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## *The Castle and the Village: The Many Faces of Limited Access*

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### Access Denied

No author in world literature has done more to give shape to the nightmarish challenges posed to access by modern bureaucracies than Franz Kafka. In his novel *The Castle*, “K.,” a land surveyor, arrives in a village ruled by a castle on a hill (see Kafka 1998). He is under the impression that he is to report for duty to a castle authority. As a result of a bureaucratic mix-up in communications between the castle officials and the villagers, K. is stuck in the village at the foot of the hill and fails to gain access to the authorities. The villagers, who hold the castle officials in high regard, elaborately justify the rules and procedures to K. The more K. learns about the castle, its officials, and the way they relate to the village and its inhabitants, the less he understands his own position. The Byzantine codes and formalities governing the exchanges between castle and village seem to have only one purpose: to exclude K. from the castle. Not only is there no way for him to reach the castle, but there is also no way for him to leave the village. The villagers tolerate him, but his tireless struggle to clarify his place there only emphasizes his quasi-legal status. Given K.’s belief that he had been summoned for an assignment by the authorities, he remains convinced that he has not only a right but also a duty to go to the castle! How can a bureaucracy operate in direct opposition to its own stated purposes? How can a rule-driven institution be so unaccountable? And how can the “obedient subordinates” in the village wield so much power to act in their own self-

interest? But because everyone seems to find the castle bureaucracy flawless, it is K. himself who seems to be the problematic element.

The original German title of *The Castle*, *Das Schloss*, is ambiguous because *Schloss* means both “castle” and “lock.” This double meaning is typical of the way authority manifests itself in the book. The seemingly legal-rational administration on the hill has the appearance of a well-organized state, but in practice it becomes an obscure and incompetent bureaucracy that remains closed to outsiders.<sup>1</sup> Interestingly, the villagers are completely insensitive to the castle’s opacity and inefficiency. It takes an outsider like K. to question the status quo. K does not *fit in*. As a result of his otherness (he comes from outside the village, has an unfamiliar profession, and claims to have a special assignment), he is marginalized and seen as an obnoxious, demanding pain in the neck. The burden of proof is put on K., not on the bureaucracy, to demonstrate he has the right to enter. K. receives scarcely any explanation of what recourse he has to gain access to the castle and its rulers. The arbitrariness of the officials’ behavior and the fundamental uncertainty it creates on K.’s part would be a stunning violation by any standard of administrative law.

On the other hand, the villagers themselves are not particularly helpful. They have their own agendas, opinions, and ways of dealing with K. Some help him (but only for their own advantage), some deliberately misdirect him, and others remain utterly indifferent to his situation. One thing is clear: no one has a real interest in helping K. gain access to the castle. It is certainly possible that it is not the castle itself that denies K. access to the authorities it houses, but rather the village and its inhabitants. They use institutional procedures as an excuse while in fact employing their own informational advantages, social networks, and discretionary powers to secure their interests. Perhaps the castle’s authorities do not even know that K. is trying to reach them . . .

## Defining Access: Matching Rights and Capacities

The subject of this book is the concept of access. We understand access as

. . . the match between societal commitment and institutional capacity to deliver rights and services and people’s capacity to benefit from those rights and services.

This definition is a bold attempt to develop an approach to institutions of democratic governance that recognizes hidden mechanisms generating inequitable outcomes such that some citizens are excluded from access. These exclusionary systems may be hidden in more than one way: First, in the sense that potential

1. This is just one possible interpretation of the tale’s core meaning, and is not necessarily what Kafka intended to illustrate with the novel or its title. As a matter of fact, the meaning of the novel has been the subject of quite a lot discussion. For an overview, see [http://en.wikipedia.org/wiki/The\\_Castle\\_%28novel%29](http://en.wikipedia.org/wiki/The_Castle_%28novel%29).

beneficiaries do not know how or why they are being denied access to certain services and goods (think of the land surveyor K.). They may also be obscured in the sense that the institutions themselves remain unaware of the discrepancies between de jure and de facto equality of access (think of the castle authorities). Finally, the mechanisms of access may be kept from the public eye; people may be very well aware of inequitable access but they may lack the power and the motivation to do something about it (like most of Kafka's villagers).

In our definition the distinction between "societal commitment" and "institutional capacity" on the one hand (taking into account the various constraints and dynamics of democratic institutions) and "people's capacity" on the other hand (taking into account the real capabilities with which nature and heritage have provided them) enables us to examine (mis)matches between the two. When full access is understood as a perfect match and lack of access as a complete mismatch, the scope of our definition covers a broad range of situations in between. Although this approach remains neutral to causes, reasons, and motivations behind various instances of impeded access, its focus on rights leaves it not neutral to consequences of impeded access. At the heart of this book is our definition of rights as *enforceable* rights and entitlements as *enforceable* entitlements. "Access" is nothing less than the means by which individual rights become (or fail to become) practice in real-life encounters between people and institutions. For it is exactly in these encounters that the democratic values of equity, equality, and social justice have meaning.

