



## Why is the Highway Closed? The Unreasonable Restriction Imposed on the Legal Services Corporation Regarding Class Action Suits

(¿Por qué Está Cerrada la Autopista? La Irrazonable Restricción Impuesta  
sobre la Corporación de Servicios Legales con Relación al Uso de Acciones de Clase)

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**Abstract:** In the paper I discuss the prohibition imposed by the US Congress on the Legal Services Corporation regarding the use of class action suits to provide free legal assistance to the poor. I deal with the creation of the Legal Services Corporation in the US, the scope and advantages of class actions suits (particularly in terms of access to justice), and the role this kind of procedure can play in a context of a deep economic crisis that have deepened the gap in access to the civil justice system. I argue that the aforementioned prohibition to use class actions is unreasonable *per se*, and that this character is even more remarkable during the current post economic scenario. Therefore, I suggest that the prohibition should be eliminated as soon as possible if there is a real interest in providing free legal services to the poor.

**Key words:** Class Actions – Legal Services for the Poor – Access to Justice – Legal Services Corporation – Economic and Cultural Barriers



## Introduction

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The purpose of this paper is to discuss the restriction imposed by the US Congress on the Legal Services Corporation regarding the use of class action suits.<sup>1</sup> I will show that the limitation is unreasonable *per se*, and that this character is even more remarkable during the current post economic crisis scenario. The basic premise of the analysis, which should be clear from the outset, is that access to justice is a basic human right within any democratic society.<sup>2</sup>

The paper is organized in four parts. In Part II I briefly describe the origins of legal aid in the US, the institutional mission of the Legal Services Corporation (LSC) and the restrictions imposed on it by Congress in 1996. Part III is dedicated to an overview of the barriers people find when trying to get access to the civil justice system. In Part IV I work specifically on the class action procedural device, explaining the origins, purposes and advantages of this mechanism in terms of access to justice, efficiency and deterrence effect.

By the end of Part IV it should be clear that class actions are an extremely relevant procedural tool for delivering legal aid services to the extent that they allow an efficient and economic way -both to the providers and the State- to get over the barriers faced by individuals in this field. By showing that, I will demonstrate that the restriction regarding class actions is unreasonable *per se*.

Once this preliminary conclusion is established, in Part V I deal with the impact of the 2008 economic crisis, both on the gap in the access to the civil justice system and in the funding of the LSC and legal aid providers. My aim is to show that, while the restriction under discussion can be

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<sup>1</sup> This paper is the result of a research performed during the Fall semester of 2010 in the context of the Seminar “Access to the Civil Justice System and Delivering Civil Legal Services to the Poor: Policies, Practices and Current Challenges” (NYU School of Law) under the supervision of Prof. Helaine M. Barnett. I am deeply grateful for her insight, comments on previous drafts and support to the project. A Spanish version of the work, with some modifications and a different title, will be published in the *Revista de Derecho Procesal*, Rubinzal Culzoni Ed., Argentina.

<sup>2</sup> Not only because without it no other right could be secure, but also because of the effects which follow from its enforcement to the democratic system as a whole. See Faisal Bhabha “*Institutionalizing Access-to-Justice: Judicial, Legislative and Grassroots Dimensions*”, 33 Queen's L.J. 139, 173 (2007) (arguing that the consequences of the exclusion of the poor and other disadvantaged people from the justice system are not only suffered by those individuals: that exclusion “can exacerbate and entrench their already marginal position in the political, social and economic structures of society”, and it can also “destabilize the political system and engender disillusionment with democratic institutions”).



considered unreasonable as a matter of principle, its adverse consequences on the whole system are even worse in the specific context of a post economic crisis scenario.

I close the paper by presenting a self-evident suggestion: assuming that there is not enough money to allocate in the legal aid arena in order to close the access to justice gap through the provision of adequate individual counsel and representation, the restriction on the LSC regarding class action suits should be eliminated as soon as possible.

## I. The Legal Services Corporation

### a. **Origins of legal aid in the US, the enactment of the LSC and the recurrent problem of lack of resources**

Legal aid work has always existed in the US, but in its origins it was informal, unorganized and individual. The history of organized legal aid services started in New York City in 1876, with the protection provided by the “German Society” to immigrants arrived to the US from that country. This private society changed drastically its name and the scope of its services (for the second time) in 1896 with the aim of start helping American citizens as well. That is how the “Legal Aid Society” appeared into scene. By 1910 organized legal aid work was “*reasonably well established in all of the larger cities of the east*”, following the trend initiated in New York.<sup>3</sup> By 1965, virtually every major city in the US had “*some kind of legal aid program*” which shared many common characteristics (the most important of them was, not surprisingly, the lack of adequate resources to accomplish their mission).<sup>4</sup>

The first time that Congress allocated federal funds for that kind of activities was during the era of the Office of Economic Opportunity (OEO). This public office was in charge of administering the governmental anti-poverty programs grounded on the Economic Opportunity Act of 1964.<sup>5</sup> As many

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<sup>3</sup> Reginald Heber Smith “*Justice and the Poor*”, The Carnegie Foundation for the Advancement of Teaching, Bulletin N° 13, 1919, pp. 133, 134, 139-140.

<sup>4</sup> Alan W. Houseman and Linda E. Perle “*Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States*”, CLASP, 2007, p.3.

<sup>5</sup> Alan W. Houseman and Linda E. Perle “*Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States*”, CLASP, 2007, p. 7. See also Helaine M. Barnett “*Justice for All: Are we Fulfilling the Pledge?*”, 41 Idaho L. Rev. 403, 407 (explaining that in the early years “*legal aid organizations were founded solely by private donations and operated independelty from each other*”). It is important to take into account that the original Act



were expecting, opposition from within the legal profession started as soon as the programs funded by the OEO began to provide (with success) free legal services for the poor.<sup>6</sup>

Facing that opposition, by 1971 the idea of an independent legal service entity began to sound loud within the organized bar, the legal services community (quite well established by then), Congress and the Nixon administration. That was how, after vetoing the first legislation passed by Congress in 1971 and just less than a month before resigned from office, Nixon signed the bill enacting the Legal Services Corporation Act of 1974.<sup>7</sup> The institutional mission of the LSC is, since its inception, to provide *“financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance”*.<sup>8</sup>

Before the creation of the LSC, the amount of money allocated by the federal government for the provision of legal services was negligible. The situation has changed since then, but not too much. According to some scholars, the reality is that there has been a *“consistent failure of Congress”* to increase LSC funding accordingly with the needs of eligible clients.<sup>9</sup>

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did not contain anything related to access to justice. The programs in this area started developing once the Act was amended in 1966.

