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## **Beyond Elite Law: Editors' Preface**

Joy Radice

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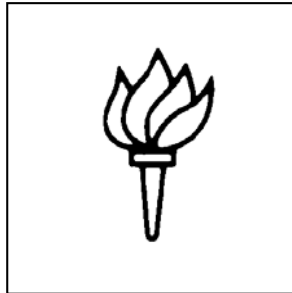
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**Beyond Elite Law: Access to Civil Justice in America**

*Samuel Estreicher and Joy Radice*

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**Beyond Elite Law: Editors' Preface  
Access to Civil Justice in America**

**Joy Radice**

**&**

**Samuel Estreicher**

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**Beyond Elite Law: Access to Civil Justice in America (Samuel Estreicher & Joy Radice eds., Cambridge Univ. Press 2016) xi-xiii**

### **Beyond Elite Law: Editors' Preface**

We are justly proud of the American legal system and the lawyers and judges who make it work. Our system, to the envy of much of the world, takes law seriously, aspires to reduce the gap between the law on the books and the law as lived, and strives to subject all within its remit to the rule of law. And yet, it remains, at its core, a system of elite law largely for the elite.

We are all engaged in elite law, whether as lawyers or academics. Each year, the law schools produce eager, bright graduates ready to provide legal services to a thin layer of the population — either by working for the major law firms that serve corporate America or for NGOs that practice law with an “impact” on important social issues. Some fortunate graduates find such work; others work for overburdened legal services or public defender officers, or hang a shingle, or practice in small firms although they are usually poorly prepared for the clientele they will encounter. Still many others drop out of the legal system entirely — perhaps their legal education will prepare them for a political or business career, or will not be relevant at all.

We hope in this book to spark a conversation that helps move us beyond elite law, to better align existing legal resources with the people who need representation or simply assistance in navigating bureaucracies but are not wealthy enough to access our “Cadillac” legal system and not poor enough to qualify for the limited supply of publicly supported legal aid.

There is a vital debate in the literature, which we explore, as to whether there is indeed a gap between the demand for legal services and the available supply of providers of such services. Survey instruments do not always faithfully capture underlying facts. Even if people “lump” their problems together in an undifferentiated bundle of hopes and anxieties and do not always see those problems as requiring legal services, one must ask whether able lawyers are in fact available for people making, say, under \$50,000 a year for:

- nonfatal claims of medical malpractice;
- employment disputes not amenable to class action treatment;
- housing disputes involving landlord failure to make timely repairs;
- transactions like wills and guardianship, closings on a small business, purchasing a medallion to drive a taxicab, transferring property or arranging child custody between spouses seeking a divorce;
- consumer claims for a defective washer-dryer or automobile not living up to warranty;
- individuals seeking bankruptcy protection or reversal of an initial agency
- decision to deny unemployment compensation or social security disability benefits;

- veterans seeking mental health or other medical assistance from the daunting Veterans Administration; or
- immigrants seeking asylum or lawful residence status to escape the risk of deportation.

We know, anecdotally, that Americans of median or lower income generally do without legal representation in these types of situations or seek help from a sector of the legal profession that, because of the sheer volume of claims, inadequate training, and perhaps other causes, is a deficient source of representation and advice.

This book, we hope, will encourage the development of more systematic information to assist policymakers. We also know that most calls for reform in this area seek an unrealistic solution: increased public funding for civil legal services programs — when decades of budget cuts have resulted in a system that falls far short of meeting the basic legal needs of those considerably below the official poverty line. Although we support the “civil Gideon” movement, changes that require significant further public funding are not politically feasible for the foreseeable future.

The question for this book, and the central question for realistic policy improvements in this area, is whether, at the current level of resources (both public and private), we can do a better job of meeting the legal needs of Americans of median or lower income.

Some improvements involve a change in lawyer culture and acculturation encouraging lawyers, young and old, to see service to non-elite populations as part of their professional identity. Law schools have a role to play in terms of the values they transmit and the skills they impart. Law firms are key players as well, and they must consider refashioning pro bono programs that will provide needed training while being better directed to the goal of service to everyday Americans. Bar associations and courts must also advance service as a condition of membership in the bar.

Not all legal problems will in any foreseeable world attract able lawyers. System redesign is needed to help people better represent themselves in court proceedings or prepare necessary documents for transactions. The internet offers vital new avenues for effective self-representation, if coupled with proper professional advice.

Intermediary institutions, like labor unions, worker centers, and ombudspersons, can also play a critical role supplementing representation and self-representation. Bar groups should not be able to inhibit the development of such alternatives through enforcement of vague rules against the unauthorized practice of law.

Forums other than traditional courts can help reduce the cost and formality of dispute resolution, enabling individuals to represent themselves or obtain limited-purpose representation from lawyers.

Law schools, too, need to embrace their role in developing a culture of service. They need to wake up to the reality that most of their graduates will not end up in the elite law firms, even assuming they can find a job requiring legal training at all. What the schools can do is train students to acquire the core competencies of a lawyer so that when they begin to practice their skills are better matched to the

needs of their likely clientele. They can also make sure they have internalized standards of professional service and understand the underlying economics of practice so that they can provide quality representation and advice in a high-volume setting. Such a development, in itself, would make an enormous contribution to access to civil justice in America.

This book is the product of leaders in the field who have contributed chapters that address each of these issues. They are outstanding judges, lawyers, and academics who care about the problem of access to justice and are actively working on making the system work better. We are proud to be associated with them in this endeavor.

During the work on this book, our good friend and mentor, Ted Eisenberg of Cornell Law School, died. His chapter on improving the database on claiming and dispute—resolution activity reflects his contributions as a leading voice for empirical study of the legal system and for tackling head—on the problem of access. This book is dedicated to his memory.

S.E.

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February 1, 2016