Furthermore, we must distinguish between societal commitment and institutional capacity. In some societies, equality of opportunity may be a widely shared ideal that institutional capacity is insufficient to realize. Conversely, social obstacles may prevent the equity of access that a community's institutions have the ability to deliver. Our definition acknowledges the tension between societal commitment and institutional capacity in order to remain aware of the forces that limit access in broader social terms. This distinction becomes relevant in chapters 4, 10, and especially 6. Finally, our definition explicitly emphasizes that it takes two to tango: it is not just failing states that cause a lack of access. People's capacity to benefit from their rights and claim their entitlements is an equally important variable, which we will explore in many ways. As we shall see, neither problems with access nor solutions to improve access originate at just one side of the equation. The equitable implementation of societal commitments through democratic institutions requires work on both sides of the mismatch.

## Access to What?

Citizens living in democracies all over the world require access to a vast range of facilities on a daily basis: food, clean water, sanitation, electricity, and transportation, to name just a few. Businesses can't survive without access to markets, financial services, and telecommunications. Communities suffer when access to health

care, education, and protection against crime and violence is inadequate. In societies with higher living standards, social safety nets have been established by the state. Those who are chronically ill, unemployed, or otherwise disadvantaged are often entitled to social services and public benefits. Adequate access to these social security provisions should prevent the people who need these services from becoming marginalized and relatively deprived.

The provision of these goods and services is usually administered through intermediary organizations. In the case of public goods, the government itself may be a direct provider, or it may outsource implementation to other parties within a given legal framework or management contract (Goldsmith and Eggers 2004). In many countries, water, electricity, transportation, education, and health care are considered public goods, but the actual providers are private sector organizations, operating in relation to the government with certain mandates concerning price, quality of service, and accessibility. If the government provides goods or services itself, it may do so directly or via semi-autonomous executive agencies or lower levels of government. It may also choose to resort to alternative delivery mechanisms, such as vouchers (Trebilcock and Daniels 2005). In both cases the delivery mechanism is the medium between a citizen (client) and a good or service. In order to have access to the good, the citizen needs to have access to the intermediary. For example, in order to have access to electricity, one needs to register with a power company. In order to receive unemployment benefits, one needs to apply at the social benefits office. In order to be treated in a hospital, one needs to be enrolled in an insurance scheme. Thus, in practice, access to certain goods means access to the organizations, programs, or schemes administering said goods. Even though equal access to certain services may have been politically mandated, equal access to the organizations and procedures can turn out to be a completely different thing. Much depends on the capacity of intermediary providers to design and manage equitable processes and procedures (Ensor and others 2002; Cook and others 1999; Jacobs and Price 2006; Valdez and others 1993; Tate and Quesnel 1995).

This holds true not only for rights to goods and services but also for rights that protect people from the government or from each other (Rhode 2004). Even with minimal government intervention, the protection of basic political and social liberties is dependent on the state's capacity to enforce these rights. And the capacity to enforce these rights depends ultimately on publicly financed intermediary organizations, such as the police, the army, inspectors of all kinds, and the justice system. This means that even if we do not want to expand the social compact beyond the protection of basic rights, we still need to pay for the administration of the enforcement of these rights (Holmes and Sunstein 1999). Quality of enforcement is variable. Let us imagine a state that promises only to protect citizens from foreign enemies and from violation of their property rights, but that cannot adequately fund the agencies responsible for these tasks. In this case,

enforcement officials would have to make serious choices about whom to protect first, what to protect them from, and how. Access to safety and security, which according to policy is the mainstay of government service provision, would still turn out not to be equal for everyone. Again the institutional capacity to realize rights is determined by intermediary organizations that shape encounters between government and citizens.

The more rights people expect, as to both goods and services and government protection, the higher the costs of service delivery and law enforcement. The higher the costs, the more likely taxes will increase. If a government's population is largely poor, its ability to extract taxes is low. In this case, either the general quality of service delivery is low but everybody has equal access to what there is, or the availability of goods is better but fewer citizens can access state benefits. These inequalities may be completely random if the scarce resources are allocated by lottery. More realistically, inequalities in receiving services, goods, or protection will be related to preexisting social inequalities that determine access to intermediary organizations. Those with better contacts, better education, better endowments, and so on are more likely to gain access to the government's delivery systems and to benefit from protection by the state.

Even in situations when citizens enjoy many rights and the state has plentiful resources, individuals do not necessarily have the opportunity to claim the full range of their entitlements. Financial resources may be in place, but specific goods or services may be unavailable for shorter or longer periods of time (for example, think of shortages of certain crops, clean water, and teachers or medical personnel). Professionals and officials may be arbitrary, discriminatory, or corrupt in distributing public goods, and the quality of these services may not meet the expectations of the citizens.

In all such cases, it becomes very important for citizens to have access to mechanisms for making their needs known (Hirschmann 1970; Cheema 2005; Shah 2005). In early stages of the policymaking process, this means the ability to express demands, either individually or through organized interest and advocacy groups. During policy execution, procedures of appeal and redress may provide access to accountability. If citizens feel that they have been treated unfairly by the government or its intermediaries, they should be able to seek redress by filing a complaint, by appealing court decisions, or simply by applying directly to the authorities.

The executive branch alone cannot guarantee access to services. The legislative branch and the judicial branch play major parts in the establishment of equal access to public goods. If weaker voices are not heard in the process of designing laws and regulations, and if stronger stakeholders dominate the agenda, the needs of the disadvantaged are likely to remain unmet in the resulting policy. Not surprisingly, projects designed for the benefit of the poor in developing countries are often monopolized by those in power with access to the

government. If those disadvantaged by a government do not have proper channels of recourse, their problems will remain unsolved and their situations unrecognized, and unjust administrative systems will remain unchanged. That is why access to public services is closely linked to, and in fact inseparable from, access to mechanisms of accountability. (In a later section, “Faces of Access,” we discuss the “chain of access” in more depth.)