<sup>6</sup> According to Houseman and Perle, the concerns of private attorneys by then fell into three categories: (i) competition for clients; (ii) impact of the free representation in their clients; and (iii) a perceived threat of the expansion of public financial support for, and governmental regulation of, the legal profession (Alan W. Houseman and Linda E. Perle *“Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States”*, CLASP, 2007, p. 10).

<sup>7</sup> See Alan W. Houseman and Linda E. Perle *“Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States”*, CLASP, 2007, pp.19-22.

<sup>8</sup> Public Law 93-355, 93rd Congress, H.R. 7824, July 25, 1974, Sec. 1003(a). Reinforcing this short but crystal clear institutional task, in Sec 1001(1), 1001(2) and 1001(3) the Congress declared that *“(1) there is a need to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances; (2) there is a need to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel and to continue the present vital legal services program; (3) providing legal assistance to those who face an economic barrier to adequate counsel will serve best the ends of justice and assist in improving opportunities for low-income persons consistent with the purposes of this Act”*.

<sup>9</sup> Michael J. Belaen *“Change we Need: Why Enacting The Civil Access to Justice Act of 2009 is Necessary to Expand Legal Aid For The Poor”*, 31 Hamline J. Pub. L. & Pol'y 329, 334-335 (showing that appearances can be deceiving because the numbers do not reflect the inflation: in 2008 *“Congress appropriated roughly \$350 million to fund LSC. This appropriation likewise represented a decrease in funding by roughly 53 percent considering inflation since 1980”*).



**b. The severe restrictions imposed on the LSC in 1996**

After evading repeated efforts directed toward its elimination during President Reagan's administration, during the decade of 1990 LSC suffered not only deep cuts in its funding but also severe restrictions regarding the kind of services that its grantees were allowed to deliver with federal funding.<sup>10</sup>

The most relevant provisions restricting the LSC freedom to accomplish its institutional task can be found in the Omnibus Consolidated Rescissions and Appropriations Act of 1996.<sup>11</sup> Through the enactment of this regulation, Congress prohibited LSC's grantees to provide free legal services to *"incarcerated people, undocumented immigrants and certain documented immigrants, and individuals facing eviction from public housing projects who are charged with a drug offense"*. According to the Act, LSC's grantees were also forbidden to collect attorney's fees and participating in class actions. In order to make the situation even worse for the provision of legal aid services, the Act established that those restrictions applied to all the grantee's activities (whether funded with federal money provided by LSC or not).<sup>12</sup>

The latter provision, known as the "poison pill",<sup>13</sup> led the LSC to adopt different "program integrity" regulations with the objective of ensuring that programs partially funded by LSC still have the ability to engage in activities restricted under the 1996 law by using money obtained from

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<sup>10</sup> See Marie A. Fallinger and Larry May *"Litigating Against Poverty: Legal Services and Group Representation"*, 45 Ohio St. L.J. 1, 2, 7 (arguing that by then *"Public debate over the fate of the Legal Services Corporation (LSC) has grown increasingly political, with Reagan Administration officials continuing to call for the total elimination of this poverty law program"* and that *"President Reagan has tried to use his executive powers to dismantle LSC altogether"*). See also Michael J. Belaen *"Change we Need: Why Enacting The Civil Access to Justice Act of 2009 is Necessary to Expand Legal Aid For The Poor"*, 31 Hamline J. Pub. L. & Pol'y 329, 336-337; and Alexander D. Forger *"Address: The Future of Legal Services"*, 25 Fordham Urb. L.J. 333, 341 (1998) (explaining that the restrictions are *"in most instances inappropriate and unduly burdensome. But Congress can give and Congress can take away. As I said earlier, it wasn't that we sat down to bargain, because we never know what's coming out until it's printed"*). Forger was, by the time when the restrictions were imposed, the President of the LSC.

<sup>11</sup> Public Law 104-134, Omnibus Consolidated Rescissions and Appropriations Act of 1996 by the 104th Congress of the United States.

<sup>12</sup> See Andrew Haber *"Rethinking the Legal Services Corporation's Program Integrity Rules"*, 17 Va. J. Soc. Pol'y & L. 404, 451 (concluding that *"The current restrictions on Legal Services Corporation grantees find their roots in the political clashes that began at the foundation of the program"*).

<sup>13</sup> Michael J. Belaen *"Change we Need: Why Enacting The Civil Access to Justice Act of 2009 is Necessary to Expand Legal Aid For The Poor"*, 31 Hamline J. Pub. L. & Pol'y 329, 357.



other sources.<sup>14</sup> Under this program, those organizations receiving federal funding through the LSC which want to engage in prohibited activities must demonstrate that they can maintain “objective integrity and independence” between both kind of activities (i.e. those funded with federal money and those funded with other sources).<sup>15</sup> That requirement of independence placed a huge burden on the grantees, because it entailed not only the obligation of avoiding transfers of money from the LSC’s funded program toward the program engaged in the restricted activities, but also the necessity of having a completely separated entity (from a legal point of view) with separate facilities and personnel.<sup>16</sup>

Specifically regarding the prohibition of initiating and participating in class actions, we have to bear in mind two things. First, that the availability of this sort of procedural device is critical for obtaining relief from widespread illegal practices (particularly critical for poor people).<sup>17</sup> Second, that the restriction was not something that came out of the blue, but instead can be considered as the closing stage of a long struggle initiated by LSC’s opponents against the capacity of the organization to engage in this kind of collective litigation.<sup>18</sup>

Which are the arguments invoked in Congress to explain that restriction? They are difficult to find,<sup>19</sup> and even more difficult to agree with. According to Senator Pete Domenici, the main reason for the prohibition is that the LSC was intended “*to represent individual poor people in individual cases, not to represent a class of poor people suing a welfare agency, suing a legislature or suing the*

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<sup>14</sup> Michael J. Belaen “*Change we Need: Why Enacting The Civil Access to Justice Act of 2009 is Necessary to Expand Legal Aid For The Poor*”, 31 Hamline J. Pub. L. & Pol’y 329, 338.

<sup>15</sup> See Andrew Haber “*Rethinking the Legal Services Corporation’s Program Integrity Rules*”, 17 Va. J. Soc. Pol’y & L. 404, 433-438.

<sup>16</sup> Michael J. Belaen “*Change we Need: Why Enacting The Civil Access to Justice Act of 2009 is Necessary to Expand Legal Aid For The Poor*”, 31 Hamline J. Pub. L. & Pol’y 329, 338.

<sup>17</sup> See Rebekah Diller and Emily Savner “*A Call to End Federal Restrictions on Legal Aid for the Poor*”, Brennan Center for Justice, 2009, p. 9, available at [http://www.brennancenter.org/content/resource/a\\_call\\_to\\_end\\_federal\\_restrictions\\_on\\_legal\\_aid\\_for\\_the\\_poor/](http://www.brennancenter.org/content/resource/a_call_to_end_federal_restrictions_on_legal_aid_for_the_poor/)).

