THE NEILL LAW LECTURE 2025

21st February 2025
All Souls College Oxford

Let's not talk about Access to Justice: Unravelling the concept to create meaning in the non-legal world

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Abstract

More than a decade after the 2012 changes to Legal Aid in England & Wales we are in yet another access to justice 'crisis'. Post-pandemic, with an economic downturn, increased levels of poverty and developing public health crises, access to justice in political and public consciousness appears irrelevant, if not invisible. Why should this be? The legal field is comfortable using 'access to justice' as a shorthand term covering a wide mix of concepts, debated in confusingly conflicting ways and without precise definition. In other spheres – public services, business, media, professions and political circles - the term lacks clear meaning substance, or salience (outside of crime). The non-legal world doesn't think much about how the justice system supports the collective social good nor its value in addressing current social and economic challenges. And yet there is real potential for legal services to work in partnership with other services such as health to make more impact on pressing social issues. A strategic approach to improving access to justice requires engaging more allies and advocates. This means we need to say what access to justice is for, what its broader societal value is, and why it matters. Unbundling the concept and developing a comprehensible 'access to justice' lexicon that is relevant and focused on outcomes rather than process, is a necessary first step.

> In truth the phrase itself, 'access to justice', is a profound and powerful expression of a social need which is imperative, urgent and more widespread than is generally acknowledged.[1]

> The fact that law reflects only certain values, that it attempts to achieve conflicting objectives, and the fact that it can be used by different people and groups to secure both desirable and undesirable ends may account for the ambivalence that we detect in policies regarding the involvement of the state in civil claims and disputes, and the contradictions in access to justice rhetoric.[2]

Preface

I have devoted the greater part of my career to access to civil justice research, teaching and policy - so by way of preface I want to say something about the motivation for my mildly perverse title this evening and suggest why those of us who think we understand the access to justice issue (or issues) and argue keenly for better or increased access to justice, need to be clearer about what we mean when we use access to justice 'speak' with each other. But most importantly, we need to talk differently and meaningfully about it, not only to ourselves but to those who ought to be natural allies in the campaign to improve access to justice and what such improvement would achieve.

I propose to reach my end point via a description of the current 'access to justice crisis' in England & Wales (and other parts of the world); position it in some historical, economic, and political context; and then attempt to unravel the complex, multi-layered, multi-meaning concept of access to justice to reveal its constituent elements. This is to try and reduce some confusion and suggest how we might be clearer about our focus when writing and speaking about access to justice and the specific targets of policy measures suggested by different proponents. Drawing on my experience of trying to work across the fields of law, health and health inequalities, I will argue that those concerned about the social value of the theoretical terrain of the civil justice system (including tribunals) and those who might benefit from its workings and its shadow, need to speak in terms of purpose and outcomes rather than process and values - using a vocabulary that resonates with overlapping spheres of associated professional interest and activity. In short, we need to communicate and advocate in terms that are understood outside of the legal sector so that those with whom we should be making common cause clearly perceive (without detailed explanation or translation) the coincidence of our respective interests and objectives (in social justice).

While those who fully understand the issues may debate the relative importance of underlying principles and values of equality before the law, rule of law, fair procedure, substantively justice outcomes and so on – for many of us, the most urgent preoccupation is how legal entitlement can be more effectively mobilised in different ways to mitigate inequality and disadvantage, to improve the life chances of those living with or born into

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[1] I. H. Jacob, 'Access to Justice in England' in Mauro Cappelletti and Bryant Garth (eds.), *Access to Justice*, Vol. 1 A World Survey (Milan, 1978), 417.
[2] Hazel Genn, 'Understanding Civil Justice', *Current Legal Problems*, 1997, 50, Issue 1, Pages 155–187, https://doi.org/10.1093/clp/50.1.155, p 164.

situations of deprivation, or for others to ease the consequences of unexpected health or financial events.

My perspective

The term 'access to civil justice' relates to a wide range of theoretical and practical concerns including (but not limited to) the social value of the civil justice system, the design and operation of justice related institutions, and the interplay between those institutions and the people and their problems that the institutions are there to serve. While the experiences of all users and potential users of the civil justice system are relevant to discussions of access to justice, some (including me) might think that a priority concern should be for those dealing with acute or chronic life challenges underpinned by legal rights and entitlements, for whom reference if not resort to legal rights is crucial in obtaining protection or relief.

I approach the discussion of access to justice this evening from the perspective of an empirical legal researcher who has spent over 30 years hanging around courts and tribunals, reading case files in dusty basements, observing and talking to parties in hearings ranging from welfare benefit tribunals to litigants in person in the Court of Appeal, and parties and mediators in mediation processes - about their experiences of trying to bring an end to the trouble or troubles plaguing them. Conducting surveys of what people think and do when faced with tricky problems around debt, housing, builders, benefits, injury and the like, I've sat in kitchens (and more recently GP surgeries) talking about experiences of trying to deal with the potentially legal problems and disputes of everyday life (what I've defined as 'justiciable' problems of everyday life.[3]) My observations and concerns about all that is swept into the shorthand term 'access to justice', while to some extent theoretical, are informed very directly by interaction with users and potential users of the civil justice system as well as the judiciary, practitioners and policy makers who shape the contours and operation of the system and influence its resources.

It is unsurprising that I think scholarly attention to access to justice issues is every bit as important in the legal academy as preoccupations with doctrine and the philosophy of law, but I am increasingly concerned that the multi-dimensional and multi-purpose concept of access to justice needs unravelling in order to be clearer on: what and who access to justice is for (in some or particular contexts – to assist policy and practice focus and prioritisation); what we think impedes access to justice, for which people in which contexts; what might be effective measures to make progress; and why any of this matters - in a more detailed and thoughtful way than I and many others in the access to justice field have undertaken to date. I have made passing reference to these concerns over many years, but I want to explain how and why I have chosen to use the opportunity of the lecture this evening to highlight the issues.

[3] Hazel Genn, *Paths to Justice: What People Do and Think About Going to Law*, (Hart Publishing, 1999). A 'justiciable problem' was defined as "a matter experienced by a respondent which raised legal issues, whether or not it was recognised by the respondent as being 'legal' and whether or not any action taken to deal with the event involved the use of any part of the civil justice system." p. 12.

A principal motivation is the dispiriting 'Ground Hog Day' experience of re-reading what I wrote in the 1970s, 1990s, early 2000s, in 2009, 2012, 2017, and 2019 in different contexts about former access to justice crises; seeing references to some of those thoughts in contemporary local and international discussion of access to justice crises, reaching similar conclusions about 'the problems' and hand-wringing about the failure of various measures designed to improve access to justice; and the realisation that not only has very little progress been made, but that to a considerable extent the situation now is in fact worse politically, financially, and institutionally - and potentially not assisted by what Minow has referred to as the 'compassion fatigue'[4] consequences of the Covid pandemic, recent economic shocks and financial hardship and their mental and physical health sequelae. It is worth mentioning that we are not alone in this. Some sort of crisis in access to justice is simultaneously being discussed and explored in the USA (led by the American Academy of Arts and Sciences),[5] Canada,[6] New Zealand,[7] and Europe.[8]

Another motivation is the awareness that legal academics, legal service providers, and advice agencies are repeatedly talking to each other about the current access to justice crisis, but that that few people outwith that circle are listening. One can detect an increasing exasperation both here and abroad with what has been referred to as the "invisible problem of access to justice"[9] - as an "orphan issue, a social problem for which no institution bears responsibility."[10] This is leading to a small but enlarging body of access to justice writing by practitioners, interest groups, and others suggesting the need to clarify, reframe, rethink, revise or re-imagine the access to justice 'problem' (often conjoined, without articulation or explanation, with the rule of law.)[11]

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[4] See Martha Minow, 'Access to Justice', American Journal of Law and Equality 2022; 2 293–311. doi: https://doi.org/10.1162/ajle_a_00039.

[5]American Academy of Arts and Sciences, Civil Justice for All Project, Report September 2020; Achieving Civil Justice A Framework for Collaboration. See also Rebecca L. Sandefur Matthew Burnett, Lauren Sudeall, Emily Taylor Poppe, Access to Justice Research as a Tool for Advancing Federal Priorities, American Bar Foundation, 2024. Accessed February 2025.

[6] Trevor C Farrow 'What is Access to Justice?' Osgoode Hall Law Journal 51.3 (2014): 957-988. DOI: https://digitalcommons.osgoode.yorku.ca/ohlj/vol51/iss3/10. Accessed February 2025.