### Access as Social Justice

Equal access touches on the concept of social justice. It is a norm of equal opportunity across different areas of life: politics, economy, social services, justice, and more. As a normative conception of equal opportunity, equal access distinguishes itself from broader liberal theories of social justice in the sense that it is both more specific than these theories and is applicable to a wider domain. Equal access is more specific in the sense that it focuses on implementation, on the practice of democratic institutions vis-à-vis their beneficiaries. Most theories focus on the institutions per se, or on policy in general. Equal access also covers a wider domain than most theories of justice in the sense that the concept does not relate merely to distributions of income and wealth, nor to membership in political and social entities, but to a wide range of areas of life in which people desire to participate. Our theory of access is concerned with the specific mechanisms of exclusion and inclusion that occur in a wide variety of realms within democratic societies.

Nevertheless, in developing these ideas we were informed and guided by the ideas of theorists of social justice who were concerned with broader questions of political, economic, and social justice. We do not intend to cover their ideas here in depth, because we would not do justice to the subject. However, to elaborate our central concept, access, we want to highlight some of the most important notions that have guided our thinking about equal access as a conception of justice.

#### *Justice as Fairness*

The conception of “justice as fairness” propounded by the American philosopher John Rawls has arguably been the most influential formulation of social justice for practitioners and scholars of democratic governance. Rawls was concerned with the design of a just “basic structure” of society as expressed through its fundamental institutions, such as the constitution, markets, and courts. These institutions are responsible for the delivery of rights and obligations and the (re)distribution of socioeconomic goods. Rawls holds that in a well-ordered society, these institutions are to be guided by two underlying principles of justice:

—Principle 1: “Each person has the same infeasible claim to a fully adequate scheme of basic liberties, which scheme is compatible with the same scheme of liberties for all.”

—Principle 2: Social and economic inequalities are to satisfy two conditions.<sup>2</sup> First, they are to be attached to offices and positions open to all under conditions of fair equality and opportunity. Second, according to the “difference principle,” [these inequalities] are to be to the greatest benefit of the least advantaged members of society (Rawls 2001, 42).

Rawls’s first principle protects the liberal freedoms of conscience, expression, association, and related political rights. In order to make sure that these rights are indeed meaningful options for anyone, regardless of background, status, or wealth, the second principle protects fair equality of opportunity. This means that inequalities are only acceptable if people with comparable talent and motivation have similar chances to improve their lives. The second condition of the second principle (the difference principle) offers a criterion to evaluate institutional or policy options in terms of the effect they have on the weakest groups in society.

As we mentioned earlier, Rawls’s theory applies to the basic structure of societies. Our theory of access has a modest goal and indeed a different domain of application. What we derive from Rawls’s theory is the structure of his argument: for rights to make sense to everyone, one needs to take into account their capacity to benefit from those rights. Rawls calls for a redistribution of income and wealth in order to ensure fair equality of opportunity. We refrain from engaging in that particular (socioeconomic) discussion in this book. Instead, we focus on other mechanisms that keep people from exercising the rights as intended in Rawls’s first principle, that have to do more with the practice than with the policies of democratic states. Even if a society manages to design and implement institutions that meet Rawls’s conception of justice, it needs to make sure that they keep functioning according to intent and design. What happens on the ground is often invisible to the public eye. Institutions that may appear just and offices that may seem open to anyone may in fact—unintentionally and unbeknownst to officials—have an exclusionary effect on certain groups or individuals. Consequently, the structure of Rawls’s argument rather than its domain of application is of the highest relevance for our analysis of equal access.

### *Equality of Opportunity*

Another concept that needs further elaboration as we refine our approach to access is that of equality of opportunity. John Roemer (1998) has distinguished between two more or less implicit conceptions of equality of opportunity that are prevalent today in Western democracies. The first may be characterized as “leveling the playing field among individuals who compete for positions.” The second may be called the “nondiscrimination principle,” which states that in the competition for positions in society, all individuals who possess the attributes relevant

2. Rawls means that inequalities are only morally acceptable if and only if they occur under the two conditions that he proposes.

for performance of the duties of the position in question be included in the pool of eligible candidates (1–2). Although these principles are clearly related and both are part of the same larger scheme of social justice, in practice the first principle leads to quite different policies than the second. If a state resolves to level the playing field for children from different groups in society to compete equitably in the labor market, it will probably have to invest in education, neighborhood infrastructure, and possibly in training and economic assistance for parents to better support their children. If, on the other hand, state service providers decide to favor the second principle, they may resort to affirmative action policies, antidiscrimination laws, and perhaps reservation requirements in public institutions and private sector organizations.<sup>3</sup> Roemer's analysis of the consequences of choosing between these two principles, even though they are both social-justice goals, demonstrates not only that the *societal commitment* to equality of opportunity matters, but also that *institutions* play a crucial role in final outcomes.