<sup>18</sup> See Marie A. Fallinger and Larry May “*Litigating Against Poverty: Legal Services and Group Representation*”, 45 Ohio St. L.J. 1, 51 (stating that “*Since the formation of LSC, its opponents have attempted to restrict the filing of class actions on behalf of the poor, especially those directed against government agencies*”). For a sample of the attacks to the LSC, see Rael Jean Isaac “*War on the Poor*”, National Review, May 15, 1995 (arguing, for example, that the poor are not the beneficiaries but the “*chief victims*” of the LSC).

<sup>19</sup> See Alexander D. Forger “*Address: The Future of Legal Services*”, 25 Fordham Urb. L.J. 333, 339 (1998) (arguing that in this field “*There is so much smoke blown in the legislative process, together with the anecdotal rhetoric, that you reach the point where you can’t really believe. Do not ever breathe in what’s out there, and you shouldn’t believe what you see*”).



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*farmers as a class*".<sup>20</sup> When the issue was discussed in the House, the Committee held that although "advocacy on behalf of poor individuals for social and political change is an important function in a democratic society", it did not believe that "such advocacy is an appropriate use of federal funds".<sup>21</sup> Notwithstanding what was said within Congress, maybe a more genuine and plausible explanation can be found in the success of LSC in advancing that kind of advocacy, and –of course- the resulting irritation of the groups of power directly affected by that success.<sup>22</sup>

One last remark before going on: even though almost all aspects of the whole "restriction package" have been challenged through different lawsuits (basically relying on two grounds: freedom of speech under the First Amendment and breach of LSC lawyers' ethical obligations to their clients), up to today the prohibition regarding class actions remains.<sup>23</sup> A prohibition that clearly "runs

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<sup>20</sup> See Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996, Domenici amendment No 2819, 104th Cong, 1st Sess (Sept 29, 1995), remarks of Senator Pete V. Domenici, in 141 Cong Rec § 14573, 14608. The mention of farmers in this context is not casual at all, see Alexander D. Forger "Address: *The Future of Legal Services*", 25 Fordham Urb. L.J. 333, 339 -340 (1998) (arguing that "*The Farm Bureau is by far the most powerful influence ... in its zeal to discredit LSC, alleges lawyer misconduct such as extortion, blackmail, and the like. It does so because LSC is extremely unpopular in its efforts to enforce employment, housing, and environmental requirements to which the growers are subject*"). In the same line, see "*Life After Legal Services*", Wash Post A18 (Sept 18, 1995) (explaining in an editorial that the problem with the LSC is that "*its mission has been confused. It was sold as a system of storefront offices to which the poor could individually bring their landlord-tenant disputes and their problems with abusive employers or cheating merchants. That model was simple, modest and had broad support. But at least some legislators saw something much more ambitious: a powerful network of poverty lawyers funded by Washington and backed up by university-based centers of expertise, that would help not just individual clients but "the poor" as a whole*").

<sup>21</sup> H.R. Rep. No. 104-196 (1995), 120.

<sup>22</sup> See Helaine M. Barnett "*Justice for All: Are we Fullfilling the Pledge?*", 41 Idaho L. Rev. 403, 416-419 (explaining the accomplishments of the LSC since its inception). See also Jessica A. Roth "*It is Lawyers We are Funding: A Constitutional Challenge to the 1996 Restrictions on the Legal Services Corporation*", 33 Harv CR-CL L Rev 107, 156 (1998) (concluding that the restrictions "*generally have been enacted to placate opponents of the LSC who, if they cannot defeat the Corporation entirely, are mollified by the knowledge that it will undertake only 'ham and eggs' work for poor people*").

<sup>23</sup> Perhaps the most recent opinion is the one issued by the United States Court of Appeals of the 9<sup>th</sup> Circuit *in re "Legal Aid Services of Oregon v. Legal Services Corp."*, 608 F.3d 1084 (2010) (holding that the restriction on the use of class actions does not violate the First Amendment: "*In prohibiting grantees from soliciting clients, lobbying, and participating in class actions, Congress did not discriminate against any particular viewpoint or motivating ideology, much less did it aim to suppress 'ideas ... inimical to the Government's own interest'. The Restrictions simply limit specific procedural tools and strategies that grantee attorneys may utilize in the course of carrying out their legal advocacy. As such, they are permissible under Velazquez III*". For a discussion of the challenges against the LSC's Program Integrity Rules, see Andrew Haber "*Rethinking the Legal Services Corporation's Program Integrity Rules*", 17 Va. J. Soc. Pol'y & L. 404, 423-431. For further references about the topic, and regarding specifically the restrictions on class actions, see Ilisabeth Smith Bornstein "*From the Viewpoint of the Poor: An Analysis of the Constitutionality of the Restriction on Class Action Involvement by Legal Services Attorneys*", 2003 U. Chi. Legal F. 693 (2003).



contrary to the mandate of the LSC” because it guarantees that many rights “will not be heard in the legal marketplace”.<sup>24</sup>

## II. Barriers affecting the right of access to the civil justice system

Many studies have shown that there are two factors which predominate in order to block the access of individuals to the civil justice system. The first and more relevant is the lack of financial resources to afford the costs of litigation, while the second is represented by lack of ability to understand and use the legal system.<sup>25</sup>

### a. **Economic barriers and the costs of litigation**

The most relevant economic barriers to access to justice are those imposed by the high cost of lawyers, experts witnesses (when necessary for the correct adjudication of the dispute) and, at least in some jurisdictions, the high costs imposed by courts as a condition of filing lawsuits.<sup>26</sup>

As Smith put it many years ago, it is not possible to identify a principle governing the issue of litigation costs: “they are too low to deter the rich, but high enough to prohibit the poor”.<sup>27</sup> The features and names of the different kind of expenses and fees have certainly change since then, as well as some of the rules governing the allocation of those costs. However, two relevant facts remain

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<sup>24</sup> Ilisabeth Smith Bornstein “From the Viewpoint of the Poor: An Analysis of the Constitutionality of the Restriction on Class Action Involvement by Legal Services Attorneys”, 2003 U. Chi. Legal F. 693, 715-716 (2003).

<sup>25</sup> See Michael R. Anderson “Access to Justice and Legal Process: Making Legal Institutions Responsive to Poor People in LDCs”, p. 18, available at <http://siteresources.worldbank.org/INTPOVERTY/Resources/WDR/DfiD-Project-Papers/anderson.pdf>

<sup>26</sup> John E. Bonine “Best Practices – Access to Justice (Agenda for Public Interest Law Reform”, p. 2, available at <http://www.accessinitiative.org/resource/best-practices%E2%80%9494access-justice%E2%80%AA>.

