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BOOK REVIEWS

Paths to Justice: What People Do and Think About Going to Law. By HAZEL GENN. [Oxford: Hart Publishing. 1999. xvi, 264, (Appendices) 118 and (Index) 1 pp. Paperback. £15.00 net. ISBN 1–84113–039–7.]

PATHS to Justice presents the results of the largest survey yet conducted of attitudes to the legal system in England and Wales. Conducted over a five-year period, the survey made headlines last year with the finding that only a bare majority of the public were confident of a fair hearing in court. Other results were no more encouraging. The survey found that most people are reluctant to go to court to enforce or defend their rights and that among the reasons were: fears about costs; a lack of confidence in the outcome; and a belief that judges serve the interests of the wealthy. For some, it gave credence to George Bernard Shaw's observation that "all professions are conspiracies against the laity".

Yet that is only part of the picture. Of the smaller number of respondents who had actual experience of attending a court or tribunal, 85% of respondents said they would definitely or probably go to court again if they found themselves in the same position. The vast majority of this group also said that they believed the outcome was fair and it did not seem to matter whether the dispute was resolved by adjudication or by agreement. Moreover, a third reported that the experience had given them a sense of empowerment; proof, perhaps, that not only lawyers can experience the Joy of Law.

An initial random sample of over 4,000 people was probed to discover whether they had experienced a "justiciable problem" (a problem that had a legal remedy) during the previous five years. Face-to-face interviews were then conducted with over 1,000 of these individuals, as well as in-depth qualitative interviews with a small sub-group. Cost unfortunately precluded comparing the experience of respondents from different ethnic backgrounds. It is hoped that future research will transcend this limitation, in view of the evidence of racial bias in other parts of the judicial system. With 40% of the sample experiencing a "justiciable problem" (typically faulty goods, money, rented accommodation and home ownership), Genn estimates that about 41 and a half million problems were experienced by nearly 16 million adults in England and Wales. In less capable hands, processing this data might betoken pages of dull statistics, but fortunately Genn succeeds in giving it a personal touch. The reader follows the fortunes of three types of respondent: the "lumper" (who does nothing about the problem and "lumps it"); the "advised" (who gets outside advice) and the "self-helper". The result is a window on the world of law through which few people, not least lawyers living at the centre of a pre-Copernican universe, have had a proper glimpse.

Surprisingly, and contrary to tales of the "litigation bug", we learn that the overwhelming majority of respondents tried to resolve the problem directly themselves by contacting the other party. Only when direct action

failed did the majority go on to obtain advice about resolving the problem. A significant minority (one-third) continued to pursue a self-help strategy which often demanded considerable determination and creativity. Many of these self-helpers lack access to good quality legal advice, but they are also typified by a fear of legal bills; previous negative experiences of lawyers; a sense of powerlessness and, in some cases, a sense of alienation from the legal system.

Naturally, the popularity of self-help depends on the type of problem experienced. Whilst consumer problems are the most likely of all problem types to be handled directly by respondents, others such as employment, neighbour, divorce and property problems are more strongly associated with obtaining outside advice. The seriousness with which the problem is viewed by the parties and the relative intractability of the issues involved sets real limits to self-help strategies, especially in the case of employment and family issues where the parties may still be locked into a continuing relationship. Fewer than half of the self-helpers succeeded in achieving a resolution by agreement. Much depends on the nature of the problem, the abilities of the complainant and the intransigence of the other party. More "self-helpers" than the "advised" thought their outcome was unfair, suggesting that advisers may help to lower expectations.

The research confirms the danger of going to court. Respondents whose problem led to a court or tribunal adjudication were the most likely to say that the experience of sorting out the problem had been stressful. By contrast, those who resolved their problem by agreement were the least likely to say that they had found the experience stressful. Indeed, they were the most likely to say that the experience had made them feel in control of the situation. Moreover, the survey also found that agreements appear to bring disputes to an end more completely than do court decisions.