It is important to note that our concept of equal access does not, like Roemer's two conceptions of equal opportunity, apply to the vast range of policy options available to governments. Obviously, both conceptions of equal opportunity (leveling playing fields and nondiscrimination) may result in equal access, because certain policies compensate for inequalities and certain rules demand equal treatment. For example, children of ethnic minorities may be admitted to certain schools because the government has established a quota or enforces nondiscrimination regulation. As a result, these children have more equal access to education. In this book we are particularly interested in a narrower conception of equal opportunity that applies to the capacity of the state to live up to its own promises with respect to all of the entitlement holders. To stay with our example: the government may have an affirmative action plan in place, but are all of the eligible candidates equally able to apply for a scholarship? There may be antidiscrimination legislation, but how competent, biased, and accountable is the government with regard to the enforcement of these rules? In other words, real access, as we conceive it, is realized when policies aimed at creating equality of opportunity are adequately implemented and successfully result in the desired outcomes.

### *Responsibility and Capability*

A third major question is to what extent societies and their institutions can and should be concerned about all possible and actual inequalities. Ronald Dworkin (2000) has proposed that distributive justice should focus on the principles of equal importance and special responsibility (5):

3. Reservation is a form of affirmative action whereby a percentage of positions in public institutions (and sometimes private sector organizations) are reserved for socially backward classes of citizens, who are generally underrepresented in these positions.



It is important, from an objective point of view, that human lives . . . be successful rather than wasted, and this is equally important, from that objective point of view, for each human life. . . . Though we must all recognize the equal objective importance of the success of a human life, one person has a special and final responsibility for that success: the person whose life it is.

The premise of this book is very much in line with Dworkin's statement. It articulates both the social values of responsibility and solidarity and the modern idea that individuals have their own responsibilities to themselves, and should not only indulge in obtaining entitlements. Dworkin's formulation is generic, and it is difficult to disagree with such a generic formulation. Although Dworkin applies his ideas to many different concrete cases in his own work, the central idea remains that values should find expression in institutions that will finally work to create situations in which equality of resources, as Dworkin calls it, becomes a reality.

Again, we are reluctant to engage in the debate about criteria for distributive justice, because we pursue a conception of equal access that is not fully compatible with Dworkin's broader egalitarian ideas. However, the ideas articulated in Dworkin's theory of justice resonate in our narrower definition of equal access; the juxtaposition of concern for each human life on the part of the collective and personal responsibility on the part of the individual is reflected in our formulation of societal commitment and institutional capacity on the one hand and people's capacity on the other hand. It *is* important for democratic governments to make sure that every citizen has an equal opportunity to benefit from her entitlements. And it *is* important that individuals take responsibility and make an effort to participate in society. One way to view our endeavor here is to see it as an examination of conditions under which both collective and individual are practically able to do their part.

### *Real Freedoms*

Amartya Sen's notion of the removal of "unfreedoms" underlies our specific conception of *access*. Sen (1999) argues that development is in fact a process of "expanding the real freedoms that people enjoy" (3). That process, aimed at detecting actual rather than theoretical injustice, is impossible without an empirical orientation. It is not the design of institutions that determines whether outcomes are just or not; rather, unjust outcomes raise questions about the functioning of institutions, regardless of design. Empirical research on actual inequalities may help us orchestrate a meaningful and informed debate about access as justice. The empirical research and critical analysis in this book mainly focuses on three questions (Baker and others 2004):

1. What are the central, significant patterns of inequality in societies?
2. How can those patterns be explained?
3. What is the role of policies and institutions in the persistence of inequality?

## Controlling Access: The Exercise of Power

We have been reluctant to include power in our definition of access. As mentioned earlier, we prefer to analyze our subject from a rights-based perspective, leaving open the question of whether a mismatch between people and institutions is a consequence of deliberate action—the unjust exercise of power. We have used the term “capacity” with respect to people and institutions. Capacity, however, does imply power, given that the properties and capabilities that define someone’s (or something’s) capacity to pursue goals are basically his, her, or its collection of powers (Ghani 1995). The fact that we prefer the word “capacity” to “power” reflects the conviction that not all instances of impeded access are a result of the concerted exercise of power by some over others. Having said that, we would be immensely naïve not to acknowledge the ways in which power is exercised through mechanisms of access and exclusion. After all, access is about the distribution of resources and opportunities, and since these are often scarce, and people are often needy or greedy, the stakes in controlling access to resources are likely to be high.

### *Power: A Closer Look*

So what does power mean and what does it look like? According to the political theorist Robert Dahl (1957, 80), “A has power over B to the extent that he can get B to do something that B would not otherwise do.” This operational definition had been in use for some time when Peter Bachrach and Morton S. Baratz (1962) published their widely acclaimed article “Two Faces of Power.” They argued that decisionmaking is only one way to use power and that behavior is only one kind of evidence of the exertion of power. One face of power, its overt exercise, is easily recognized. The other face is a bit more obscure and is characterized by nondecisionmaking—when those in authority can prevent certain issues from being put on the agenda through their social, economic, institutional, and political clout. In so doing, they manage to win conflicts over policy preferences or social grievances by avoiding them entirely. In a famous critique, Stephen Lukes (1974) went even further, finding their two-faces approach too behavioral and too focused on decisionmaking or lack thereof. Lukes looks at the exercise of control over the political agenda not necessarily through observable decisions or lack of them but through “latent conflict.” He refuses, in the end, to define interests merely as policy preferences or grievances or, in other words, as subjective interests. His point is that people can have interests of which they are unaware because those in power are able to shape the perception of what is possible, acceptable, and desirable for their citizens.