[7] Bridgette Toy-Cronin et al, Wayfinding for Civil Justice - A national strategy for working together to improve access to civil justice in Aotearoa New Zealand. December 2023. A stakeholder framework. See also Dame Helen Winkelmann, Chief Justice of New Zealand, 'Access to Justice: We Need More (Than) Lawyers', MacKenzie Elvin Law Lecture, University of Waikato, Tauranga, 24 August 2022. In the context of concerns about rising populism and challenges to democracy, Dame Helen suggests that "attending to access to justice is a democratic imperative."

[8] Judith Resnik, 'Constituting a Civil Legal System Called "Just": Law, Money, Power, and Publicity', in Xandra Kramer, Alexandre Biard, Jos Hoevenaars, and Erlis Themeli (eds.), *New Pathways to Civil Justice in Europe,* (Springer, 2021).

[9] American Academy of Arts & Sciences open access journal Dædalus 2019 special edition on Access to Justice. See contributions especially by Lincoln Caplan 'The Invisible Justice Problem'; and Rebecca Sandefur, 'Access to What?'. (Accessed February 2025).

[10] Emily S. Taylor Poppe, 'Institutional Design for Access to Justice', UC Irvine Law Review 11, no. 3 (February 2021): 781-810, p784.

[11] Some access to justice scholars and legal philosophers have paid attention to the issue, see for example William Lucy, 'The Normative Standing of Access to Justice: An Argument From Nondomination', Windsor Yearbook 2016 Vol. 33; and William Lucy, 'Access to Justice and the Rule of Law', Oxford Journal of Legal Studies, Volume 40, Issue 2, Summer 2020, Pages 377–402.

Finally, and possibly most importantly for me (given the value I place on evidence and conclusions derived from empirical investigation), I have been brought to my title and argument this evening through recent experience of working closely with the health sector. In a development of my broader access to justice work (and the activities of UCL Laws free legal advice service in East London) I have been focusing for the past few years on the cross-directional connection between law and health, leading a project aimed at strategic advocacy and inter-professional education promoting the recreation of something like 1980s Citizens' Advice pop-up desks situated in GP surgeries in a modern incarnation named Health Justice Partnerships (essentially direct partnerships between free social welfare legal advice and health services).[12] This rather ambitious objective flowed from my own and others' research finding that many consultations in GP surgeries and A&E departments relate to social or 'non-medical' problems raising legal issues. These have been characterised as unrecognised or unmet needs for social welfare advice and support 'masquerading' as health problems - or what are referred to as 'health harming unmet legal needs',[13] (another shorthand term which itself requires considerable explanation and unravelling and to which I will return).

For more than five years I have engaged closely with doctors and other health practitioners, health policy makers, decision-makers responsible for health funding decisions, and an army of health policy innovators concerned with making connections, explaining and promoting personalised care, health inequalities, social prescribing, clinical commissioning, integrated care systems, boards and partnerships.

Aside from discovering that compared with the health system, the organisation of the justice system and its policy is extraordinarily legible and coherent, I have been increasingly baffled by the extent to which those with whom I have been dealing in the health field are either largely or entirely oblivious to law outside of crime (and medical negligence). There is little understanding of the broad scope of law in many areas of social, economic, family and commercial life. In 2019 I gave a lecture at UCL entitled 'When Law is Good for Your Health'[14] presenting the idea of partnerships between health and free legal services as a "health intervention". While this intrigued and surprised some of the lawyers and judges present, it puzzled if not astonished many of my health colleagues. Some of the bewilderment on the part of health colleagues could be attributed to historic inter-professional rivalry and suspicion. But it is clear to me now that many public health policy officials, clinical practitioners of all kinds and health educators have little or no comprehension let alone appreciation of the connections between law and health (except at

[12] Genn H, Beardon S. (2021) *Health Justice Partnerships: Integrating welfare rights advice with patient care* University College London; see also materials and resources on UCL *Health Justice Partnerships* website, National Strategy for Health Justice Partnerships funded by The Legal Education Foundation.

[13] Ellizabeth Tobin Tyler, 'Medical-Legal Partnership in Primary Care: Moving Upstream in the Clinic,' Am J Lifestyle Med. 2017 Mar 23;13(3):282-291. doi: 0.1177/1559827617698417. PMID: 31105492; PMCID: PMC6506975. Accessed February 2025.

[14] Hazel Genn, 'When Law is Good for Your Health: Mitigating the Social Determinants of Health through Access to Justice', (2019) Current Legal Problems, 72, Issue 1, 159-202, https://doi.org/10.1093/clp/cuz003. Accessed February 2025.

the level e.g. of sugar tax and smoking restrictions[15]); and most importantly no understanding of the protective scope of law and its potential to alleviate some of the underlying causes of poor physical and mental health and in so doing to mitigate the much discussed health inequalities arising from social and economic determinants of health.[16]

The people that many access to justice commentators and practitioners routinely classify as 'hard to help or hardest to reach', those with the most complex, interconnected, clustered challenges, I have heard characterised by clinicians as "heart sink" patients or "frequent flyers" - not because their problems are being trivialised - but because doctors recognise that the underlying cause of the presenting problem is ultimately not amendable to medical intervention – having been triggered by a social rather than biological pathogen – and that the doctor has little else to offer -- a suicidal tenant about to be evicted; a child suffering from asthma caused by mould; an employee about to lose their job; a struggling parent unable to put sufficient food on the table or heat the home. In these situations, law (or a credible threat of legal action – what I call 'legal heft') as an intervention has the potential to improve health in situations where medicine alone cannot. But the health sector does not define or interpret these as legal problems or legal needs.

Although initially surprised by having to explain that what were referred to as 'social' problems might, and indeed often would, raise legal issues, I have now become used to the need to make clear that benefits, housing, employment, immigration, family, debt and a range of other issues are indeed social problems underpinned by legal rights, and that lack of awareness of this fact on the part of patients, or lack of ability to find help to pursue or protect legal rights and entitlements are often referred to in access to justice terms as 'unmet legal needs'. I do this with health professionals, policymakers, implementers, and UCL medical students who I introduce to the connections between law and health and the role of law as a health intervention. In webinars, roundtables, seminars and lectures I have been forced to change the way that I communicate about access to justice and 'legal needs' and feel an urgent sense that we must think, speak and do things differently to engage not just health professionals, but with a wide range of health and social justice campaigners with whom we should be collaborating to achieve the shared objectives of improved public health, social and economic wellbeing.

Though we are dealing with overlapping issues we currently do not have a common vocabulary through which the health sector can recognise that some of the most challenging and complex cases they deal with are precisely the groups of people that many access to justice practitioners engage with daily or seek to reach. But there is little value in using the language of access to justice. This is unsurprising. Why should a doctor faced with a suicidal patient about to be dismissed from work or evicted from their home recognise that she is dealing with a legal problem, a public legal education deficit, 'an access to justice issue' or a 'health harming unmet legal need'?

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[15] Lawrence Gostin et al., 'The legal determinants of health: harnessing the power of law for global health and sustainable development', (2019), The Lancet, Volume 393, Issue 10183, 1857 – 191.
[16] Michael Marmot, 'Social determinants of health inequalities', (2005) The Lancet, Mar 19-25;365(9464):1099-104. doi: 10.1016/S0140-6736(05)71146-6. PMID: 15781105.

Edited conversation from 2016 with GP in practice:
Hazel: We think that having a free social welfare legal advice centre based in your surgery would be a tremendous benefit for your patients and would help you with issues that you can't address.
GP*:* But our patients don't have legal problems. I mean the social problems that bring them in here depressed and suicidal are things like being about to be evicted or losing their job or the fact that they can't get benefits.

While those in the legal sector may understand that social welfare legal advice and support can be critical for gaining access to safety net rights and services, especially among those with least financial and personal resources, recognising the need for legal assistance is not intuitive to health professionals, or indeed to many others – and why should it be?

