

THE GAP BETWEEN THE NEED FOR LEGAL AID AND ITS FULFILMENT: A SOCIO-LEGAL ANALYSIS OF THE “JUSTICE GAP”

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Abstract

The “justice gap” is conventionally reported as a single figure expressing the distance between the volume of civil legal need and the volume of legal services supplied. This article argues that the conventional measure embeds a supply-side assumption — that need is met by lawyers — and therefore measures only the final stage of a much longer process of attrition. The study is doctrinal and socio-legal; it reports no original empirical data, and every quantitative statement is drawn from a published source and cited to it. Applying the framework of Felstiner, Abel and Sarat, the analysis treats the gap as a sequence of drop-off points: naming, blaming, claiming, disputing, and only then seeking assistance. Sandefur’s Community Needs and Services Study, conducted on a random sample of 668 adults in a mid-sized American city, found that sixty-six per cent had experienced at least one civil justice situation in the preceding eighteen months, but that assistance was sought from a third party outside the respondent’s social network in only twenty-two per cent of situations; cost was reported as a factor in seventeen per cent of cases where no such help was sought, while the more important reason was that people did not understand their situations to be legal. The article concludes that the binding constraint in most situations is legal recognition rather than price, that supply-side measures therefore systematically understate the gap, and that jurisdictions without a legal needs survey — including Uzbekistan — cannot at present know the size of their own.

Keywords

justice gap, legal needs, access to justice, legal consciousness, naming blaming claiming, legal aid, legal needs surveys, socio-legal research, unmet need, civil justice

INTRODUCTION AND RELEVANCE

Few phrases in access-to-justice scholarship are used as confidently, or defined as loosely, as the “justice gap”. It appears as a headline number: a percentage of legal problems receiving no adequate assistance, or a count of people worldwide with unmet justice needs. The Task Force on Justice estimated in 2019 that some 5.1 billion people lack meaningful access to justice [1]. The Legal Services Corporation reported in 2022 that low-income Americans received no or insufficient legal help for ninety-two per cent of the civil legal problems that substantially affected them [2].

Such figures are indispensable for advocacy. They are considerably less useful as objects of analysis, because they compress into a single ratio a process that socio-legal research has shown to consist of several distinct stages, each with its own attrition. A number expressing unmet demand for legal services can only count those who reached the point of demanding them.

This article therefore asks a prior question: what exactly is being measured when a justice gap is reported, and what is being left out? The question is not merely methodological. If the gap is defined as the shortfall between need and legal services supplied, the implied remedy is more services. If the larger losses occur before anyone seeks a service at all, that remedy addresses the smaller part of the problem.

The analytical framework adopted here is that of Felstiner, Abel and Sarat, whose 1980–81 study of the emergence and transformation of disputes remains the standard socio-legal account of how an experience becomes a legal matter. They described a sequence of transformations: an unperceived injurious experience becomes perceived (naming); the perceived injury is attributed to another’s fault (blaming); the grievance is voiced to the party held responsible (claiming); and where the claim is rejected, a dispute emerges. The authors emphasised that formal litigation, and even disputing in unofficial fora, account for only a small fraction of the antecedent events that could have matured into disputes [3].

The empirical counterpart to that framework is now substantial. Genn’s Paths to Justice established for England and Wales that most people experiencing justiciable problems do not consult lawyers [4]. Sandefur’s Community Needs and Services Study produced comparable findings for the United States and, critically, identified the principal reason [5; 6].

The relevance for Uzbekistan is direct and, at present, unresolved. Article 29 of the Constitution in its 2023 redaction guarantees the right to qualified legal assistance and provides for assistance at the expense of the state in cases established by law [7]; the Law on the Provision of Legal Aid at the Expense of the

State of 16 June 2023 gives that guarantee operational content by defining categories of entitled persons and proceedings [8]. Entitlement is thus specified from the supply side. Whether the categories correspond to the distribution of actual legal need in the population is not presently knowable, because no national legal needs survey has been published.

The scientific novelty of this study lies in treating the justice gap not as a quantity but as a structure – a sequence of filters, each of which removes a portion of the population before the next becomes operative – and in identifying which filter the available evidence shows to be the most restrictive. A second contribution is that the analysis explicitly qualifies a conclusion the author has argued elsewhere: a companion line of argument concerning the price of representation addresses a constraint that, on the evidence examined here, binds only after several earlier constraints have already been passed.