We can apply all three formulations usefully to the phenomenon of impeded access in democratic societies, but not necessarily to the policymaking process alone. Whereas the discussed theories focus on the exercise of power through

agenda setting, policy formation, and political (non)decisions, we shift our attention of the practical functioning of institutions and to the implementation and execution of policies. Throughout this book we will discuss the exercise of power in its various manifestations. Lukes's conception of "latent conflict" is of particular interest to us, as we seek to reveal the *hidden* mechanisms of exclusion. However, the fact that these mechanisms are hidden does not necessarily mean that malignant forces overtly exercise their power over vulnerable people. The mechanisms impeding access are often much less straightforward.

In a response to his critics, Lukes concludes that his original conception of power is not fully adequate. He argues instead that the concept of power is relational rather than propositional, meaning that it can only be analyzed in terms of power relations between actors and not as capacities that can be attributed to actors individually. He also states that binary power relations and simplistic assumptions about dependencies are not satisfactory as explanations of the many ways in which power manifests itself. We very much agree with him here. Power is obviously an important explanatory concept in access analyses, but it leads us to an undesirable choice: either we modestly and tentatively stipulate manifestations of power but fail to grasp the phenomenon in its entire complexity, or we develop an intricate and sophisticated analytical framework but fail to see anything other than the exercise of power.

We choose not to choose. First, as we mentioned before, we must take into account that not everything that impedes access is an exercise of power. Without being naïve, we do want to keep open the option that impeded access can be a result of lack of awareness and accidental negligence by people with the best intentions. The examples of innovations and successful remedies to improve access that we have found all over the world show us that even without political pressure or popular demand, institutions have worked to fix their access problems. Once made aware of institutionalized impediments to access and their solutions, politicians, appointed officials, and civil servants have proactively restored equity in service-delivery systems, in mechanisms of voice and accountability, and in institutions of justice in numerous cases. We want to acknowledge the efforts of well-intentioned bureaucrats and politicians all over the world, who work for the benefit of all. At the same time, we must remain highly attentive to the exclusionary powers that be.

### *Sources of Power*

One way of remaining attentive to the exercise of power is to pay attention to *sources* of power. By focusing on the *means* through which access is gained, maintained, and controlled, we escape from the multivariate minefield to which dissecting the anatomy of power relations would lead us. The highly interesting article "Theory of Access" by Jesse Ribot and Nancy Lee Peluso (2003) provides us with a range of means through which access can be gained, maintained, and

controlled. According to Ribot and Peluso, “Access is about all possible means by which a person is able to benefit from things” (154). They clearly distinguish between “rights,” which may or may not lead to actual benefits, and “access,” which means that there are actually mechanisms in place to derive tangible benefits from those rights. Interestingly, they make a distinction between legal access and illegal access: the former indicates that there exists a legal entitlement to public resources; the latter, that there exists no such right. In both cases, the means through which people acquire access are largely similar: sources of power. Ribot and Peluso identify the following sources of power (which they call structural mechanisms of access): technology, capital, markets, labor opportunities, authority, social relations, and social identities. All of these enable individuals to access resources, whether they are entitled to do so or not. In our discussion we will confine ourselves primarily to situations in which people are indeed entitled to benefits, or protection, but lack the means to enforce their privileges. In many chapters in this volume (particularly in chapters 5, 7, and 12), the configuration of sources of power is discussed in more detail.

The concept “sources of power” is closely linked to the concept of empowerment, which dominates many of the remedies to improve access that are presented in this book. Empowerment does not tap into the idea of actors exercising *power over* other actors. Instead, it focuses on *generating the power to* do something. To empower people means to provide them with the sources of power (information, skills, authority, and so on) so that they can benefit from resources. In this sense, the concept of empowerment is complementary to the concept of institutional development. Institutional development (in the context of this book) means strategies to improve an institution’s capacity to deliver citizens’ rights and services, whereas empowerment refers to mechanisms that increase citizens’ capacity to benefit from these rights and services.

### Faces of Access<sup>4</sup>

The provision of goods and services and the enforcement of rights, as we have discussed, is administered through intermediary institutions. Although these institutions are sometimes private sector or voluntary sector organizations, they operate nonetheless within a public sector framework. This means that to a certain extent the agencies and their managers and professionals operate within a rule-bound system under a political or constitutional-legal mandate. The typical form such organizations adopt is that of the bureaucracy. The most salient constituting principles of a bureaucracy are: (1) formalization, (2) standardization, (3) hierarchy, (4) specialization, and (5) expertise (Weber 1972). These

4. This section draws on the working paper by J. de Jong, “Faces of Access,” posted on [www.improvingaccess.org](http://www.improvingaccess.org).

principles should guarantee that policies are executed without interference from factors other than the rightful application of law. Bureaucratic forms of organization are by no means to be found only in the public sector; private sector organizations have also found bureaucracy to be a rational, efficient, and controllable organizational form.