On the rare occasions that there is glimmer of recognition in relation to the term access to justice, it invariably conjures up references to crime, prison and prisoners. The lack of appreciation or knowledge of the role of law in health reflects a wider social obliviousness to law beyond crime and the criminal justice system.[17] Representations of law in popular culture focus overwhelmingly on the drama of criminal law and "for many people the law is the criminal law. Ordinary people do not routinely carry a distinction in their head".[18]

So, when people talk of justice, the lay listener hears or thinks crime, and even among those who know about non-criminal areas of the justice system, non-criminal justice talk fails to capture the imagination or spark of interest. A stunning example came just before Christmas when a former Justice Minister, talking principally about criminal justice, in an aside, remarked that "the justice system [outside of crime] is not taken seriously by politicians. Governments are generally slow to give resources to justice. In England & Wales the annual spend on justice is equivalent to two weeks of expenditure by the Department of Work and Pensions." This perhaps reflects the lack of interest among the general public or

[17] The concept of 'a justiciable problem' developed in the *Paths to Justice* surveys emerged from the realisation that asking members of the public about their experiences of 'legal' problems was futile. Instead, people were asked about any "problems or disputes that were difficult to solve to do with……" The approach has been replicated ever since, see Hazel Genn *Paths to Justice: What People Think and Do about Going to Law*, (Hart Publishing, 1999).
[18] Hazel Genn, 'Understanding Civil Justice', (1997) Current Legal Problems, Volume 50, Issue 1, p.159. https://doi.org/10.1093/clp/50.1.155, although Sudeall pointedly notes the overlap in that, for example, eviction leading to homelessness can catapult someone from the civil to the criminal sphere and that for this reason many of those who experience civil justice problems "do not distinguish between the two contexts'…[t]he line between criminal and civil is blurrier than we typically acknowledge and the experience of many-low-income people - in particular - exists at the overlap. People living in poverty are often just steps away from being dragged into either system - for example, either through arrest or eviction - or may bounce back and forth between the two systems as negative outcomes in one sphere lead to an increased risk of involvement with the other." Lauren Sudeall, 'Integrating the Access to Justice Movement', 87 Fordham Law Review Online. 172 (2019). Available at: https://scholarship.law.vanderbilt.edu/faculty-publications/1394, p174. See also Sara Sternberg Greene, 'Race, Class, and Access to Civil Justice', 101 IOWA L. REv.1263, 1290 (2016), "[F]rom a legal standpoint, for most poor respondents there is little difference between the two systems… Court is court. The law is the law. Lawyers are lawyers. Judges are judges." Cited by Sudeall.

those who canvass the public. In polls of voter priorities justice system, courts or access to justice are not even offered as options.[19] While health consistently ranks top among voter priorities, the only justice related options presented to respondents by YouGov refer to crime, immigration and housing. As far as trust in public officials is concerned, trust in judges remains higher than football referees, but lower than nurses, doctors, engineers, professors. teachers and museum curators.[20]

While lawyers make arguments largely to each other about the positive value of law, the importance of the rule of law to democracy and how access to justice is an essential element in the rule of law – other constituencies view, and may experience law as oppressive, and see lawyers as disrupters of legitimate political agendas.
But I want to focus on why many of those interested in social justice - in promoting equity in health, in life chances, in well-being, in breaking cycles of poverty and deprivation - have not been and are not partners in the goal of improving access to justice. Many of the people in this room will have an idea of what I mean, but those people outside of legal academia, the legal profession and justice system actors do not necessarily connect the term access to justice with the initiatives that motivate them. More worryingly, those within the legal academy, the profession and justice system more broadly do not agree about the meaning of access to justice or its connection with the rule of law and adopt differing analyses of access to justice theory, while referring to the problem of internal confusion and imprecision. We have diverging and contradictory accounts of what the access to justice problem is, who it affects, and what would be the measures most likely to deliver improvements in what is defined as the justice gap. Why should this be?

To try and answer this I want to consider the nature of the current access to justice 'crisis' and its antecedents and remind us of the measures, programmes and initiatives that have been promoted, implemented, abandoned, recreated and developed to address various perceived access to justice issues, especially during the past two decades.

Second, I want to look at what I think of as Access to Justice and Rule of Law 'speak' and try to disentangle some of the constituent elements corralled into the access to justice concept and what it means to say that they are essential to the rule of law (and democracy).

And then, using health as a concrete example, I want to suggest that in promoting the purpose of access to justice, the legal sector should collaborate with other professionals and non-legal services who regularly interface with those experiencing complex and clustered social and economic challenges, but do not recognise the relevance of law to their mission and activities. The failure to capture the attention and recruit those who ought naturally to be professional and political partners in the pursuit of equality and social justice agendas – or even departmental savings – is perhaps not to do with political differences, but a lack of understanding of the potential and value of law and what we call effective access to justice

[19] Grateful to Tom Clark (Editor of Prospect Magazine) for this point. See YouGov tracker The Most important issues facing the country Accessed February 2025.
[20] Ipsos Veracity Index, Trust in Professions Survey, November 2024. Accessed February 2025.

in furthering social reform agendas simply by helping people to obtain the protective or safety net services and benefits to which they are legally entitled.

So where are we in 2025?

We are in another access to justice crisis. How did we get here? Who or what is (and has always been) in crisis? What is being said? Who is not listening and why?

There seems to be a consensus among access to justice scholars, legal practitioners both private and third sector, the judiciary, and even the Ministry of Justice (under both the former and current administrations) that we are experiencing another access to justice crisis - or possibly another phase in what seems to be an (endless?) continuing series of 'crises' in 'access to justice'.

Access to justice can be viewed as a process and outcome aspiration that can only empirically achieve its theoretical objectives at an individual level. An 'access to justice crisis' is a population level description of the experiences of myriad individuals faced with everyday problems[21] in need of solution and for whom recourse to legal rights and entitlements is not theoretically the only way of dealing with the issue, but may, in practice, be the only way of achieving a solution or a remedy. Why the only way? Because rights and entitlements are not self-executing and because those fixed with legal obligations may only comply with those obligations if threatened with the coercive power of the state.

The Nuffield Foundation, launching in late 2024 a new initiative on what is boldly called The Public Right to Justice[22] refers to "considerable concern about the state of the justice system in England and Wales that has prompted growing calls for change and raised profound questions about the extent to which the system is effectively delivering justice." [23]

With the catchy title of *Where Has My Justice Gone?* the Foundation launched a wide ranging, multi-phase initiative on access to justice with a seminar and the publication of an excellent review of current access to justice issues and evidence gaps. The review highlighted the negative experiences of many users of the justice system, including long delays, difficulties navigating the system, a lack of help or advice, and a wider sense of "a system that can lose sight of the needs of the individuals it serves."[24]

As part of that work Nuffield plan to commission a review of justice system reviews over the past few decades. In doing so they note that the sheer volume of reviews exceeds the scope of its initiative. Covering civil, family, criminal and administrative justice (to name but a few) they propose focusing on a selection including:

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[21] Hazel Genn *Paths to Justice: What People Think and Do about Going to Law*, Hart Publishing, 1999 https://bloomsbury.com/9781841130392

[22] Nuffield Foundation, *Public Right to Justice*, December 2024. Accessed February 2025/

[23] At this point I want to pay tribute to Sir Ernest Ryder who as Trustee of the Nuffield Foundation has successfully championed this access to civil justice initiative.

[24] For a comprehensive survey of the issues see Natalie Byrom, *Where Has my Justice Gone? Current issues in Access to Justice in England and Wales,* March 2024, Nuffield Foundation. Accessed February 2025.

- *The Hodgson Review of Civil Justice* (1988) to improve the machinery of civil justice in England & Wales to reduce delay, cost and complexity.
- *The Woolf Review of Access to Justice* (1994-1996) – addressing cost, complexity and delay in civil courts and introducing new procedural rules.
- *The Jackson Review of civil litigation costs* (2009) – trying to mitigate some of the additional costs caused by the Woolf Reforms.
- *The Norgrove Family Justice Review* (2011) private and public family law.
- *The Low Commission on Future Legal Advice and Support* (2014) looking at post LASPO 2012 changes to Legal Aid.
- *The Briggs Review of Civil Court S*tructure (2016) – integrating mediation into public courts.
- *The Bach Commission on the Right to Justice (Access to Legal Aid)* (2017) another look at the implications of LASPO 2012.

Looking down the list, one could be forgiven for thinking that rather than being an orphan or invisible issue, there has been a positive obsession with access to justice - and it is true that much time and money has been spent on reports, commissions, and investigations, leading to a plethora of new measures designed to change the landscape or ameliorate the problems of access to justice in all their varied meanings and manifestations.

But the number and variety of reviews reflect precisely the wide assortment of actors and interests involved in the justice system and the attendant contrasting issues bundled into the concept of access to justice. They also reflect the political, social, economic and constitutional tensions inherent in what we can mark out as access to justice and rule of law territory.

Picking up that point and clearing the undergrowth

To clear a bit of the undergrowth, let's go back to the basics of access to justice speak - who and what is access to justice for?

A potentially hobbling quality of the access to justice field is its conceptual ambiguity, its moving targets in respect of people or legal problems, its competing objectives in terms of desired outcomes, and the proposed policy interventions that would deliver those outcomes. The access to justice 'sticker' is routinely applied to a disparate range of projects and policies, most cynically by government to make financial savings politically palatable (the 1999 *Access to Justice Act* being the most remarkable example of Orwellian doublethink).