<sup>27</sup> Reginald Heber Smith “Justice and the Poor”, The Carnegie Foundation for the Advancement of Teaching, Bulletin N° 13, 1919, p. 23.





unaltered: on the one hand, the fundamental difficulty posed over litigants by the high costs of counsel; and on the other, the relevance of counsel in order to have an adequate defense within the case.<sup>28</sup>

**b. Cultural barriers and the complexity of modern law**

A recent report produced by an state Access to Justice Commission highlight the fact that the lives of poor people “are highly regulated and the intersection between statutes, regulations and decisional laws is not obvious to those without experience”.<sup>29</sup> Indeed, the real problems faced every day by this disadvantaged group of people are intimately related to issues of legal language, access to information about rights and other cultural factors that converge to deny equal access to justice.<sup>30</sup> These difficulties, in turn, are even more severe with regard to some particular groups of poor people; the best example being that integrated by immigrants.<sup>31</sup>

Which are the sources of those problems? Maybe the main cause is the extreme complexity of contemporary legal systems (not only for lay people, but also for lawyers themselves).<sup>32</sup>

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<sup>28</sup> See Reginald Heber Smith “*Justice and the Poor*”, The Carnegie Foundation for the Advancement of Teaching, Bulletin N° 13, 1919, p. 31 (arguing that “*The expense of counsel is a fundamental difficulty because the attorney is an integral part of the administration of justice*”).

<sup>29</sup> See “*Rationing Justice: the Effect of the Recession on Access to Justice in the District of Columbia*”, Joint Report of the District of Columbia Access to Justice Commission and the D.C. Consortium of Legal Services Providers, November 2009, p. 4, available at <http://www.legalaidcc.org/documents/RationingJusticeReport..pdf>.

<sup>30</sup> See the Amicus Brief in support of the University of Michigan presented before the Supreme Court in the case “*Grutter v. Bollinger and Gratz v. Bollinger*” by the Hispanic National Bar Association and the Hispanic Association of Colleges and Universities [14 Berkeley La Raza L.J. 69, 83 (2003)]; Robert R. Kuehn “*Undermining Justice: The Legal Profession’s Role in Restricting Access to Legal Representation*”, 2006 Utah L. Rev. 1039, 1040 (2006) (arguing that “*lower-income persons likely encounter greater geographical, literacy, cultural, and language barriers just to access the justice system, much less to use the system successfully*”).

<sup>31</sup> See Roland T. Y. Moon “*Access to Civil Justice: Is There a Solution?*”, 88 Judicature 155 (noting that “*for the increasing number of immigrants who have come to the U.S. in recent years, the problem of access to justice has been compounded by issues pertaining to language barriers, cultural differences, and difficulties associated with assimilating into the mainstream of American life*”). The same kind of problems affect this group in other areas as well, see Jon C. Dubin “*Clinical Design for Social Justice Imperatives*”, 51 SMU L. Rev. 1461, 1485 (1998) (arguing that language and cultural barriers also place obstacles to immigrants in their search of employment).

<sup>32</sup> See Nicole Black “*Lawyers Should not be Wary of Cloud Computing*”, 72 Tex. B.J. 746 (arguing that “*The complexities of modern law practice are such that managing a law office in the absence of practice management software programs is nothing short of impossible*”); Kevin Mazza “*Divorce Mediation. Perhaps not the Remedy it was Once Considered*”, 14-SPG Fam. Advoc. 40, 42 (arguing that “*Given the complexities of modern law, both statutory and case law, and its continuing evolution, nonlawyers are ill-equipped to give advice on legal issues*”); James M. Fischer “*External Control Over the American Bar*”, 19 Geo. J. Legal Ethics 59, 67 (arguing that this complexity has led to a trend among lawyers “*toward specialization*”); in the same line, Steven K. Berenson “A



This phenomenon affects almost any area of law, is not new and, of course, is not exclusive of the US.<sup>33</sup> For the purpose of this paper, what matters the most is that, as Jennings stated in 1932, “so great is the complexity of modern law that the citizen is unable to determine his rights and duties in any situation which is even a little out of his normal course of life”.<sup>34</sup>

Even though achieving the elimination of the complexities of substantive and procedural law is a kind of utopia,<sup>35</sup> it has been argued that the legal system “may be amenable to simplification”.<sup>36</sup> Different proposals have been presented in order to accomplish that objective (e.g. reduce legal technicalities and simplify legal language,<sup>37</sup> altering the lawyer's monopoly on the justice system and demystifying the law so that lay people can understand it,<sup>38</sup> etc.). However, an overview of contemporary legal systems shows that we are far away from that.

### c. A dangerous combination

Both economic and cultural barriers bring about severe obstacles to access to the civil justice system. While this is true in general terms and can be predicated in relation to any middle class

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*Family Law Residency Program?: A Modest Proposal in Response to the Burdens Created by Self-represented Litigants in Family Court*, 33 Rutgers L.J. 105, 160 (2001) (arguing that “The economics and complexities of modern law practice have only served to increase the forces pushing in the direction of further specialization”); Howard G. Pollack “The Admissibility and Utility of Expert Legal Testimony in Patent Litigation”, 32 IDEA 361 (noting the complexity of modern law as one of the factors which “may have changed the prevailing judicial attitude toward the utilization of legal experts”).

<sup>33</sup> See Thomas Schmitz “Matthias Ruffert (ed.). *The Transformation of Administrative Law in Europe*”, Book Review, 19 Eur. J. Int'l L. 625, 625 (2008) (“She points to the high degree of complexity of modern administrative law, which has made it ‘unteachable’”).

<sup>34</sup> W. Ivor Jennings “*Declaratory Judgments Against Public Authorities in England*”, 41 Yale L.J. 407 (1932). See also Reginald Heber Smith “*Justice and the Poor*”, The Carnegie Foundation for the Advancement of Teaching, Bulletin N° 13, 1919, p. 31 (arguing that “With a vast body of ever changing law, which a man after a lifetime of devotion is only beginning to master, it is apparent that the layman, in order to understand his rights, what can and cannot do, must have the assistance of counsel”).

<sup>35</sup> History seems to show that the trend is going exactly in the opposite way. See Max Weber “*Economy and Society*”, Berkeley, California, London, p. 895 (arguing that “Whatever form law and legal practice may come to assume ... it will be inevitable that, as a result of technical and economic developments, the legal ignorance of the layman will increase”).

<sup>36</sup> Denise R. Johnson “*The Legal Needs of the Poor as a Starting Point for Systemic Reform*”, 17 Yale L. & Pol'y Rev. 479, 486 (1998).