Bureaucracy in the pejorative sense of the term is obviously a phenomenon almost everybody loves to hate—remember Kafka! (Howard 1994; Kettl and Fesler 2005; Barzelay 1992; Osborne and Plastrik 1997). Bureaucracies and bureaucrats have become notorious for inflexibility, ignorance, and slowness. Typical symptoms of malfunctioning bureaucracy include difficult forms to fill out, long lines to stand in, and unfriendly staff. These nuisances are not just uncomfortable facts of modern life—they affect the relationship between the citizen and the state in a fundamental way by determining the level of trust people have in government (Peters 1995, 239–40). They thereby affect the perception of the legitimacy of the state. The volume of so-called red tape determines the manner in which a citizen does or does not deal with government (Nye and others 1997). It also influences who benefits from public resources and who does not (Social and Cultural Planning Office 2003). The more time or money a procedure takes, the more people who have time or money benefit; the more complex a procedure is, the more intelligent or savvy people benefit; the more tailored a procedure is to the average citizen, the more people fitting that profile will benefit.

To get a better understanding of the mechanisms that lead to these inequitable practices and the subsequent limitation of access, we first turn to a discussion of four relevant dimensions of a political-administrative system: bureaucrat behavior, agency performance, network dynamics, and contextual factors.

### *Bureaucrat Behavior*

In his groundbreaking work *Street-Level Bureaucracy*, Michael Lipsky (1980) analyzes in depth how bureaucratic organizations operate and why. The conditions that determine the work context of bureaucrats operating in agencies, including conflicting or ambiguous goals, limited resources, fixed means and tools, performance measures, client expectations and behavior, lead to embedded mechanisms that appear to be contrary to the policy goals these public officials are supposed to achieve. Lipsky reserves a key role for the so-called street-level bureaucrats, those civil servants who work in frontline jobs and have direct contacts with clients. Given the relatively high amount of discretionary power they have at their disposal to make specific judgments and decisions on individual cases and the autonomy they enjoy relative to their agencies, Michael Lipsky argues that street-level bureaucrats are in effect policymakers. Their individual behavior adds up to agency behavior and de facto policy (Lipsky 1980, 13; see also chapter 6, this volume).

The constraints that shape the work of civil servants lead to certain patterns of practice that Lipsky describes as rationing services. First of all, the idea that demand

for (free) public services will always exceed supply makes agencies devise ways to ration goods. There are several ways to deal with this (Lipsky 1980, 88–104):

—*Imposing costs of services on clients.* Costs can be expressed in time and in money. They can be explicit, but also embedded in application procedures. The invisible costs that clients have to pay to obtain certain services can decrease the demand.

—*Withholding information.* Agencies and individuals can decide in which way, to what extent, and to whom they make information available. Knowledge about availability of services, eligibility criteria, and application procedures is highly dependent on the available information.

—*Psychological strategies.* The act of applying for services can be either very discreet or highly embarrassing for clients. Psychological thresholds can be built into intake interviews, control mechanisms, or general attitudes of frontline workers. Clients may withdraw because they do not want to be subjected to perceived indignities.

—*Queuing.* A common way of rationing is to create waiting lists or waiting lines. The idea of first come, first serve seems fair and logical, but does not take into account that the costs of waiting for some are higher than for others, that some are in higher need of service than others, and that some have fewer alternatives than others.

—*Categorization.* Not everyone is equally entitled to public services. Although eligibility for entitlements is usually a political decision, people-processing bureaucracies have two important practical tasks: first, to develop an appropriate set of categories by means of which clients will be processed, and, second, to map clients in terms of their qualifying or disqualifying characteristics. This authority sometimes leads to *cream skimming*: giving priority to those clients who are most likely to succeed in terms of bureaucratic success criteria.

—*Worker bias.* Discretionary powers of street-level bureaucrats allow them to make decisions influenced by prejudice and personal values and beliefs. Moral judgments rather than professional assessment might induce a bias in their work, resulting in unequal chances for certain client groups.

These mechanisms (more elaborately described and analyzed in Lipsky 1980; Prottas 1979) might give the impression that government agencies and the civil servants working in them are malignant and not interested in best serving their clients or the public interest. In fact, these patterns of practice can go either way: discretionary powers can just as easily favor the disadvantaged as the advantaged. And the aggregate effect of decisions by some street-level bureaucrats can be balanced by the decisions of others. Still, one thing is clear: equitable treatment for individual clients is not guaranteed. This applies not only to service delivery but also, possibly more so, to law enforcement by regulatory agencies. The nature of the contacts between citizens and law enforcement officers is usually not characterized by customer orientation but rather by compelling citizens to contribute to

public purposes. Mark Moore (1995, 37) characterizes these contacts as “obligation encounters.” The role of regulators in the context of enforcement is much more focused on preventing and correcting deviant behavior, and is therefore by definition very much rule-oriented. Consideration for particular individual circumstances, or for equity, for that matter, is considerably less prominent in their task orientations.

Malcolm Sparrow (2000) points out that regulators must adopt a broader vocabulary so that they think in terms not only of “customers” but also of stakeholders, citizens, obligatees, objects or targets of enforcement, beneficiaries, taxpayers, and society itself. “They must contemplate the broader public purposes that their missions encompass and the numerous individual sacrifices necessary to deliver them,” he writes (63). Achieving these missions is clearly a complicated task, requiring many smaller and bigger decisions that can have major impacts on the lives of citizens. Because the complexity of the task demands higher levels of autonomy and more discretionary power for individual bureaucrats, it also leaves room for agents to let personal beliefs, values, and judgments influence their decisions. Given the fact that regulators, like case workers and other frontline public servants, have the most frequent and immediate contacts with citizens, the patterns of practice of street-level bureaucrats exert a major influence on access to public resources.