I am not alone in this observation. Access to justice scholarship and position papers are replete with concerns and criticisms of this lack of clarity, let alone precision of the concept (if that is what it is) and the need to articulate who and what access to justice is for, without unfortunately, moving on to provide the required clarification. An example of the formulation of the problem without a resolution from McDonald in 2010 is that "even though access to justice has been a rallying cry for almost half a century, there is still much

scholarly uncertainty both about what the expression means and about the research endeavors it calls forth." [25]

Access to justice has been called a code for disparate issues that are legal, political, procedural, substantive, instrumental and symbolic.[26] Intriguingly in 2021 Sandefur proclaimed that access to civil justice was experiencing "a renaissance, both as a movement in the world and as an area of scholarly research" but then pointed out that a "building tension in contemporary access to justice research is the question of what access to justice means."[27]

In preparing for this lecture I discovered something I wrote in frustration in 1996 following Lord Woolf's *Access to Justice Report* where I noted that to give greater weight to the promotion of various interests, an access to justice label was frequently being applied to an array of diverse and contradictory measures such as: unlimited legal aid; cheaper legal costs; opening up the market for legal services; maintaining a monopoly over legal services; the provision of alternative dispute resolution systems; slick and streamlined expert courts for international business to resolve disagreements; the provision of legitimate and authoritative judicial decision-making via fair procedures; simple adjudication systems that litigants can operate themselves; a system in which an individual citizen can take on the might of the state to challenge decisions and assert legal rights; a system that the tax-payer can afford. I concluded that in the end access to justice means everything and as a result perhaps nothing.

It seems to me now that the inherent confusion or contradiction that I and others have been complaining about relates essentially to the access to justice 'sticker', and not the items to which it is attached. While the label in its complexity provides fertile ground for theorising, its ubiquitous usage becomes devoid of helpful and practical meaning. Without explanation it does not signpost the problem or challenge of concern. It does not even signal whether the emphasis is in the domain of civil, commercial, social welfare, criminal, family or administrative law.

But we have to recognise that for many, if not most of those who are committed to an 'access to justice' agenda, the term principally refers to the availability of provision of legal information, advice and advocacy services at public expense (legal aid for private and third sector providers) as well as the funding of institutions and processes by which remedies or resolution can be achieved for disputes concerning legal rights and entitlements. The focus

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[25] Macdonald, Roderick A., ' Access to Civil Justice', in Peter Cane, and Herbert M. Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (2010), p42; online edn, Oxford Academic, 18 Sept. 2012), https://doi.org/10.1093/oxfordhb/9780199542475.013.0022, accessed 8 Feb. 2025.
[26] Macdonald, Roderick A., 'Whose Access? Which Justice?', Canadian Journal of Law and Society, 1992;7(1):175-184, 'A Review of Access to Civil Justice', edited by Allan C. Hutchinson, (1990) Toronto: Carswell doi:10.1017/S0829320100002209, page 5. See also Deborah Rhode, 'Access to Justice: An Agenda for Legal Education and Research', 2013, Journal of Legal Education [online], 62(4), 531–50. Available at: https://jle.aals.org/home/vol62/iss4/2/ p532.
[27] Rebecca Sandefur, 'Access to Justice', Chapter 21 in Shauhin Talesh, Elizabeth Mertz, and Heinz Klug (eds) *Research Handbook on Modern Legal Realism,* Edward Elgar 2021. https://www.elgaronline.com/edcollchap/edcoll/9781788117760/9781788117760.00035.xml

on public funding of legal advice and assistance leads commentators, activists and providers to move naturally from the term 'access to justice' to the qualifier 'for low income, disadvantaged, socially excluded and vulnerable groups.' The people for whom law is the only resort – if they only knew that, and how to use it.

But policy and practice interest in access to justice, more broadly interpreted, covers a much wider range of potential litigants, legal issues, interests, preferences, entitlements and needs, as exemplified by Lord Neuberger who effortlessly merges the interests of ordinary citizens and businesses in the need for competent legal advice and representation as a fundamental ingredient in the rule of law. "Obtaining advice and representation does not merely mean that competent lawyers exist; it also must mean that their advice and representation are sensibly affordable to ordinary people and businesses: access to justice is a practical, not a hypothetical, requirement."[28]

While access to justice certainly relates to those for whom the formal justice system is the only hope of enforcing rights and obtaining remedies or resolutions (such as welfare benefit claimants), it also supports business activity, family relationships, property transactions and so on. The procedures and operation of justice-facilitating institutions influence the cost and trouble of resort to law for everyone, and so an expansive reading of access to justice sweeps in those who must or prefer to resort to courts and tribunals as well as those who can and choose to operate in the shadow of the formal system, currently populated by a developing proliferation of private dispute resolution providers offering online and in-person services.[29]

Aside from people and their entitlements, obligations and disputes (what we could call the 'demand side') - as a public service, access to the justice system also covers sector resources, institutions and their design, providers and their services (the 'supply side').[30]

On the demand side

At a minimum, a person-centred focus of 'effective' access to justice (what do people want and need?) requires:

- **Awareness** of rights, entitlement, obligations and responsibilities (knowledge and capability)
- **Awareness** of procedures for redress (knowledge and capability)
- **Ability** effectively to access redress/DR systems (if that is what is desired) (knowledge, empowerment and capability)
- **Ability** effectively to participate/engage in redress processes (participation - knowledge, comprehension, advocacy, capability, empowerment)

[28] Lord Neuberger, President of the Supreme Court Access to Justice, Welcome address to Australian Bar Association Biennial Conference, 3 July 2017.
[29] Obvious examples are negotiation, mediation, expert determination, early neutral evaluation, online dispute resolution such as Resolver, international commercial dispute resolution. See Sir Geoffrey Vos MR, *The Future of London as a Preeminent Dispute Resolution Centre: Opportunities and Challenges*', McNair Lecture, April 2023.
[30] See McDonald using demand and supply side terminology 2010 see fn 25.

- **In order to achieve just outcomes** that reflect legal merits via conspicuously fair procedures (rectitude of decision and trust in process).

This formulation essentially includes both the knowledge requirement necessary for technical access and the procedural requirement of fair process.[31] Effective access requires the ability to engage, to participate, to be dealt with by fair procedures and to receive a substantively just outcome. That is the individual benefit of access to justice.

The broader societal benefit of access to justice goes much further – supporting social justice, economic stability and social order as recently underlined by Lord Reed in the Unison case regarding fees for employment tribunals.[32]

I do not have time to deal with all of those elements but enumerate them to demonstrate the range of issues involved in the concept of access to justice, focusing principally on the demand side. Of the necessary elements, participation is a particular challenge, and this is true whether individuals want to attempt to resolve their problems via the formal legal system, via private dispute resolution, or taking advantage of new technology to engage in online dispute resolution. Unless an individual has an understanding of their legal entitlement, unless they can appreciate the implications of arguments and choices they might make, either in person or online or in negotiation, they will risk an outcome that defeats the justice element in access to justice and, potentially the fairness element.

On the supply side

This involves institutional design, the range of adjudication or dispute resolution forums; the resources to operate those forums, and the resources available to provide the necessary support and representation for users to participate effectively in the processes, whether state sponsored or private. The ability to participate in public redress systems is a measure of the health of our democracy. The critical question is not what rights do we give or what obligations do we impose, but what opportunities do we provide for the public to make good their entitlements? "Without legal remedies, legal rights are meaningless . . . but without legal facilities, legal remedies are meaningless."[33]

Again, on the supply side, is the institution-centred focus of access to justice (what the institutions of the justice system offer). The institutional design that supports access to justice in England and Wales involves a wide range of public and private adjudication and dispute resolution bodies – first instance and appellate courts, tribunals, public and private ombudsmen, arbitration, mediation, and so on.

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[31] See William Lucy, The Normative Standing Of Access To Justice: An Argument From Nondomination, Windsor Yearbook 2016 Vol. 33; and William Lucy, Access to Justice and the Rule of Law, *Oxford Journal of Legal Studies*, Volume 40, Issue 2, Summer 2020, Pages 377–402, https://doi.org/10.1093/ojls/gqaa012.

[32] *R (UNISON) v Lord Chancellor* [2017] UKSC 51, Lord Reed para 76.

[33] Ralph Nader, *The Ralph Nader Reader* 33 (1st ed. Seven Stories Press 2000), quoted in Pete Davis, Our Bicentennial Crisis: A Call to Action for Harvard Law School's Public Interest Mission, The Harvard Law Record, 2017.

Courts and tribunals must meet standards of fair procedures with impartial, well-trained, professional judiciary who provide reasoned decisions on the legal merits of cases.

Primary responsibility for policy and resources, monitoring, maintaining and improving access to justice in institutional terms is spread across multiple agencies and teams – including the Legal Aid Agency, Ministry of Justice, and His Majesty's Courts and Tribunals Service. Researchers have argued that this structure detracts from rather than supporting access to justice, since it encourages cost-shifting between agencies and reduces opportunities for developing a coherent approach to access to justice.[34] As we will see, the reduction in real-terms budget for the justice system over the past two decades has led to crumbling courts and tribunals; long backlogs; complex procedures; paper heavy proceedings; and a flood of litigants in person.