Genn's research also sheds light on what people want from the law. Over half of all respondents said that their main objective was money or property related. Only about seven percent said that their primary aim was to achieve a change in the other party's behaviour (e.g. noisy neighbours) and less than one percent of respondents wanted an apology. Only a tiny proportion was interested in preventing the problem from happening to others. These narrow objectives suitably reflect the limits of law. Fewer than half of all respondents said that they had achieved their main objective completely and about a third said that they had not achieved their main objective. In terms of successful outcomes, it is better to be an accident victim than to have a bad employer or a noisy neighbour.

Genn's research is a benchmark by which to measure the success of recent reforms. Indeed, it is a measure of the speed of change that her research is already dated; notably, in the area of mediation and ADR. Still, the finding that half of all members of the public failed to achieve any resolution to their problems, whether or not they sought advice, bears on the demand for greater access to justice, whilst the discovery of widespread feelings of ignorance about legal rights across most social groups and a profound need for easily accessible free or low cost advice sharpens the challenge for the Community Legal Service (CLS). Only time will tell whether these demands will lead to less litigation, as parties develop a greater capacity for avoiding or effectively resolving disputes, or to more, as increased knowledge of one's own rights leads to a greater willingness to take cases to court. Either way, *Paths to Justice* is a seminal text: a

cataract of revelation about the state of civil justice at the end of the twentieth-century.

J.P. BURNSIDE

Just Lawyers: Regulation and Access to Justice. By CHRISTINE PARKER. [Oxford: Oxford University Press. 1999. vii, 228, (Appendices) 4, (Bibliography) 31 and (Index) 3 pp. Hardback. £45.00 net. ISBN 0–19–826841–6.]

IN *Just Lawyers* Christine Parker sets out to describe a method of ensuring wider access to justice by integrating the discussion and determination of justice into all levels of the community in a form of "deliberative democracy". She claims that we can establish a multi-layered system which will be both fairer than the current model and also self-policing. The system described is essentially a pyramid, with informal discursive community forums at the bottom level, informal ADR mechanisms above them, and the courts at the very top. The community will be empowered to achieve justice for itself, thus avoiding the exclusionary and the individualistic side-effects of reliance on courts, and will also be empowered to police the courts' justice on those occasions when it is necessary to rely on them. Simultaneously, the top level of the justice pyramid, the courts, will oversee the justice being meted out at the lower levels and ensure that sufficient protection is given to individual and minority rights.

The first part of the book identifies the failings of the current legal system and lawyers as the sole forum for justice available to the community. Parker cites community concerns with the high cost of legal services together with the lower quality of legal services provided to the poor compared to those offered the rich, and lawyers' perceived willingness to work substantive injustices in the name of client loyalty. Parker also criticises the lack of connection between the communities' concerns and the chief preoccupations of the law profession's governing bodies. Communities are concerned with quality of service whereas lawyers' concerns revolve around maintaining their economic monopoly on service provision.

Next, Parker analyses previous attempts to increase access to justice, identifies four "waves of reform": the legal aid movement, public service litigation, ADR and attacks on the non-competitiveness of the legal profession. She identifies a lack of co-ordination between them, coupled with the tendency to focus too much on lawyer-mediated justice and to allow lawyers to hijack even community-based schemes. Instead, Parker emphasises sociological views of justice as a community construct or shared value and argues that unless provision is made for more community-lawyer dialogue justice as a construct of the courts suffers, becoming at once unrealistic and unenforceable. Accordingly, she recommends a "fifth wave" of reform which she claims will build on and reinvigorate the previous efforts: the systematic creation of informal justice forums at multiple levels of society as described above. Parker isolates three levels at which there must be discussions of justice for a truly "deliberative democracy" capable of ensuring access to justice for all: "indigenous ordering" in everyday relationships of family and work; informal forums within institutions and finally as a last resort, the courts. Parker makes a series of variously detailed proposals for change at each level.