<sup>37</sup> See Michael R. Anderson “*Access to Justice and Legal Process: Making Legal Institutions Responsive to Poor People in LDCs*”, p. 25, available at <http://siteresources.worldbank.org/INTPOVERTY/Resources/WDR/DfiD-Project-Papers/anderson.pdf>.

<sup>38</sup> Denise R. Johnson “*The Legal Needs of the Poor as a Starting Point for Systemic Reform*”, 17 Yale L. & Pol'y Rev. 479, 484 (1998).



citizen, it is worthwhile to highlight that the concern is even deeper when assessed in relation to poor people. Undeniably, the combination of both barriers is almost always a fact every time that a poor individual is in need of legal advice.<sup>39</sup>

### III. The class actions

According to some scholars, the origins of class actions can be traced to certain specific medieval group proceedings in England.<sup>40</sup> For the sake of this paper we do not need to come back so far, because what really matters is what they have become after its last comprehensive reform operated in 1966: a mechanism to adjudicate similar claims of big groups of people in a single judicial proceeding, providing finality for the controversy with complete independence of the result of the discussion.<sup>41</sup>

Since their inception, but particularly since that reform, class actions have been the focus of great controversy. What makes the topic fascinating is that most of the controversy has little to do with technical or legal aspects of the procedural device. Instead, the great attention which has been directed toward class actions is frequently grounded on the social and political implications they entail in a democratic society.<sup>42</sup> These implications, in turn, are the result of three particular advantages offered by the mechanism.

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<sup>39</sup> As a recent report shows, *"It is the experience of long-time legal services lawyers that many potential clients fail to seek services because they lack information about their rights, they cannot afford transportation or they are discouraged by prior experiences of not receiving services at an office that was too busy to help"* (*"Rationing Justice: the Effect of the Recession on Access to Justice in the District of Columbia"*, Joint Report of the District of Columbia Access to Justice Commission and the D.C. Consortium of Legal Services Providers, November 2009, p. 2, available at <http://www.legalaiddc.org/documents/RationingJusticeReport..pdf>).

<sup>40</sup> Stephen C. Yeazell *"Collective Litigation as Collective Action"*, 1989 U. Ill. L. Rev. 43. For an in-depth study see Stephen C. Yeazell *"From Medieval Group Litigation to the Modern Class Actions"*, New Haven: Yale Univ. Press, 1987.

<sup>41</sup> Federal Rule of Civil Procedure 23.

<sup>42</sup> In this sense, for example, it has been argued that the controversy over damage class actions is not about the mechanism itself. Instead, it is *"a dispute about what kinds of lawsuits and what kinds of resolutions of lawsuits the legal system should enable"* (RAND Institute for Civil Justice *"Class Actions Dilemmas: Pursuing Public Goals for Private Gain"*, 2000, p. 50). See also Judith Resnik *"Lessons in Federalism from the 1960s Class Action Rule and the 2005 Class Action Fairness Act: 'The Political Safeguards' Of Aggregate Translocal Actions"* 156 U. Pa. L. Rev. 1929, 1952 (2008) (underlying the political facet of class actions while arguing that *"CAFA's intent to cut back on class actions--and thereby to limit the way in which aggregate litigation can be used to respond to the economic barriers to litigation that I raised at the outset--should also be put in the context of the lack of congressional interest in finding other ways to subsidize litigation. As in the 1960s, when Rule 23 was in sync with the creation of*



In the following lines, I present an overview of the benefits provided by class actions suits in terms of access to justice, deterrence effect and efficiency. The analysis displayed here has no specific relation to any kind of context. However, as I hope will be apparent, the advantages provided by this sort of procedural device match almost perfectly with the LSC's institutional mission, and demonstrate that class actions are a remarkable weapon to be used in the fight against the barriers identified in Part III of this paper.<sup>43</sup>

#### a. Access to Justice

Since the 1966 reform, class actions have a potential "*broadly to affect access to court*". In fact, that appears to have been one of the goals of the reform.<sup>44</sup> According to Kaplan (the person primarily responsible for drafting the reform), that kind of procedure works plainly as "*something like the function of an administrative proceeding where scattered individual interests are represented by the Government*". This is especially true when the rights at stake are not relevant and the people entitled to them are more likely to forget or abandon their claims due to different sort of reasons (like ignorance, economic limitations, timidity or unfamiliarity with business or legal matters).<sup>45</sup>

How do class actions provide a plausible channel to access to the civil justice system? The answer can be found in the fact that they eliminate (or at least diminish) the power disproportion

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*the Legal Services Corporation, CAFA coheres with the 1996 restrictions on LSC lawyers and congressional prohibitions on LSC-funded lawyers bringing class actions*").

<sup>43</sup> The benefits provided by class actions can be invoked to support a group-impact approach to poverty law. Approach which, as Fallinger and May explain, does not necessarily work "*to the disadvantage of the individual poor persons who seeks legal assistance*". For the distinction among the different models for providing legal services for the poor which have emerged since the 60's see Marie A. Fallinger and Larry May "*Litigating Against Poverty: Legal Services and Group Representation*", 45 Ohio St. L.J. 1, 14, 17-18 (explaining that "*the law reform model and the equal access model. The first model views legal services as one of many tools to be used to combat the institutional problems of poverty, so that preference or interest satisfaction can be maximized within society. Proponents of the second model argue that poverty law programs are a means for placing individual poor clients on an equal legal footing with the non-poor, so that justice, which depends on this formal equality, can be advanced, resulting in the optimal protection of the legal rights of all citizens*"; and arguing that that "*Not every calculation in terms of group impact is an unjustifiable denial of the access rights of poor persons who are turned away by such procedures. It is not inconsistent for Legal Services lawyers to claim to be serving the interests of the poor as a group as well as the interests of individual poor clients when these lawyers engage in group litigation*").

<sup>44</sup> See Stephen B. Burbank & Linda J. Silberman "*Civil Procedure Reform in Comparative Context: The United States of America*", 45 Am. J. Comp. L. 675, 684 (1997).