Finally, on the supply side is the provider-centred focus of access to justice (including private and third sector providers). Here there are overlapping and also conflicting interests and concerns, objectives and priorities. Private practitioners struggle with fee-levels set by the Legal Aid Agency and the bureaucratic requirements of the contracting system. Third sector practitioners have similar concerns but are more severely affected by questions of legal aid scope.

All of these various demand and supply side issues (as well as many more) account for the wide range of reviews, commissions, policy changes and mitigations of policy changes that can be tracked in the history and policies of access to justice reform since 1949.

A brief journey from 1949 to 2025 via LASPO2012

I don't want to provide a long history lesson, but I think a bit of background is helpful to put the current access to justice 'crisis' language and its precursors in context.

The problems of providing effective access to civil justice for the poor, as opposed to commerce or middle class, has been recognised since the 15th century and Henry VII.[35] Indeed, May Donaghue (she of the snail in the ginger beer bottle and a central character in last year's Neill lecture by Lady Rose) was a beneficiary of the *in forma pauperis* procedure which entitled poor plaintiffs to free legal services.[36]

The first Legal Aid and Advice Act in 1949 provided public support at taxpayer expense for legal advice and representation "for those of slender means and resources' so that no one would be unable to prosecute a reasonable claim or defend a legal right."[37] Initially covering

[34] See for example Natalie Byrom, Where Has my Justice Gone, 2024 section 6, n 24.
[35] *In forma pauperis* procedure given statutory recognition since reign of Henry VII, see Brian Abel Smith and Robert Stevens*, Lawyers and the Courts (London*, 1967), p12.
[36] Chris Smith, House of Lords Library Research Briefing, *Legal Aid and Advice Act 1949: 70th Anniversary* 23 July 2019.
[37] Quoted by Sir Henry Brooke in The History of Legal Aid – 1945 to 2010, 2016 available at https://sirhenrybrooke.me/2016/07/16/the-history-of-legal-aid-1945-to-2010/#_ftn1, accessed February 2025.

about 80% of the population,[38] the 1960s and 1970s expansion of the demand-led scheme meant that by 1979, legal aid accounted for about a third of the Bar's income resulting from increases in criminal work and a rising divorce rate.[39]

The conservative government of 1979 produced a lasting change of approach. From the mid-1980s, the cost of legal aid became a focus of attention and has remained so to this day. The rising cost of criminal legal aid was the main cause, but also some increase on social welfare advice and assistance.

Radical changes to the scheme were proposed in 1986, the most dramatic being the introduction of a cap on legal aid expenditure which largely protected criminal legal aid but cut eligibility in civil cases to those on benefits - i.e. the poorest in society. This instigated a fierce critical reaction from social justice activist groups and the profession.[40] The 1997 incoming Labour Government continued the campaign and the *Access to Justice Act* 1999 (which did many things but increasing access to justice was not one of them) introduced a fixed budget for legal aid and removed most civil cases from its scope, using no-win no fee arrangements as a substitute for legal aid. The result was that between 1997 and 2005 expenditure on criminal legal aid increased by 37% while civil legal aid fell by a quarter.[41]

Given my emphasis on how we think and speak about access to justice, it is instructive to look at the change in political rhetoric employed during this period of legal aid retrenchment. The most striking and perhaps surprising coming from the Labour Lord Chancellor, Lord Irvine. In laying the ground for the Access to Justice Act 1999 he conspicuously flipped legal aid discourse and rhetoric. It was no longer to be envisioned as an access to justice support for the poor and those of modest means, but instead as a racket for 'fat-cat lawyers' stuffing their pockets with taxpayers' money.[42] In my view, the legacy of this campaign continues to this day (at least among sections of the media and those who do not understand the purpose of what we call access to justice or are out of sympathy with its social justice goals).

Lord Woolf's 1994-6 Review of Access to Justice was not principally concerned with legal aid, but it fed into legal aid issues by targeting the 'barriers' of cost, complexity and delay

[38] Although referred to as a pillar of the welfare state, this is questioned by Brooke who says that the four pillars were the NHS; universal housing; state security (benefits); and universal education, Ibid.
[39] Sir Henry Brooke, The History of Legal Aid, Ibid.
[40] Roger Smith, 'Legal Aid on an Ebbing Tide', 1996, Journal of Law and Society, vol. 23, no. 4, 570–79. JSTOR, https://doi.org/10.2307/1410481. Accessed 15 Feb. 2025. There were also cuts in eligibility and a move toward standard fees for legal aid lawyers.
[41] Hazel Genn, *Judging Civil Justice,* (Cambridge University Press, 2009), p 41. This increase in expenditure on criminal cases was mirrored by an increase in the cost of the Crown Prosecution Service by over 46% between 1998-99 and 2004-05, which the Government attributed to its determination to tackle persistent offending and anti-social behaviour and to increase the number of offenders brought to justice, *A Fairer Deal for Legal Aid* (DCA, July 2005, Cm 6591), Figure 5.
[42] Referred to in Genn *Judging Civil Justice* Ibid and an article published by the *Daily Telegraph* 29 April 1998 naming the 'fat cats' of legal aid. "Details of the largest earnings from legal aid were given to Parliament as part of what was seen as a campaign by ministers to justify their far-reaching plans to reform the system.", fn 21 p44.

for users and potential users of the civil courts. In diagnosing the problems besetting the civil justice system he adopted an anti-lawyer anti-adjudication stance, promoting early settlement and diversion of claims to private dispute resolution, with a heavy emphasis on voluntary mediation and experiments with compulsion.[43]

Since 1998[44] it has been explicit Government policy to reduce the proportion of disputes coming to the civil courts – the key instrument for achieving this target was to be mediation both within and outside the court structure and in the wake of Lord Woolf's 1996 Access to Justice reforms[45] the judiciary have developed a body of 'mediation law' supporting the diversion of cases from courts into mediation and early settlement.[46]

Austerity and access to justice

Following the financial crisis of 2008 and the austerity measures introduced by the Coalition Government in 2010, the justice system was one of the hardest hit areas of government expenditure, even though many of the incoming public spending cuts directly impacted low-income groups most in need of free welfare legal advice. A 2011 paper proclaimed that too many civil disputes were going to court suggesting that "[The system] needs to focus more on dispute resolution...for the majority of its users, rather than the loftier ideals of 'justice', that cause many to pursue their cases beyond the point that it is economic for them to do so."[47] Note the devaluation of the noble concept of justice, which had apparently become an uneconomic "lofty ideal."

Under pressure to save £2billion from the justice budget, in November 2010 the Ministry of Justice published proposals for the reform of legal aid that would dramatically affect non-criminal legal aid services.[48] The 2012 Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) intended to reduce legal aid spending by £350m. In practice, it exceeded its target, reducing the annual legal aid budge to a lower level in real terms than it had been in 2010.[49]

At a stroke, LASPO removed most private family, employment, welfare benefits, housing, debt, clinical negligence and non-asylum immigration law matters from its scope, and

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[43] Lord Woolf, *Access to Justice: Interim Report to the Lord Chancellor on the Civil Justice System in England and Wales,* Lord Chancellor's Department, 1995.
[44] Lord Chancellor's Department, *Modernising Justice - The Government's plans for reforming legal services and the courts* 1998, Cm 4155.
[45] Lord Woolf, Access to Justice Final Report, HMSO 1996.
[46] See for example, *Dunnett v Railtrack Plc (Costs)* [2002] EWCA Civ 303; *Cowl & Ors v Plymouth City Council* [2001] EWCA Civ 1935; *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576.
[47] Ministry of Justice Solving Disputes in the County Courts, Consultation Paper CP6/2011 March 2011.
[48] Ministry Of Justice, Proposals For Reform Of Legal Aid In England And Wales, Consultation Paper CP12/10, Cm 7967, 2010.
[49] See Magdalena Domínguez and Ben Zaranko, Justice spending in England and Wales, Institute for Fiscal Studies, 11 February 2025. An output of a four year £2.5m project entitled *Transforming Justice: The Interplay of Social Change and Policy Reforms*. https://ifs.org.uk/transforming-justice-interplay-social-change-and-policy-reforms. Accessed February 2025.

changed the financial means test, ending automatic eligibility for individuals on means-tested benefits.[50] [51]

The pre-LASPO battle was fierce but ultimately futile. Wilmot Smith's 2014 view that the plan of LASPO was "to place law out of the reach of the poor, rather than delegalising various classes of dispute"[52] chimes well with that of Roger Smith in 2011 when, as Director of Justice, he argued vividly that "We face the economic cleansing of the civil courts. Courts and lawyers will be only for the rich. The poor will make do as best they can with no legal aid and cheap, privatised mediation. There will be no equal justice for all – only those with money."[53]

Impacts of LASPO

A year after LASPO's implementation the National Audit Office concluded that taxpayers would have to foot the bill for additional costs to the public sector where problems which could have been resolved by legal aid-funded advice lead to adverse health consequences.[54] It argued that while the MOJ might make quick reductions in its spending on civil legal aid, it had not thought through how and why people access civil legal aid and the implications for courts and tribunals of more litigants in person and other consequences. They stated confidently that the Act would potentially create additional cost to the MOJ and wider government. They also referred to the empirical evidence of the adverse consequences of unresolved civil legal problems and the negative effects on health and wellbeing. "Where legal problems remain unresolved, the cost may be met by the taxpayer through additional costs to the NHS or welfare programmes."