### *Agency Performance*

On the agency level, other mechanisms play their part. Executive bodies with a certain level of autonomy tend to develop a will of their own. These organizations are under continuous pressure to perform as they are faced with juridical and budgetary constraints, close scrutiny by the media, and high expectations from politicians and the public (Wilson 1989). Depending on specific performance measures, institutional focuses and behavior may vary, but in the end it is the agencies themselves that have the best information about what is happening when they work with citizens. It is a curious situation that agencies’ political masters often depend on the agencies’ own figures for oversight. These organizations may use rationing tactics, risk-averse behavior, and budget-maximizing strategies to act in their own interest rather than in the interest of the population they are supposed to serve. The privatization of public services that has occurred in many countries over the past couple of decades has led to the creation of semi-autonomous bodies performing tasks for the government. These agencies were believed to perform more effectively and efficiently if placed at a relative distance from the political arena and subjected to market incentives (Pollitt and others 2004), but one question that has hardly been asked in the discourse of privatization, liberalization, and deconcentration of government agencies is, What is the impact of agencies’ relative autonomy on access? The Organization for Economic Cooperation and Development and the World Bank (2006) have conducted interesting surveys and case studies



into accessibility and equity of social services under neoliberal policy regimes, but the specific role of agencies as mediators of those policies has largely remained unexplored.

Although it is hardly possible to assert general truths about an organizational form that takes so many different shapes in different countries and policy areas, it is important to realize that structures, strategies, tactics, and culture on the agency level are another major factor determining the chances that certain groups will be prevented from enjoying their entitlements.

### *System Dynamics*

The complex triangulated relations among citizens, government agencies, and the street-level bureaucrats that represent them provide opportunities for different levels of analysis that are relevant for the examination of exclusionary mechanisms in policy fields. Another level that is less distinct, but perhaps all the more relevant, is that of governance arrangements. Here we leave the clear-cut boundaries of one organizational entity and enter the sometimes rather diffuse realm of interorganizational networks, regulated markets, and voluntary initiatives. Many if not most policy fields long ago abandoned the idea that the delivery of public services or the protection of public goods is the sole responsibility of governments. The most adequate arrangement for financing, producing, and controlling public tasks involves a constellation of actors from public, private, and voluntary sectors that coproduce governance and concerted action. Advocates such as Goldsmith and Eggers (2004) and Kamarck (2007) have hailed networked government as the wave of the future. Yet there is a caveat: networked governance may excel in efficiency and effectiveness, but the question of accountability is less easily answered than in traditional forms of government.

Even if the state remains responsible for defining tasks and regulating markets, the more networked providers there are, the more room there is for confusion over allocation of resources and over assigning responsibility. The complexity increases when the interests of network actors only overlap partially. All actors in a network can share an interest in delivering one particular service efficiently and effectively, but beyond that, their interests may diverge: a voluntary organization might only have local or community-related interests, a private sector company only sectoral interests, and a governmental organization just jurisdictional interests. Although hybrid networks have enormous potential to be responsive to the needs of citizens, chances are that cooperation and commitment only extend to the defined goal and target group. These agencies may have no interest in cooperating with one another to innovate beyond set tasks, to explore connections with other policy areas, or to consider societal impact of social programming (Bogdanor 2005).

Another problem that frequently occurs in governance arrangements is the problem of collective responsibility and organizational autonomy. Network part-



ners may agree on collective goals and joint interests, but they often fail to work out the details of such cooperation. Sometimes this is the result of neglect or poor management, but often network partners are hesitant to give up too much autonomy in favor of the network as a whole. They want to keep their own databases, intake procedures, help desks, and planning and control mechanisms in place. This can lead to serious flaws in terms of customer orientation. For example, in the case of social welfare policy in large cities, people in serious need of money, treatment, or guidance can slip through the cracks because networked service providers all think that some other agency should be assisting them. If a difficult case makes it into the system, the individual may be shunted from one organization to another because no one knows what to do, and no single agency wants to take responsibility. Of course, a well-functioning, responsible, and responsive network is far from unthinkable, but as streamlining and communication demand increasing institutional focus, the risk of reduced accessibility is relatively high.

### *Contextual Factors*

This book focuses on the role that states, through processes of (coproduced) democratic governance, play in creating equal opportunities. It is logical, therefore, to identify and explore the different levels at which (and forms through which) states operate. We have discussed three levels of analysis that refer to the state in its various manifestations: bureaucrat behavior, agency performance, and system dynamics. These levels of analysis represent the *institutional capacity* that the state, on behalf of society, employs to deliver rights and services. The other variable in our access definition is *people's capacity* to benefit from these rights and services. People's capacity to access democratic processes, public services, the economy, and justice is influenced by several factors. Some of those factors appear to be individual, such as intelligence, social skills, personal effort, and motivation. On the other hand, individual intelligence, skills, and performance are developed in a physical environment and a social context that may either help or impede, encourage or discourage the individual. Cultural, social, and religious norms may allow women to attend school or accept a job, or not. All over the world, ethnicity, caste, and race are still important defining characteristics of people, and minority groups are often discriminated against, either overtly or covertly. There are, of course, constitutions and laws in many countries that make discrimination illegal. Some countries, such as India, even have official and significant affirmative action policies. Still, most social interaction takes place beyond the influence of the constitution and the state. Women may have a right to vote or get elected, but if their men successfully "persuade" them to stay away from politics, they are effectively excluded. Minority groups may have the right not to be discriminated against in the labor market, but if employers prefer candidates of "equal competency" from their own ethnic group, minorities are effectively marginalized.