The aim of the study is to establish what the conventional measure of the justice gap captures and what it omits, and to identify the practical consequences for legal aid policy. The objectives are: to reconstruct the stages at which need is lost; to assemble the empirical evidence on attrition at each stage; to assess the measurement instruments currently in use; and to draw conclusions for jurisdictions, including Uzbekistan, that lack such instruments.

MATERIALS AND METHODS

The object of study is the relationship between civil legal need in a population and the assistance actually obtained. The subject is the structure of attrition between the two, and the adequacy of the instruments used to measure it.

Theoretical materials comprise the socio-legal literature on dispute transformation and legal consciousness: Felstiner, Abel and Sarat on naming, blaming and claiming [3]; Ewick and Silbey on legal consciousness in everyday life [9]; Galanter on the structural advantages of repeat players [10]; and Sandefur's conceptual work on what access to justice is access to [11; 12].

Empirical materials comprise Genn's Paths to Justice survey for England and Wales [4]; Sandefur's Community Needs and Services Study, based on a random sample of 668 adults surveyed in person in a mid-sized American city in 2013 [5; 6]; the World Justice Project's legal needs survey work [13]; the Legal Services Corporation's 2022 Justice Gap study [2]; and the Task Force on Justice's 2019 report [1].

Methodological materials comprise the joint OECD and Open Society Foundations guidance on legal needs surveys [14] and the OECD's framework on

equal access to justice [15], together with Sandefur's assessment of what legal needs research does and does not establish [12; 16].

National materials comprise the Constitution of the Republic of Uzbekistan in its redaction of 30 April 2023 [7]; the Law on the Provision of Legal Aid at the Expense of the State, No. O'RQ-848 of 16 June 2023 [8]; the Law on Advocacy No. 349-I of 27 December 1996 [17]; and the World Justice Project Rule of Law Index country profile for Uzbekistan [18].

The methods applied are socio-legal analysis of published survey evidence; structural analysis, in which the gap is decomposed into successive stages; comparative assessment of measurement instruments; and mapping of national legal aid entitlement criteria onto the stages so identified.

Note on the limits of the study. *This is a secondary analysis. No survey was conducted by the author, no case files were examined, and no statistical model was constructed. Every figure is attributed to the published study that produced it and is reported at the level of precision used there. Survey findings are treated as evidence about the populations surveyed; they are not transposed to Uzbekistan, and no estimate of Uzbek legal need is offered or implied.*

RESULTS

1. What the conventional measure counts

The headline figures share a common structure. The Legal Services Corporation measure compares problems that substantially affected low-income households against the legal help received, and reports that ninety-two per cent received no or insufficient help [2]. The Task Force on Justice figure aggregates populations unable to obtain justice for particular categories of problem and populations excluded from legal recognition [1].

Both are ratios of need to service. Neither is wrong, and both measure something real. What must be noticed is where the measurement begins. A respondent is counted as having an unmet need only once the problem has been recognised, characterised as one on which help might be sought, and reported to an interviewer as such. Every person whose injury was never perceived, never attributed, or never understood as belonging to the domain of law is absent from the numerator and the denominator alike.

2. The structure of attrition

Felstiner, Abel and Sarat set out the sequence. Naming converts an unperceived injurious experience into a perceived one. Blaming attributes the perceived injury to another party's fault. Claiming voices the resulting grievance to that party. Where the claim is rejected in whole or in part, a dispute emerges. Each

transformation is, in the authors' terms, subjective, unstable and incomplete; and formal litigation accounts for only a small fraction of the antecedent events capable of maturing into disputes [3].

Two further stages must be added for present purposes. After a dispute emerges, the party must decide whether to seek assistance; and if assistance is sought, it must be available and affordable. Conventional justice gap measurement operates at these last two stages only.

3. The empirical evidence on attrition

Sandefur's study provides the clearest available evidence on the distribution of losses. In a random sample of 668 adults interviewed in person in 2013, sixty-six per cent reported experiencing at least one of twelve categories of civil justice situation in the preceding eighteen months; the average number of situations among those reporting any was 3.3, and 2.1 across the whole sample [5; 6].