The reduction in public expenditure has led to closures in the third sector due to local authority cuts and difficulties obtaining a legal aid contract.[55] [56] While provision has decreased, the demand for services has not. The diminishing quantity of free legal advice

[50] House of Commons Justice Committee, *Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012* (HMSO 2015), 8. https://publications.parliament.uk/pa/cm201415/cmselect/cmjust/311/311.pdf. Accessed February 2025.

[51] Prior to the introduction of LASPO, the Ministry's own Equality Impact Assessment predicted: A deterioration in case outcomes; wide social and economic costs; reduced social cohesion; loss of respect for and compliance with law; increased criminality; reduced business and economic efficiency; increased costs for other Departments. For later assessment see Ministry of Justice, Reform of Legal Aid in England and Wales: Royal Assent Stage Equality Impact Assessment (EIA), London (July 2012), P.14.

[52] Frederick Wilmot Smith, Necessity or Ideology, London Review of Books, Vol. 36 No. 21 · 6 November 2014.

[53] Roger Smith, JUSTICE press release on legal aid and county court changes, 2011.

[54] National Audit Office, *Implementing Reforms to Civil Legal Aid* (2014) paras 1.1 to 1.34.

[55] Ian Griggs, 'Shelter to close nine housing advice centres because of cuts to legal aid' (*Third Sector* 11 March 2023) <https://www.thirdsector.co.uk/shelter-close-nine-housing-advice-centres-cuts-legal-aid/finance/article/1174095> accessed April 2025.

[56] The Bar Council, The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO): One Year On Final Report (2014), para 177. Accessed April 2025.

services nationally has led to patchy provision across England and Wales, resulting in what are referred to as "legal advice deserts".[57]

Measures introduced to combat the COVID-19 pandemic have exacerbated existing delays, generating significant case backlogs across whole areas of courts and tribunals, leading some to describe the justice system in England and Wales as being in a state of "terminal decline".[58]

Interestingly, only two weeks ago, the Institute for Fiscal Studies [IFS] published some helpful economic analysis of spending on the Justice system that confirms the post-LASPO post-austerity situation.[59] A perfunctory introductory sentence declares that: "The justice system is an important part of how the government upholds the law and maintains public order, making it a significant area of responsibility." They then go on to say that their scrutiny of the surprisingly haphazard state of economic data available,[60] confirms that between the early 2000s and the late 2010s, the MoJ fared worse than the average government department. In the decade between 2007 and 2017, the MOJ bore a 33% cut to its budget, compared with a 3% cut to total departmental spending; a 3% cut to the Department for Education; a 6% cut to the Ministry of Defence; and a 25% increase to the Department of Health and Social Care budget. Other (non-health, non-education, non-defence, non-justice) departmental budgets fell by 22%, meaning justice also did worse than the average 'unprotected' department.

Recent funding injections apparently do not offset the severe budget cuts in the 2010s. Real-terms day-to-day justice spending in 2025–26 is set to be no higher than it was in 2002–03, almost a quarter of a century earlier, and around 16% lower in per-person terms.

About half of the total cost is swallowed up by prisons and probation services, while HMCTS and legal aid each account for about one-fifth. According to the IFS, the outlook for justice spending in England and Wales is uncertain, ominously suggesting that:

> Given reasonable assumptions about what might happen to 'protected' budgets such as the NHS, the Ministry of Defence, overseas aid and childcare, this would leave other 'unprotected' budgets – potentially including the MoJ – facing real-terms cuts.

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[57] Amnesty International UK, *Cuts That Hurt: The impact of legal aid cuts in England on access to justice* (October 2016). Accessed February 2025.

[58] Safi Bugel and Helen Pidd (2022) 'The system is in crisis: barristers make their case as strike begins', *The Guardian*, Monday 27 June 2022. Available online at: https://www.theguardian.com/uk-news/2022/jun/27/the-system-is-in-crisis-barristers-make-their-case-as-strike-begins. Accessed 3 February 2025.

[59] Magdalena Domínguez and Ben Zaranko, Justice spending in England and Wales, Institute for Fiscal Studies, 11 February 2025. An output of a four year £2.5m project entitled *Transforming Justice: The Interplay of Social Change and Policy Reforms* https://ifs.org.uk/transforming-justice-interplay-social-change-and-policy-reforms. Accessed February 2025.

[60] In so far as data permits – nothing before 2005 and even then, apparently, no clear account of expenditure. **"**The primary hurdle to tracking MoJ spending over a long period of time is that there is no single document containing information on the size of its budget all the way back to its creation." Ibid p7.

They conclude that "plans can change but, on the face of it, the justice system of England and Wales is facing another period of retrenchment."

So, considering the current situation and gloomy predictions, what is the access to justice plan?

Well, first - more reviews. Reacting to continuing complaints about lack of access to justice and, perhaps more influentially, threats by the Bar to strike, the MOJ reviewed criminal legal aid remuneration, publishing its report in 2021[61] and then began a Review of Civil legal aid in 2023, that continues.[62]

The Civil legal Aid Review[63], predictably rehearsing the mantra that legal aid is a vehicle for upholding the rights of individuals and driving improvements in society for the most vulnerable, is focusing on

- easy and quick access to the civil legal aid system:
- encouragement of early dispute resolution (where appropriate)
- simplified and flexible technology
- building the dwindling capacity of private and third sector providers.[64]

Confirming the incoming government's intention to complete the civil legal aid review, the Minister for Courts and Legal Services said that:

> Legal aid is the cornerstone of our justice system. It underpins the rule of law in this country, helping to ensure that everyone, including the poorest and most vulnerable, can access justice and enforce their legal rights…..[W]e inherited a legal aid system creaking under pressure after years of neglect…We are determined to nurse this critical sector back to health, rebuilding a legal aid system that is sustainable, effective and efficient, and that helps people to address their legal problems as quickly and as early as possible.

What we currently have is fewer providers in the private and third sector; greater demand following Covid; economic shocks, with increased poverty; poor physical and mental health; a justice system that is creaking from backlogs and crumbling buildings; strained funding and no more money for justice on the horizon.

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[61] Sir Christopher Bellamy, Independent Review of Criminal Legal Aid, November 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041117/clar-independent-review-report-2021.pdf. Accessed February 2025.

[62] Ministry of Justice, Open consultation Civil legal aid: Towards a sustainable future, updated March 2025. https://www.gov.uk/government/consultations/civil-legal-aid-towards-a-sustainable-future/civil-legal-aid-towards-a-sustainable-future#fn:3. Accessed 14 April 2025.

[63] https://www.gov.uk/guidance/civil-legal-aid-review. Accessed 14 April 2025.

[64] A paper published in January 2025 as part of this review confirms that the LASPO scope changes mean fewer people can access legal advice and representation for problems in family, employment and welfare benefits law and that civil legal aid cases have dropped by more than a quarter (28%), mediations have fallen by almost a half (48%), and legal help has fallen by three-quarters**.** James Boyde, Imogen Farthing, Daniel Jones, Elena Sharratt and Eve Tailor Review of Civil Legal Aid: Literature Review of User Experiences, Key findings from published research, summarising the experiences of users of civil legal aid, January 2025. Accessed April 2025.