<sup>45</sup> Benjamin Kaplan "*Continuing Work of the Civil Committee: 1966 Amendments of the Federal Rules of Civil Procedure (I)*", 81 Harv. L. Rev. 356, 398 (1967).



which exists between the group of affected people and the defendant. The clearest example of this feature can be seen in relation to “small claims” (i.e. claims which costs of litigation do not justify the effort of discussing about them in a court of justice because those costs have no reasonable relation with the best result that can be achieved in case of winning the case). The possibility of pooling those small claims in a class action suit increases the defendant potential liability and ensures that they enter the judicial system by attracting lawyers to litigate the case in a contingency fee basis.<sup>46</sup>

It is useful to underline that class actions do not only play a role in relation to claims that otherwise would not be litigated on grounds of economic reasons. From the same access to justice perspective, they represent a particularly interesting device when it comes to deal with other barriers to the courts: the cultural and educational ones. In this sense, class actions can also enable litigation by bringing into the legal system claims which individuals are unaware of.<sup>47</sup>

## **b. Efficiency**

Class actions efficiency arises from its very collective nature. I mean, from the possibility of aggregating multiple common claims and discussing them within only one procedure.<sup>48</sup> On the one hand, this allows the government to save resources; on the other, very often that advantage also plays a relevant role benefiting the defendants because they are able to spend less money in legal

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<sup>46</sup> See Katie Melnick *“In Defense of the Class Action Lawsuit: An Examination of the Implicit Advantages and a Response to Common Criticisms”*, 22 St. John’s J. Legal Comment. 755, 790 (2008). But, see also Charles Silver *“We’re Scared to Death’: Class Certification and Blackmail”*, 78 N.Y.U. L. Rev. 1357, 1373 (2003) (arguing that defendants tend to settle the case for substantial amounts once the class actions is certified because the suit creates remote risks of financial ruin).

<sup>47</sup> See RAND Institute for Civil Justice *“Class Actions Dilemmas: Pursuing Public Goals for Private Gain”*, 2000, p. 49 (arguing that class actions require telling people that *“they may have a claim of which they were previously unaware, but does not require them to take any initial action to join the litigation”*).

<sup>48</sup> See Edward F. Sherman *“Aggregate Disposition of related cases: The Policy Issues”*, 10 Rev. of Litigation 231, 237 (1991) (arguing that *“Aggregation of cases promises savings by eliminating duplication and providing economies of scale”*); Elizabeth J. Cabraser *“The Class Action Counterreformation”*, 57 Stan. L. Rev. 1475, 1479 (2005) (underlying the utility of class actions to provide a fair, efficient and cost-effective procedural device to adjudicate common questions of law and fact).



counsel and representation (the possibility of litigating once and for all the common questions of law or fact allows them to prepare only one defense).<sup>49</sup>

### c. Deterrence effect

We have already seen that class actions allow people to bring small claims into the legal system. If it were not for that procedural device, those claims would remain outside the stream of justice. As anyone can easily guess, this is one of the main reasons why class actions have been so strongly criticized: they enable litigation that otherwise would never exist.<sup>50</sup>

The problem with the critics is that they forget one of the most relevant practical effects of class actions, i.e. deterrence of illicit collective conducts through effective enforcement.<sup>51</sup> In fact, without the availability of an aggregate device *“many businesses would arguably be able to escape answering for their wrong-doings until they injured someone so substantially that it became cost effective for the injured victim to pursue the claim individually”*.<sup>52</sup> So relevant is this facet of class actions

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<sup>49</sup> See David Rosenberg *“Mass Tort Class Actions: What Defendants Have and Plaintiffs Don’t”*, 37 Harv. J. on Legis. 393, 393-94 (2000). Even though the argument is presented in this article specifically with regard to mass torts class actions, it can also be stated regarding those actions involving small claims and injunctive relief.

<sup>50</sup> Among the critics, see Edward H. Cooper *“The (Cloudy) Future of Class Actions”*, 40 Ariz. L. Rev. 923 (1998).

<sup>51</sup> See Kenneth E. Scott *“Two Models of the Civil Process”*, 27 Stan. L. Rev. 937 (1975), cited by Stephen C. Yeazell *“Collective Litigation as Collective Action”*, 1989 U. Ill. L. Rev. 43, 56. In this sense, the deterrence function of class actions has given birth to the figure of the “private attorney general” within the field, which entails recognition that the mechanism serves *“to afford remedies for injuries unremedied by the regulatory action of government”* [see *Newberg on Class Actions*, CLASSACT § 1:6 and the opinions of the Supreme Court cited there in support of this particular function: *“Deposit Guaranty Nat. Bank, Jackson, Miss. v. Roper”*, 445 U.S. 326 (*“The aggregation of individual claims in the context of a classwide suit is an evolutionary response to the existence of injuries unremedied by the regulatory action of government”*) and *“Phillips Petroleum Co. v. Shutts”*, 472 U.S. 797 (*“As commentators have noted, from the plaintiff’s point of view a class action resembles a ‘quasi administrative proceeding conducted by a judge’*)]. See also Ilana T. Buschkin *“The Viability of Class Action Lawsuits in a Globalized Economy --Permitting Foreign Claimants to be Members of Class Action Lawsuits in the U.S. Federal Courts”*, 90 Cornell L. Rev. 1563, 1588 (2005) (arguing that the through the possibility of pooling not only claims but also resources *“the class action lawsuit lessens the burden on individual claimants, making it more attractive to bring suits in the public interest”*)

<sup>52</sup> Katie Melnick *“In Defense of the Class Action Lawsuit: An Examination of the Implicit Advantages and a Response to Common Criticisms”*, 22 St. John’s J. Legal Comment. 755, 791 (2008). See also Andrei Greenawalt *“Limiting Coercive Speech in Class Actions”*, 114 Yale L. J. 1953, 1971 (2005) (noting the capacity of the mechanism to modify the defendant’s behavior).



that, according to many commentators, deterrence (and not compensation) is the principal rationale of the mechanism.<sup>53</sup>

**d. Preliminary conclusion**

The class actions represent an efficient procedural mechanism which defining features resemble a mirror image of the barriers faced by individuals to access to the civil justice system. As we saw, the Federal Rule of Civil Procedure 23 was originally enacted and amended in 1966 with two main purposes in mind: (i) enable litigation of claims that otherwise would be left outside the system; and (ii) provide an efficient and economic means to solve huge numbers of similar claims once and for all in a single procedure.

If we have in mind these purposes, it is evident that class actions are one of the most relevant resources available in the US to provide legal counsel and representation to big number of individuals, and to do it at a low cost. Its employment would advance the institutional mission of the LSC and would multiply the (always) scarce resources of providers.

It makes no sense at all to deprive LSC's grantees from that kind of instrument. The restriction is completely unreasonable *per se*.