The pattern of response is the significant finding. Respondents handled the situation themselves in forty-six per cent of cases, did nothing in sixteen per cent, and sought help or advice only from family or friends in a further sixteen per cent. Assistance was sought from a third party outside the immediate social network – a category including not only lawyers but also social workers, police officers, municipal agencies, religious leaders and elected officials – in only twenty-two per cent of situations [5; 6].

The reasons given are more significant still. Among those who did not seek assistance from outside their social circle, concern about cost was reported as a factor in seventeen per cent of cases. The more important reason people did not seek assistance, and in particular did not approach lawyers or courts, was that they did not understand their situations to be legal [6].

Genn's earlier survey for England and Wales had reached a compatible conclusion: most people experiencing justiciable problems do not consult a lawyer, and many resolve or abandon the matter without any formal advice [4]. Sandefur has separately drawn attention to the analytical importance of inaction as a response in its own right rather than as a residual category [16].

4. Mapping the stages

Combining the framework with the evidence yields the structure set out in Table 1. The table records what is lost at each stage and what instrument, if any, currently measures it.

Table 1. Stages of attrition between legal need and assistance obtained

Stage	What is lost here	Principal constraint	Currently measured by
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Stage	What is lost here	Principal constraint	Currently measured by
Naming: injury perceived	Experiences never recognised as injurious	Awareness; normalisation of harm	Not measured by service-based indicators [3]
Blaming: fault attributed	Injuries treated as misfortune rather than wrong	Attribution; social relationship with the other party	Not measured [3; 9]
Recognition as legal	Grievances not understood as belonging to law	Legal consciousness	Legal needs surveys only; identified as the principal reason for not seeking help [6]
Claiming and disputing	Claims not voiced, or abandoned on rejection	Expected futility; relationship costs	Partially, by legal needs surveys [4; 5]
Deciding to seek help	Situations handled alone or with family only	Perceived need for advice; expected usefulness	78% of situations in the study cited [5; 6]
Obtaining help: availability	Need exceeding provider capacity	Supply of providers; eligibility rules	Service statistics and legal aid intake data [2]
Obtaining help: affordability	Assistance available but not affordable	Price	Cost cited as a factor in 17% of non-seeking cases [6]

Source: compiled by the author from [2; 3; 4; 5; 6; 9]. The table records the location of attrition and the instruments that observe it; it contains no estimate of the volume lost at any stage.

5. The limits of the available evidence

Three limitations must be stated. First, the principal study relied upon was conducted in a single American city on a sample of 668 adults [5]; it is a careful study of one place, not a national estimate. Second, legal needs surveys themselves underestimate incidence, since respondents forget events and since any list of problem categories is necessarily incomplete [12]. Third, the instruments are not standardised across jurisdictions, which is precisely the difficulty the OECD and Open Society Foundations guidance was developed to address [14].

For Uzbekistan the position is more basic. The Rule of Law Index 2024 places the country 83rd of 142 overall and 74th of 142 on the civil justice factor [18], which locates it comparatively but says nothing about the incidence or distribution of justiciable problems in the population. No published national legal needs survey

exists. This is a limitation on the present study and a finding in its own right: the size and shape of the Uzbek justice gap are, at present, unknown.

DISCUSSION

The central implication is that the justice gap is not one gap. It is a series of filters arranged in sequence, and the conventional measure observes only the last two. A policy inference drawn from that measure will therefore be correct about the population it describes and silent about the larger population that never reached it.

This conclusion requires a qualification that bears directly on the author's own earlier argument. A separate line of analysis concerning limited-scope representation proceeds from the proposition that the price of full representation excludes litigants who could afford part of it. The evidence examined here does not contradict that proposition, but it does locate it: price operates as a constraint only for those who have already named the injury, attributed it, recognised it as legal, and decided to seek help. In Sandefur's data, cost was reported as a factor in seventeen per cent of the cases in which no outside help was sought [6]. Reforms directed at price are therefore correct but partial – and stating that plainly is more useful than allowing two separate arguments to imply two different diagnoses.