Next, technology to the rescue

For at least a decade, technology has been envisioned as an answer to varied access to justice problems. Sophisticated commercial litigators can be relieved of paper bundles or deal with their disputes online and remotely, and the everyday troubles of 'ordinary people' can be handled via online dispute resolution or self-service remote determination. In 2016, following various future-gazing reports[65] a Joint Vision Statement by the Lord Chief Justice and Senior President of Tribunals[66] signalled a five-year, £1billion justice system transformation project led by HMCTS, encompassing online, telephone and video technology-access in a single system for civil, family and tribunal cases. Though the transformation continues, impact assessments conducted by HMCTS published in December 2023, suggest (to put it charitably) that the new digital services have not resolved barriers to access to justice for all users on an equal basis.'[67]

We are now promised another digital revolution known as the 'Digital Justice System', supposed to increase access to justice by demystifying the existing complexities of dispute resolution, allowing disputes to be resolved quickly and at proportionate cost online and, wherever possible, without the need for legal proceedings. In so far as I understand it, and I am not sure that I do, the proposal would force all county court and tribunal disputes to go through non-court digital dispute resolution and ombudsmen services, that will somehow interface with HMCTS. It is currently unclear how far these proposals are taking shape

MOJ policy

To address the access to justice crisis in so far as it affects the increased weight of unmet legal need for advice and support among those facing challenges of poverty, housing, employment, and poor physical and mental health, the MOJ is focusing on a broad policy of facilitating avoidance, early problem resolution, and the potential for increasing impact via a holistic approach. This may involve collaboration, co-location and other innovations between the free legal advice sector and other services who support those living with disadvantage or who face temporary crisis that can tip them into longer terms difficulties. Establishing a coalition of the willing, a Legal Support Strategy Delivery Group has been set up, including academics, and representatives from a wide range of interest groups and community advice umbrella organisations. It is early days and although there is a financial commitment behind the activity, the likely outcomes are, as yet, unclear and the relationship of this work to the technological revolution being driven by HMCTS and the judiciary are hazy – at least to me and others that I have questioned.

So where do we go from here?

The history and scope of reforms made in the name of access to justice, the discourse and rhetoric surrounding them, their objectives and content, reflect the social, political, economic

[65] Civil Justice Council, *ODR for Low Value Civil Claims*, in 2015; JUSTICE, *What is a Court?* in 2016; Lord Justice Briggs' *Review of Civil Courts Structure* in 2015/16. Accessed February 2025.
[66] The Lord Chancellor, The Lord Chief Justice and The Senior President of Tribunals, Transforming Our Justice System, September 2016. Accessed February 2025.
[67] Natalie Byrom, *Where Has My Justice Gone*, op cit. fn24.

and constitutional context in which the field of access to justice and its connection with rule of law is situated. To address all of this adequately would require several more lectures.

If we accept that what needs to be thought of as the field of access to justice has many objectives and underlying values, and if we want to promote those objectives and values, we need to move beyond internal theoretical discussions, agree that access to justice covers a wide range of issues, focus on which meaning or aspect we are genuinely interested in progressing at any particular time, and then use that focus to frame our conversations and advocacy with those outside the legal sector who would listen and perhaps make common cause if they realised the relevance of our objectives and proposals to their own preoccupations.

Conclusion: Returning to lessons from health

By way of example, my conclusion concentrates on the social justice aspiration of access to justice and considers what needs to be done to progress that goal. I use Health Justice Partnership as an illustration of what can be done and how, and the model it suggests for constructive system-level collaboration to transform the reality, perception and understanding of access to justice. Making explicit and comprehensible how law on the ground contributes tangibly to social justice is essential in the project - and in my experience the words 'access to justice' are neither necessary nor helpful in achieving that objective.

In social justice terms, access to justice involves reference to legal rights and entitlement to improve the situation of those living in poverty, and or facing other challenges such as poor health, disability, discrimination and so on, as well as those temporarily facing crises that threaten their social and financial stability as well as their health. The objective of access to justice in this sense is to mobilise the law or background threat of legal rights to mitigate the consequences of such situations. Work on legal needs has demonstrated that 'everyday legal problems' [68] rather than being discrete and rare events, often come in clusters with one triggering another.[69] This is especially so for those living with disadvantage. Such clusters have been graphically referred to as "multiple, interconnected and messy."[70]

Despite the prevalence of everyday legal problems and disputes, very few people end up in courts or tribunals. While academics worry about inequalities in the experiences and outcomes of unrepresented litigants in civil litigation, many activists are concerned with the much broader challenge of helping the vast majority of individuals whose problems never make their way to an adviser, let alone any sort of legal forum. What people do or want depends on whether they are a potential claimant or defendant and who the opponent it.[71]

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[68] Pascoe Pleasence, Nigel Balmer and Rebecca Sandefur, Paths to Justice: A Past, Present and Future Roadmap, 2013 Nuffield Foundation. See also Pascoe Pleasence and Nigel Balmer, How People Resolve 'Legal' Problems, 2014, Report to the Legal Services Board. Accessed February 2025.
[69] Pascoe Pleasence et al, 'Multiple Justiciable Problems: Common Clusters and Their Social and Demographic Indicators', 2004 Journal of Empirical Legal Studies, Volume 1, Issue 2, 301–329.
[70] Luke Clements, *Clustered Injustice and The Level Green*, (Legal Action Group, 2020), p37.
[71] In the vast majority of county court cases the initiator is a business or institution rather than an individual. Except for personal injury proceedings, individual experience of court proceedings is as a

Research tells us is that people do not generally crave involvement with legal processes, but they do want their problem to be sorted out, to be resolved and preferably in their favour, but do not know how to do it. In this sense access to justice can assist with the earliest resolution and the avoidance of further harm. This is likely to require information for some, advice and action for others, and representation and advocacy where necessary. We know that many people have only a weak or absent understanding of their legal rights and may seek information or advice from a vast range of more or less helpful sources.[72]

Those living with multiple challenges are often regularly in contact with a range of health, social and other services. Those afflicted by a sudden catastrophe (dismissal, redundancy, unexpected eviction) are also likely to seek, or come into contact with, services that might assist. While the affected individual may not recognise the need or value of legal intervention – indeed may not understand the relevance of law to their situation in any sense – the professionals and services with whom they have contact are 'critical noticers' - in a pivotal position to connect patients and clients with free social welfare legal services. Doctors in primary and acute care, maternity services, mental health services and so on, are among the remaining free services that people can approach.[73]

Indeed, a high proportion of patient GP consultations concern medical problems with a social cause, the top categories being personal relationship problems, housing, unemployment/work related issues and welfare benefits.[74] Demand for "non-health" work is identified as a contributing factor to increased general practice pressures[75] and exacerbating health inequalities.[76] The most recent data I've seen shows that one in five GP appointments (amounting to 200,000 consultations every day) are taken by 'patients' with non-medical issues like debt, relationships or housing.[77] Similar concerns have emerged from Red Cross research on high intensity users of hospital A&E departments.[78]

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defendant rather than as claimant. See Hazel Genn, Online Courts and the Future of Justice, Annual Birkenhead Lecture, Gray's Inn, October 2017. https://www.ucl.ac.uk/laws/sites/laws/files/birkenhead_lecture_2017_professor_dame_hazel_genn_final_version.pdf. Accessed February 2025.

[72] See Hazel Genn *Paths to Justice* n3; Pascoe Pleasence et al, *Causes of Action: Civil Law and Social Justice*, Legal Services Commission, 2004.

[73] As indeed are the police and MP surgeries. A recent study shows that three-quarters of constituent appointments with MPs were related to legal issues, the most common being housing, immigration and asylum issues. Hogan Lovells and Law Works, Mind the gap: The Unmet Need for Legal Advice in England & Wales, June 2023. Accessed February 2025.

[74] Citizens Advice. *A Very General Practice: How much time do GPs spend on issues other than health?,* Report of a Survey by Citizens Advice*, 2015.* Accessed February 2025.

[75] Beccy Baird, Anna Charles, Matthew Honeyman, David Maguire, Preety Das, Understanding Pressures in General Practice*,* The King's Fund May 2016. Accessed February 2025.

[76] Ellen Bloomer, with Jessica Allen, Angela Donkin, Gail Findlay and Mark Gamsu, *The impact of the economic downturn and policy changes on health inequalities in London*, (UCL Institute of Health Equity 2012).

[77] Data Care Solutions 2023, 'Smart flow' providing GPs with information about high service use. Accessed February 2025.

[78] British Red Cross, *Seen and Heard: Understanding frequent attendance at A&E*, 2024. Accessed February 2025.

The health sector recognises that reducing health inequalities and relieving the crisis in primary care requires something more than increased expenditure on treating disease. A strategic approach to improving public health involves addressing the systemic multi-level social causes of health problems.[79] Policy innovation and social interventions, including health system redesign, are necessary. Until recently the role of law has been absent from discussion about collaboration and system innovation, but there is a developing interest in how legal services might help to improve health and well-being and reduce pressure on health services.