**IV. A new light for the analysis: the post economic crisis scenario**

Several researches have been conducted in order to assess the impact of the 2008 crisis on the US society. Some of them are related specifically to the legal problems which poor people is

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<sup>53</sup> See John C. Coffee Jr. "Litigation Governance: Taking Accountability Seriously", 110 Colum. L. Rev. 288, 343 (2010) and "Rescuing the Private Attorney General: Why the Model of the Lawyer as Bounty Hunter Is Not Working", 42 Md. L. Rev. 215 (1983); Myriam Gilles and Gary B. Friedman "Exploding the Class Action Agency Costs Myth: The Social Utility of Entrepreneurial Lawyers", 155 U. Pa. L. Rev. 103, 162 (2006) (concluding that "the vast contemporary literature of class actions (and, for that matter, the work of Congress and the courts) fails entirely to appreciate the concrete public policy implications of the one true normative polestar here: the forced internalization of social costs"). But, see John H. Beisner, Matthew Shores and Jessica Davidson Miller "Class Action 'Cops': Public Servants or Private Entrepreneurs?", 57 Stan. L. Rev. 1441, 1451-62 (2005) (criticizing the model of law enforcement through class actions and the idea of a "private attorney general").



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dealing with in the aftermath of that crisis. The results of those specific studies are logical and, to some extent, obvious: many individuals are facing new legal problems caused by the recession and the old problems remained in the same place as before (most of the times aggravated). The demand of legal aid has increased accordingly.<sup>54</sup>

But the problem is even deeper because, once again, we are facing in this context a dangerous combination. The economic crisis was not only suffered by the US population, but also by the federal state itself, the local states and, as a consequence, by the organizations in charge of providing legal services for the poor. As it is shown by a recent report, the deep recession “*has increased the number of children and adults living in poverty*” while at the same time “*funding for civil legal services has declined dramatically*”.<sup>55</sup>

Furthermore, direct funding through legislative allocation is not the only source which has been affected by the crisis. Indeed, the IOLTA programs (“IOLA” in New York) have received the most severe strike. The final report of The Task Force to Expand Access to Civil Legal Services in New York explains a widespread phenomenon, shared by every single local state in the US: since 2007 up to today (and particularly since the 2008 crisis) interest rates have dropped abruptly. The cumulative effect of that drop amounts to an overall decline of 88%, which has produced “*a devastating impact on the funds available to IOLA for grants to civil legal services providers across the State*”.<sup>56</sup>

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<sup>54</sup> See “*Rationing Justice: the Effect of the Recession on Access to Justice in the District of Columbia*”, Joint Report of the District of Columbia Access to Justice Commission and the D.C. Consortium of Legal Services Providers, November 2009, p. 2, available at <http://www.legalaidcc.org/documents/RationingJusticeReport..pdf> (reporting that “*Legal services lawyers estimate a 20% increase in demand for help*” and recognizing that this number “*probably underestimates the actual need*”).

<sup>55</sup> See The Task Force to Expand Access to Civil Legal Services in New York, *Report to the Chief Judge of the State of New York*, p. 8 (available at <http://www.courts.state.ny.us/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>)

<sup>56</sup> See The Task Force to Expand Access to Civil Legal Services in New York, *Report to the Chief Judge of the State of New York*, p. 34 (available at <http://www.courts.state.ny.us/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>) (“*During 2007 the IOLA Fund generated slightly more than \$24 million*”, while the projection for 2011 shows that “*less than \$6 million*” are expected to be available for distribution). A similar situation is being faced by all local states, see Janet Stidman Eveleth “*Court Reforms to Enhance Access To Justice System*”, 43-JUN Md. B.J. 58, 59-60 [explaining that “*IOLTA (Interest on Lawyer Trust Accounts), the state's primary funding mechanism supporting Maryland Legal Services Corporation's 35 legal services providers, dropped by a record 70 percent, forcing major cutbacks in services to the poor. Compounding this was the severe cut in state funding for legal services due to the serious State of Maryland budget crisis*”].





**V. Why is the highway closed?**

If the restriction imposed on the LSC regarding class action suits is unreasonable as a matter of principle, it assumes some level of absurdity when assessed in a post economic crisis context where the access to justice gap has increased dramatically and, at the same time, the sources of funding for legal aid services have decreased in the same manner.

In order to illustrate the nonsense of the restriction, it is useful to bring into play a hypothetical scenario. Let us think about a highway which connects Rich City (RC) with Poor City (PC) within a State. A huge and safe highway, constructed long time ago and managed by the State, without any toll station and very well known due to its modern design. At the same time, there is another road which also connects both cities. A narrow, hidden, old and damaged one, for which use travelers must pay costly tolls.

Now let us suppose that tens of millions of PC inhabitants need to travel regularly to RC in order to reach their jobs. The economy in PC is worse than ever, and because of that the State had created a governmental entity specifically in charge of helping people from PC to get on time to their jobs in the other city.

The restriction imposed by Congress on the LSC regarding class action suits is almost the same as a governmental decision of closing the highway which connects both cities in our hypothetical scenario. Even more difficult to understand, it is like a decision which closes the highway only in the direction PC-RC (i.e. affecting the people who need the most a safe, free and well designed corridor). Finally, and completely illogical (at least for a foreign observer), that governmental decision is taken: (i) without eliminating the public authority created by the same State specifically to help PC inhabitants to reach their place of work; and (ii) with sufficient knowledge of the negative impact of such a decision over the people of PC.

I have been told that there is not enough money to allocate in the field of legal aid. It is reasonable, it happens almost anywhere. What I cannot understand without further explanations is the firm reluctance to use the available money in the most efficient way. What I cannot understand is why the highway is closed in the US.



## FULL BIBLIOGRAPHY

Alan W. Houseman and Linda E. Perle *“Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States”*, CLASP, 2007.

Alexander D. Forger *“Address: The Future of Legal Services”*, 25 Fordham Urb. L.J. 333 (1998).

Andrei Greenawalt *“Limiting Coercive Speech in Class Actions”*, 114 Yale L. J. 1953, (2005).

Andrew Haber *“Rethinking the Legal Services Corporation’s Program Integrity Rules”*, 17 Va. J. Soc. Pol’y & L. 404.

Benjamin Kaplan *“Continuing Work of the Civil Committee: 1966 Amendments of the Federal Rules of Civil Procedure (I)”*, 81 Harv. L. Rev. 356 (1967).

Charles Silver *“‘We’re Scared to Death’: Class Certification and Blackmail”*, 78 N.Y.U. L. Rev. 1357 (2003).

David Rosenberg *“Mass Tort Class Actions: What Defendants Have and Plaintiffs Don’t”*, 37 Harv. J. on Legis. 393 (2000).

Denise R. Johnson *“The Legal Needs of the Poor as a Starting Point for Systemic Reform”*, 17 Yale L. & Pol’y Rev. 479 (1998).

District of Columbia Access to Justice Commission and the D.C. Consortium of Legal Services Providers, Joint Report *“Rationing Justice: the Effect of the Recession on Access to Justice in the District of Columbia”*, November 2009, available at <http://www.legalaiddc.org/documents/RationingJusticeReport.pdf>.