A serious objection must be addressed. If most people handle their situations alone or do nothing, perhaps the gap is smaller than supposed: perhaps many of these situations do not require legal assistance, and self-resolution is an adequate outcome. The objection is not frivolous, and Sandefur herself declined to treat her findings as a straightforward case for more lawyers [5]. The answer is that the data do not tell us whether outcomes were adequate. They tell us how people responded, not whether the response secured what the law would have given them. A person who accepts an unlawful deduction from a deposit, or abandons a maintenance claim, has resolved the situation in the sense of ending it. Whether that counts as access to justice depends on what one thinks justice is access to – the question Sandefur poses directly [11].

A second objection runs in the opposite direction. If legal consciousness is the binding constraint, is the remedy public legal education? That inference is too quick. Ewick and Silbey show that legal consciousness is not simply a deficit of information but a patterned relationship to law formed by experience, including experience of law as remote or unhelpful [9]; and Galanter's analysis indicates that the structural advantages of repeat players persist irrespective of what one-shot parties know [10]. Information campaigns address the shallowest layer of a deeper phenomenon. What the evidence supports is something narrower and more

tractable: problem-specific recognition prompts delivered at the moment a problem arises, rather than general education delivered in the abstract.

Third, the measurement question has a direct institutional consequence for jurisdictions building legal aid systems. Where entitlement is defined by categories of person and category of proceeding, as under the 2023 Uzbek legal aid law [8], the system will serve those whose problems fall within the listed categories and who present themselves. It cannot, by construction, discover need that never presents. That is not a criticism of the statute, which does what statutes of its kind do; it is an argument for pairing it with an instrument capable of observing the population rather than the caseload.

Finally, the international framework already supplies the instrument. The OECD and Open Society Foundations guidance sets out how legal needs surveys are designed and fielded [14], and the World Justice Project has demonstrated that such surveys can be run comparably across many countries [13]. A national survey is a modest undertaking beside the cost of the service system it would inform.

The principal limitation of this study is that it cannot say how the distribution of attrition in Uzbekistan compares with that observed elsewhere. Further research should field a legal needs survey on a national sample, using the OECD framework to preserve comparability, and should report attrition by stage rather than as a single ratio.

CONCLUSION

1. The conventional justice gap measure compares legal need against legal services supplied and therefore observes only the final stages of a longer process. Figures such as the ninety-two per cent reported for low-income Americans [2] and the global estimate of 5.1 billion people [1] are accurate as to what they measure and silent as to what precedes it.

2. Applying the framework of Felstiner, Abel and Sarat, need is lost at successive stages: naming, blaming, recognition as legal, claiming, disputing, and the decision to seek help [3]. Service-based indicators cannot observe the first three.

3. The best available evidence indicates that the most restrictive filter is recognition rather than price. In a random sample of 668 adults, assistance was sought from outside the respondent's social network in only twenty-two per cent of situations; cost was a factor in seventeen per cent of the remainder, while the more important reason was that people did not understand their situations to be legal [5; 6].

4. It follows that reforms directed at the price or structure of representation are correct but partial: they operate on a population that has already passed several earlier filters.

5. Uzbekistan has a constitutional guarantee of qualified legal assistance [7] and a statute defining state-funded entitlement by category [8], but no published national legal needs survey. The size and shape of its justice gap are therefore not presently known.

Proposals. *Four measures follow from the analysis.*

First, a national legal needs survey should be conducted on a representative sample, using the OECD and Open Society Foundations framework to preserve international comparability [14]. Reporting should disaggregate by stage of attrition rather than presenting a single ratio, since it is the stage distribution that identifies where intervention is required.

Second, legal aid entitlement criteria should be reviewed against the survey results once available. Category-based eligibility [8] is administratively necessary, but the categories should be tested against the observed distribution of problems rather than assumed to correspond to it.

Third, recognition prompts should be delivered at the point where problems arise rather than through general legal education – for example, through the institutions people do contact, including mahalla bodies, employers, medical facilities and housing administrations. The evidence indicates that the difficulty is not that people lack access to information in the abstract but that they do not classify their situation as one to which law applies [6; 9].

Fourth, the outcomes of self-resolved situations should be studied, not only their frequency. Present data record what people did; they do not record whether what they obtained approximated what the law provided. Without that, self-resolution cannot be distinguished from quiet loss.

The wider point is one of framing. To call the shortfall a gap between need and services is to answer the question before asking it. The evidence suggests a different formulation: the distance between what the law promises a person and what that person is able to obtain – a distance that begins to open long before anyone considers hiring a lawyer.

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