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## Access to Justice and the Welfare State

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ACCESS TO JUSTICE AND THE WELFARE STATE. Edited by *Mauro Cappelletti*. Florence, Italy: European University Institute. 1981. Pp. viii, 365.

*Access to Justice and the Welfare State* was born in the comparative and interdisciplinary research of the Florence Access-to-Justice Project which Mauro Cappelletti completed in 1979. The Florence Project resulted in a four-volume work entitled *Access to Justice*.<sup>1</sup> In an attempt to make the findings of the Florence Project more accessible to policymakers, an international conference titled "Access to Justice after the Publication of the Florence Project: Prospects for Future Action" was held in October of 1979. The articles in this book reflect the thoughts of respected authors who originally presented their papers at that conference and revised them to reflect the conference discussions. These articles analyze the original work of the Florence Project. They also provide realistic access to some of the research results for those unable to wade through the 2700 pages of *Access to Justice*.

Cappelletti uses a "wave" metaphor to describe the access to justice movement,<sup>2</sup> especially its experience in the United States. The structure of the book follows this metaphor. The first wave involves reforming institutions to provide legal services for the poor. The second wave concentrates on extending representation to diffuse interests, such as consumers or environmentalists. The third wave questions the effectiveness of dispute-resolving institutions, and examines less formal alternatives to traditional courts. Correspondingly, the first three sections of the book contain articles on each of these topics.

The fourth and final section of the book goes beyond these waves and considers access to justice in light of the political realities of a modern welfare state. A welfare state is "a society with considerable governmental involvement in an essentially private economy and with a governmental commitment to ameliorating the economic and social conditions of the disadvantaged . . ." (p. 20). Accordingly, the government often intervenes in the affairs of the individual citizens. Such intervention implies that full access to justice must include more than access to the courts and legal representation. In short, concludes one contributor,<sup>3</sup> "it is impossible and unwise to attempt to isolate totally the problems of accessibility. There is one big enveloping issue: justice in the Welfare State" (p. 306).

A mere formal right to access cannot solve problems; a declaration of a right does not guarantee its enforcement. The articles by Harry Street and Andre Tunc<sup>4</sup> point out impediments that low-income people must over-

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1. ACCESS TO JUSTICE, Vols. 1-4 (M. Cappelletti gen. ed. 1978 & 1979).

2. For a more complete explanation, see Cappelletti & Garth, *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective*, 27 BUFFALO L. REV. 181, 197-227 (1978).

3. Harry Street, Professor of Law, University of Manchester.

4. Professor of Law, University of Paris I.

come to obtain justice. Perhaps the most significant problem is lack of information: people ignorant of their rights do not seek the advice of an attorney, even if an attorney is provided by a legal aid system. Tunc suggests forming neighborhood information centers to inform low-income people of their rights and training social workers to identify their clients' legal problems as possible means of increasing access to justice.<sup>5</sup> Professor Street suggests the use of paralegal advocacy, expanding the role of union legal staffs to protect members' rights, and greater use of class action litigation. Few people, however, have expertise in the complex area of social welfare legislation, and such reforms would require development of adequate training procedures.

In addition to the availability of advocates, access to justice may depend on access to information. Often a case will turn on expert testimony. Professor Street sees the lack of access to information as a severe problem in England's landlord-tenant disputes. Although special courts and procedures give tenants an inexpensive forum to enforce rent control laws, tenants often lose because they cannot afford the expert testimony of real estate appraisers that their cases demand. For many tenants, access to justice without access to information is an empty right.

Before steps can be taken to solve these problems, policymakers must consider the costs of increasing access. Beyond the obvious, yet difficult, question of how much money a society should spend on such projects, there are social costs involved in increasing access to justice. If access leads to litigation, the costs of adjudication include not only expense and delay, but also the diminution of private ordering that reduces individual flexibility and exacerbates institutional rigidity. Some commentators have voiced concern about the inevitable increase of the Leviathan State as government expenditures for access to justice increase (p. 22). For example, the number of cases increase as people find that it does not cost anything to bring a claim. Defendants often settle unjust claims merely to avoid the expense of litigation.

Anyone expecting *Access to Justice and the Welfare State* to provide concrete solutions will be disappointed. The international framework of the book is a rich source of varying perspectives and experiences, yet also a source of frustration. Each author would admit there are many problems in applying one country's learning and experience to another, due to different political and social environments, yet none attempts to give serious guidance in working through such problems. An article by Erhard Blankenburg<sup>6</sup> and Udo Reifner<sup>7</sup> specifically addresses the difficulties of extending the experiences of other countries to the German system. They give no analysis, however, of whether these difficulties can be overcome. Though this collection of works may not provide many specific answers, it does offer some general ideas for improving current approaches to dispute resolutions. Along with these ideas come even more insightful words of caution about trade-offs and abuses that can arise from attempting to increase access to

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5. For a more detailed look at this proposal, see Phillips, *Social Work and the Delivery of Legal Services*, 42 MOD. L. REV. 29 (1979).

6. Professor of Sociology, Free University Amsterdam.

7. Dr. Jur., Wissenschaftszentrum Berlin.

justice. For these reasons, the book offers useful background material for those concerned with the access to justice problem.<sup>8</sup>

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8. Cappelletti's book has also been reviewed by Jolowicz, *Book Review*, 40 *CAMBRIDGE L.J.* 368 (1981).