A recent shift in approach comes from young healthcare professionals facing what they refer to as a 'polycrisis' comprising ineffective service delivery, demand outgrowing capacity and reactionary sick-care more than health care. Bemoaning the practice of caring for the sick and then returning them to the conditions that caused their ill health, they intimate the need for multi-service approaches and collaboration. While not mentioning the role of law, they point to the fact that:

> Health, disease, and illness occurs beyond the membrane of our biology. Health is created and destroyed in houses, in communities, in our social lifestyles, in poverty and beyond. Health care professionals cannot and should not be responsible for addressing the wider determinants of health. They can, however, develop new roles in facilitating and supporting others to do so, across the whole spectrum of maintaining and creating health and preventing disease.[80]

The innovation of the Health Justice Partnership is one model of collaboration delivering holistic care that effectively addresses the underlying socio-legal issues that produce or exacerbate ill health.[81] They are a very helpful practical instantiation of the need to address the clustered nature of complex challenges or misfortunes from a range of perspectives, with legal advice and support as one important, if not essential, element. What are sometimes referred to as the 'wicked' problems of social policy[82] cannot be easily unpicked and parcelled up. They interact, compound and escalate. Ask anyone faced with a sudden health problem of the ways in which this can affect every aspect of life – not least, financial security. The value of such partnerships has been recognised in the USA to the extent that

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[79] The Health Foundation, Healthy Lives for people in the UK, January 2017, p12. Accessed February 2025.

[80] H Khan, B Chiva Giurca, Z Tugcu, Y Baker, K Choi, G Gillett, E Tonner, *Hope for the Future: Promoting a Vision of Health Professionals' Education Based on Disease Prevention and Health Creation,*2024. Available at: https://drive.google.com/file/d/1ZSHQHnO4wv75E4bTlgCQrZUu3lQzlIRX/view. Accessed April 2025.

[81] See for example, Hazel Genn and Sarah Beardon, Health Justice Partnerships: Integrating welfare rights advice with patient care (2021); Sarah Beardon et al, International Evidence on the Impact of Health Justice Partnerships: A Systematic Scoping Review (2021); Sarah Beardon, Sarah Ahmed, Hazel Genn, Health Justice Partnerships: Funding welfare rights advice services to work in partnership with healthcare (2024).

[82] Horst Rittel and Melvin Webber, (1973), 'Dilemmas in a General Theory of Planning.' Policy Sciences, 4(2), 155-169. https://link.springer.com/article/10.1007/BF01405730. Referred to by Pascoe Pleasence and Nigel Balmer, 'Justice & the Capability to Function in Society', *Daedalus* 2019; 148 (1): 140–149. doi: https://doi.org/10.1162/daed_a_00547. Accessed February 2025.

civil legal aid funding eligibility rules have been amended to allow health centres to use federal funds to pay for on-site civil legal aid to help meet the primary care needs of the population. It is seen as enabling better health. Since 2021, Scotland has funded Welfare Advice and Health Partnerships recognising that free welfare legal advice located where people are already receiving mental and physical health offer easier access to the help needed while often reaching those who do not engage with traditional advice services.

Combining the skills and experiences of health practitioners with those of social welfare legal practitioners can provide many of the benefits that the shorthand 'access to justice' is meant to deliver. Knowledge, problem-solving, improved capability, effective participation, empowerment, routes to remedies and fair outcomes when problems can't otherwise be resolved.

Why, then, is free legal advice not routinely part of 'care pathways'? Macmillan provides a proactive model based on the two questions posed by patients diagnosed with cancer, the first being: 'am I going to die'; and the second being 'how will this affect my job and finances?' Macmillan offers free social welfare financial advice as an essential step in patient care.

The collaboration model could be promoted, widened and funded in many ways involving cross-governmental responsibility and initiatives, multi-disciplinary professional and service partnerships, inter-professional training, as well as public and community outreach and education programmes. But to make any progress on this we need to re-think, adapt, and transform. We need to step outside of habitual 'crisis tropes' in which we see ourselves as beleaguered and misunderstood as we try to do good in a way that is not widely appreciated.

This neatly brings me back to my original concern: The problem of language

So, to end, how are we to think and speak about access to justice in order to be heard and understood? It is far from novel to note that legal knowledge is complex, and it is both cynical and simplistic to suggest that this complexity can be attributed simply to lawyers' design. I am much persuaded by William Lucy's convincing argument[83] that some of the complexity of legal language derives from the fact that "legal knowledge draws on a long tradition and vocabulary of legal concepts that do not always overlap with ordinary common-sense concepts."

He argues further that although some legal concepts have equivalents in ordinary language, the "correspondence is often inexact." But he concedes that some legal concepts either have "no analogues in ordinary understanding or, when they do, the legal counterpart is esoteric... and that complexity also arises from the process of integrating current legal developments into the narrative of existing and past law." While we can debate the cause of legal complexity I would doubt, frankly, that it is significantly more opaque or

[83] William Lucy 2020 Ibid, n11, p380.

incomprehensible that the language and vocabulary of many other fields of professional practice, academic disciplines, or even rugby union. Everyone needs to be able to communicate, especially when we are trying to persuade and advocate.

I have argued that the problem of effective communication on access to justice with non-lawyers is both the range of issues that it covers and the lack of clarity about the focus of the communication. This is both a problem of conceptual confusion and language.

I have suggested that when people talk about access to justice, they need to be clearer about which particular aspect or aspects of access to justice are the target of their communication – people, problems, institutions, or resources, or something else. And then they need to express themselves in a way that makes a connection with the subject of the communication in terms of objectives, priorities, practice methods and values.[84]

So how do we engage allied professionals and services, politicians, and the general public and who should take responsibility? The Canadian scholar Trevor Farrow suggests that access to justice must become a topic of widespread conversation and concern:

> When access to justice and the legal health and well-being of our citizenry become regular topics of dinner table conversation—then it will be much more difficult for elected officials, and those charged with the research and policy work of the nation, to avoid putting those voices and views at the centre of …. a much more reflective, and therefore universally accessible system of justice.[85]

This requires a significant shift in thinking, writing and speaking. We need clarification of purpose and the adoption of positive, outward facing, objective-focused discourse, attentive to the benefits and beneficiaries of improved access to justice. How can we work with you to achieve our shared objectives? This is more appealing than the rather opaque, inward-looking, crisis dominated lack of access to justice language that often hints darkly at the collapse of the profession, damage to the rule of law and democracy (which is happening already), and social unrest. Judicial speeches on access to justice and the rule of law are littered with such ominous warnings.[86]

But who should bear responsibility for this shift in communication? Getting back to the idea of access to justice as an 'orphan issue' for which no one institution bears responsibility, the

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[84]As part of their strategic work for *21st Century Justice,* the Law Society has been looking specifically at language used about the justice system. In February 2025 they published findings of the early stages of their campaign for Reframing Justice. They are planning to publish a toolkit "to help communications professionals and organisations make the case for strengthening the rule of law and improving access to justice."

[85] Trevor Farrow, 'What is Access to Justice?' Osgoode Hall Law Journal 51.3 (2014) : 957-988. DOI: https://doi.org/10.60082/2817-5069.2761
https://digitalcommons.osgoode.yorku.ca/ohlj/vol51/iss3/10

[86] For example, Lord Neuberger, 'Justice in an Age of Austerity', Tom Sargant Memorial Lecture 2013; Dame Helen Winkelmann above n5. "[A] society whose people no longer believe that there is equality before the law, is a society in which social cohesion will be loosening and civil society deteriorating."

legal sector picks up and pays for the failures of many other areas of government decision-making, such as benefits and housing. We have no cross-departmental or judicial body with responsibility for promoting the social justice objectives of access to justice.

I am proposing that we drop the insider language of access to justice – which is a process not an outcome – a means not an end – as a shorthand for something else, and adopt a vocabulary that resonates with the people we need to engage in the pursuit of social justice and equity via the use of the legal means available and procedural innovation that makes those legal means effective.

This is a two-step process. Without explanation and accessible language, we risk positioning access to justice and the rule of law as unknowable and unreachable. Unless personally affected, it is challenging for the public to see how the values and processes wrapped up in these concepts underpin social, political and economic systems and shape our everyday lives.

The first step is to continue unbundling the concept of access to justice, revealing with more clarity its constituent elements, targets and objectives so that they can be more effectively understood and utilised by the public, professionals, multiple service providers and politicians.

The final step is speech. I would love to end with a polished access to justice vocabulary, but I have had neither the time nor inspiration to give it the thought that it needs. It is not an overnight project. While we may feel its urgency now, we need a sustained communication revolution that encourages collaboration and joint problem solving through law; that explains with concrete examples how legal rights support the prevention of harm; how legal entitlements can protect and improve health and well-being. We need to talk more of the ROLE rather than the RULE of law in relation to access to justice. We need to stress how law can help, support, facilitate, repair, protect and prevent. In sum, we need, through our language, to connect better with those outside the legal field to communicate the value of law to individuals and to society.