Edward F. Sherman *“Aggregate Disposition of related cases: The Policy Issues”*, 10 Rev. of Litigation 231 (1991).

Edward H. Cooper *“The (Cloudy) Future of Class Actions”*, 40 Ariz. L. Rev. 923 (1998).

Elizabeth J. Cabraser *“The Class Action Counterreformation”*, 57 Stan. L. Rev. 1475 (2005).



Faisal Bhabha *“Institutionalizing Access-to-Justice: Judicial, Legislative and Grassroots Dimensions”*, 33 Queen's L.J. 139 (2007).

Heber Smith *“Justice and the Poor”*, The Carnegie Foundation for the Advancement of Teaching, Bulletin N° 13, 1919.

Helaine M. Barnett *“Justice for All: Are we Fullfilling the Pledge?”*, 41 Idaho L. Rev. 403.

Howard G. Pollack *“The Admissibility and Utility of Expert Legal Testimony in Patent Litigation”*, 32 IDEA 361.

Ilana T. Buschkin *“The Viability of Class Action Lawsuits in a Globalized Economy --Permitting Foreign Claimants to be Members of Class Action Lawsuits in the U.S. Federal Courts”*, 90 Cornell L. Rev. 1563 (2005).

Ilisabeth Smith Bornstein *“From the Viewpoint of the Poor: An Analysis of the Constitutionality of the Restriction on Class Action Involvement by Legal Services Attorneys”*, 2003 U. Chi. Legal F. 693 (2003).

James M. Fischer *“External Control Over the American Bar”*, 19 Geo. J. Legal Ethics 59.

Janet Stidman Eveleth *“Court Reforms to Enhance Access To Justice System”*, 43-JUN Md. B.J. 58.

Jessica A. Roth *“It is Lawyers We are Funding: A Constitutional Challenge to the 1996 Restrictions on the Legal Services Corporation”*, 33 Harv CR-CL L Rev 107 (1998).

John C. Coffee Jr. *“Litigation Governance: Taking Accountability Seriously”*, 110 Colum. L. Rev. 288 (2010).

John C. Coffee Jr. *“Rescuing the Private Attorney General: Why the Model of the Lawyer as Bounty Hunter Is Not Working”*, 42 Md. L. Rev. 215 (1983).

John E. Bonine *“Best Practices – Access to Justice (Agenda for Public Interest Law Reform”*, available at <http://www.accessinitiative.org/resource/best-practices%E2%80%9494access-justice%E2%80%94AA>.



Civil Procedure Review  
AB OMNIBUS PRO OMNIBUS

John H. Beisner, Matthew Shores and Jessica Davidson Miller *“Class Action ‘Cops’: Public Servants or Private Entrepreneurs?”*, 57 Stan. L. Rev. 1441 (2005).

Jon C. Dubin *“Clinical Design for Social Justice Imperatives”*, 51 SMU L. Rev. 1461 (1998).

Judith Resnik *“Lessons in Federalism from the 1960s Class Action Rule and the 2005 Class Action Fairness Act: ‘The Political Safeguards’ Of Aggregate Translocal Actions”* 156 U. Pa. L. Rev. 1929 (2008).

Katie Melnick *“In Defense of the Class Action Lawsuit: An Examination of the Implicit Advantages and a Response to Common Criticisms”*, 22 St. John's J. Legal Comment. 755 (2008).

Kenneth E. Scott *“Two Models of the Civil Process”*, 27 Stan. L. Rev. 937 (1975).

Kevin Mazza *“Divorce Mediation. Perhaps not the Remedy it was Once Considered”*, 14-SPG Fam. Advoc. 40.

Marie A. Fallinger and Larry May *“Litigating Against Poverty: Legal Services and Group Representation”*, 45 Ohio St. L.J. 1.

Max Weber *“Economy and Society”*, Berkeley, California, London.

Michael J. Belaen *“Change we Need: Why Enacting The Civil Access to Justice Act of 2009 is Necessary to Expand Legal Aid For The Poor”*, 31 Hamline J. Pub. L. & Pol'y 329.

Michael R. Anderson *“Access to Justice and Legal Process: Making Legal Institutions Responsive to Poor People in LDCs”*, available at <http://siteresources.worldbank.org/INTPOVERTY/Resources/WDR/DfiD-Project-Papers/anderson.pdf>).

Myriam Gilles and Gary B. Friedman *“Exploding the Class Action Agency Costs Myth: The Social Utility of Entrepreneurial Lawyers”*, 155 U. Pa. L. Rev. 103 (2006)

*Newberg on Class Actions*, CLASSACT § 1:6.

Nicole Black *“Lawyers Should not be Wary of Cloud Computing”*, 72 Tex. B.J. 746.

Rael Jean Isaac *“War on the Poor”*, National Review, May 15, 1995



RAND Institute for Civil Justice *“Class Actions Dilemmas: Pursuing Public Goals for Private Gain”*, 2000.

Rebekah Diller and Emily Savner *“A Call to End Federal Restrictions on Legal Aid for the Poor”*, Brennan Center for Justice, 2009, available at <http://www.brennancenter.org/content/resource/a-call-to-end-federal-restrictions-on-legal-aid-for-the-poor/>).

Reginald Heber Smith *“Justice and the Poor”*, The Carnegie Foundation for the Advancement of Teaching, Bulletin N° 13, 1919.

Robert R. Kuehn *“Undermining Justice: The Legal Profession’s Role in Restricting Access to Legal Representation”*, 2006 Utah L. Rev. 1039 (2006).

Roland T. Y. Moon *“Access to Civil Justice: Is There a Solution?”*, 88 Judicature 155

Stephen B. Burbank & Linda J. Silberman *“Civil Procedure Reform in Comparative Context: The United States of America”*, 45 Am. J. Comp. L. 675 (1997).

Stephen C. Yeazell *“Collective Litigation as Collective Action”*, 1989 U. Ill. L. Rev. 43.

Stephen C. Yeazell *“From Medieval Group Litigation to the Modern Class Actions”*, New Haven, Yale Univ. Press, 1987.

Steven K. Berenson *“A Family Law Residency Program?: A Modest Proposal in Response to the Burdens Created by Self-represented Litigants in Family Court”*, 33 Rutgers L.J. 105 (2001).

The Task Force to Expand Access to Civil Legal Services in New York, *Report to the Chief Judge of the State of New York*, (available at <http://www.courts.state.ny.us/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>).

Thomas Schmitz *“Matthias Ruffert (ed.). The Transformation of Administrative Law in Europe”*, Book Review, 19 Eur. J. Int'l L. 625 (2008)

W. Ivor Jennings *“Declaratory Judgments Against Public Authorities in England”*, 41 Yale L.J. 407 (1932).