . . ) began to recognize the problem. There followed a long history of reports and initiatives to try to solve it.

A new urgency to fund criminal defense came from Supreme Court decisions requiring states to provide for indigent defense of federal felony defendants (1938), state felony defendants (1963), and, finally, all accused facing loss of liberty (1972). States responded variously: some expanded existing public defender offices, others (like most states of the Old Confederacy) assigned counsel – often the dregs of the bar – to represent accused persons, but paid so little (like $500 for a capital case) that all any counsel could hope to get for her client was a hastily negotiated guilty plea. Meanwhile, the wars on crime and on drugs, following a spike in violent crime peaking around 1990, effectively transferred charging and sentencing discretion from judges to prosecutors, reducing even further defense counsel's only leverage – the credible threat to take a case to trial – in plea negotiations. Now, fifty-five years after *Gideon v. Wainwright*, criminal defense remains in a state of crisis.[30] Despite many publicized exonerations of defendants in capital cases wrongly convicted by the state's misconduct or mistakes, funding for criminal defense has little popular support – in part because most defendants are black or brown – and almost no effective political lobby, though by now the organized bar has taken up its cause.

Contrast England and Wales. After World War II, under pressure to reduce enormous class disparities among a people who had shared equally in wartime sacrifice, the government resolved to try to make the common-law courts, which had been priced far out of the range of most citizens, more accessible. (The prewar and wartime governments tried to compensate by funding Citizens Advice

Bureaus that dispensed informal advice to people with legal, or potentially legal, problems. These still exist: there is no law in England giving the profession the monopoly over advice-giving.) The route chosen was a form of judicare: Parliament provided a generous system of state support for solicitors and barristers to represent the indigent. By the 1960s, barristers were receiving over half their collective income from legal-aid cases.

A series of governments, beginning with Margaret Thatcher's conservative one and followed by conservative and neoliberal ones, decided this scheme was too costly and wasteful, and have gradually dismantled it in favor of central state control over lawyers' costs and outsourcing to nonprofit providers of more "holistic" services that favor mediation and conciliation over adversarialism in family cases. Personal-injury cases are now, as in the United States, financed by contingent fees. Since 2000, control over providers has been tightened further, subordinating clients' welfare and rights entirely to budgetary concerns, abandoning audits of quality, and leaving to providers how to deal with exploding caseloads.[31] The legal profession's responses to these changes have been mixed. Initially, they were outraged by some of the reforms targeting their traditional privileges, like barristers' monopoly of rights of audience in courts, and solicitors' monopoly of conveyancing practices.[32] More recently, however, lawyers and judges have rallied to protest cuts in legal services budgets and to try to protect rule-of-law values in a system of administrative controls.

The highest barriers to access to the legal system are its complexity and costs.[33] Complexity calls for personnel with the training to deal with it, and their time and that of the other experts who support their work – forensic accountants, scientific and medical experts, and the like – is expensive. Some blame the complexity of law on lawyers themselves, and there is probably some truth to that charge. But the most likely cause is that a pluralist, fragmented political system like the United States' proliferates multiple and conflicting laws, and interpretations of those laws, to satisfy the demands of interest groups. Legal procedures are distended to meet the capacities and budgets of their highest-end users: business corporations.[34] The adversary system adds extra expense because investigating facts is left to the parties, their lawyers, and their hired experts rather than to a neutral magistrate as in Europe. Liti-

a backstop for unsettled cases.[36] Minor "soft-tissue" injuries from accidents are increasingly the province of settlement mills, which send demands for compensation to insurance companies, take a cut of the proceeds, and never try cases.[37]

The veterans benefits claim system from the Civil War to 1988 excluded lawyers by providing they could be paid no more than $10 per case.[38]

Divorce has been mostly delegalized, taken out of the court system by no-fault divorce, and self-help form-filling in uncontested cases. Many divorce lawyers' offices now offer mediation services to clients.[39]

More ominously, as mentioned above, many tort and contract claims that might otherwise be heard in courts have been relegated to arbitration by mandatory arbitration clauses in most consumer and employee contracts.

Federal immigration rules permit certain kinds of nonlawyer advisors to act for immigrants.[40]

Another project of the organized bar that has obstructed access to justice, broadly conceived, has been its sustained efforts to maintain its monopoly over advice-giving that has any legal component. Throughout the twentieth century, using statutes prohibiting the "unauthorized practice of law," the bar has fought turf wars with many competitors, some won and some lost.[41] The bar ceded most tax preparation work to accountants, and real-estate closings in many states to title companies and realtors. It is currently challenging firms like LegalZoom and RocketLawyer, which supply mostly standardized legal services for relatively routine transactions.

Many current proposals are in the air to relax unauthorized practice rules to allow paraprofessionals who have gone through a short training and certification program to help clients navigate disputes and adverse government actions. Segments of the organized bar, although still mounting phalanxes of resistance, have begun to perceive the inutility and bad public relations of resisting nonlawyer involvement in markets its monopoly does not serve. There are many areas of practice in which specialized paraprofessional providers could give better service than barely competent generalist gradu-

But most lawyers, most of the time, are concerned with making a profitable living, and not much interested in supplying or financing legal services for others: they put their own interests first,

*Aid Work in the United States*

*To Establish Justice for All: The Past and Future of Civil Legal Aid in the United States*

*Restricting Legal Services: How Congress Left the Poor with Only Half a Lawyer*

*To Establish Justice for All*

*UCLA Law Review*

*Access to Justice*

*Unequal Justice: Lawyers and Social Change in Modern America*

*Bates v. State Bar of Arizona*, *Ohralik v. Ohio State Bar*,

*Patriots and Cosmopolitans: Hidden Histories of American Law*