The social and cultural environment, combined with the effect of market forces, constitutes the context in which individuals develop and use their capabilities. Their capacity to benefit from rights and services depends to a large extent on their immediate families, neighbors, colleagues, employers, and fellow citizens. The fact that contextual factors are to an extent beyond the control of the state does neither mean that the state can or should be more active, nor that it should leave things as they are. It just means that when looking at the issue of access, it is important to take into account what sociocultural and socioeconomic factors impact people's capacity to benefit from their rights. An analysis that lacks this dimension and only focuses on institutional capacity is likely to miss out on important explanations for lack of access. More important, it is likely to miss out on potential solutions.

### *Access Analysis: A Framework*

Here we are as we began this chapter, outside the castle in Kafka's story and trying to get in. We see, from a citizen's perspective, that these several levels of analysis we have discussed do not particularly make sense. K. is simply on the outside of something he does not understand. He cannot discern, from the outside, whether it is the street-level bureaucrats, the strategy of the castle as organization, or poor communication between the village and the castle that leaves him excluded and uncertain. Or is it just that the villagers do not like him or his "strange" behavior? All he knows is that he has no access, and he does not know how to go about getting it. He feels powerless, confused, and marginalized. The interesting thing about the story, and the reason it is such an extraordinary metaphor for what happens in public administration all around the world, is that *nobody* seems to really know what exactly causes the lack of access, either outside or inside the system. Exclusion is not always a straightforward process. On the contrary, lack of access may be the result of many interacting mechanisms at many different levels.

To better understand what these mechanisms are, how they manifest themselves, and how they interrelate, we need to look at inequalities in access in a more systematic way. We propose a framework that includes the four levels of analysis that we have discussed: bureaucrat behavior, agency performance, system dynamics, and contextual factors. Each level has its particular unit of analysis, scope of influence (or realm), and typical sources of power that control access. The bureaucrat-agency-system-context, or BASC, framework is a lens that enables us to dissect situations in which access is impeded (see table 1-1). In the concluding chapter we use this framework to discuss the findings of all the chapters in this book, looking for differences, similarities, and patterns of exclusion. This same BASC framework provides us with a means of organizing innovative solutions and recommendations with regard to improving access.

Table 1-1. *The BASC (Bureaucrat-Agency-System-Context) Framework*

<i>Level of analysis</i>	<i>Unit of analysis</i>	<i>Scope of influence</i>	<i>Main sources of power</i>
Bureaucrat	Individuals	Administrative discretion	Information, decisions
Agency	Organizations	Relative autonomy	Resources, procedures, (legal) authority
System	Institutional arrangements	Coordinated institutional activity, networks	Policy agendas, delivery systems, advocacy coalitions
Context	Social and economic forces	Human interaction	Norms, group membership, informal hierarchy, performance, behavior, incentives, sanctions, mobilization, and organization

Source: Authors.

## Applying the Access Framework: The Chain of Access

Now that we have defined our basic concepts, elaborated the theoretical underpinnings of the access perspective, and sharpened our conceptual lens, we turn to presenting the subsections of this book: access to political decisionmaking (part II), access to the economy (part III), access to public services (part IV), access to accountable government (part V), and access to justice (part VI). These subsections constitute closely linked domains that form a chain of access.

### *Access to Political Decisionmaking*

When President Abraham Lincoln, in his Gettysburg Address, defended the struggle for “government of the people, by the people, and for the people,” the United States was still a long way from achieving the ideal of equal democratic rights. Some argue that this ideal never has been realized. Others may argue that it never will be. In any case, the conviction that “all men are created equal” hardly ever translates into really equal treatment. Mere institutions and equitable delivery mechanisms can never be enough to ensure that all citizens have equal opportunities to enjoy their rights and to achieve the goods and services to which they are entitled. Government for the people is only as good as the people defining what it should deliver and how. Thus, access to politics is a first prerequisite to improved access to rights.

Government by the people is of course an intrinsically democratic value understood here to mean the variety of ways individuals can participate in governance, either directly or through mechanisms of representation. Thus, voting rights have been a key issue in many campaigns for minority rights. Being able and allowed

to cast a vote constitutes an important part of what we mean by democratic citizenship (de Jong 2008). But government by the people far exceeds the right to participate in elections. Democratic processes are also indispensable mechanisms on every level to identify needs, problems, conflicts, values, solutions, ideas, and resources. From village group meetings in rural areas to general national elections and everything in between, the democratic process is not only about choosing between candidates and policy options but also about exploring the concerns and expressing the will of the electorate. In this sense, good government *for* the people is dependent on good government *by* the people.

Obviously, many democratic processes do not live up to these ideals. Elections may be unfair or nontransparent, voters may be disenfranchised, representation mechanisms may be flawed, and so on and so forth. Democracy, as a form of social organization, has never been and will never be perfect and undisputed, and we do not argue that it is or will be. Nevertheless, there are degrees of imperfection, and we do argue that although democracy may never be perfect, it will certainly fail to come close to living up to its promise if access to its decisionmaking processes is limited. The democratic ideal that citizen involvement contributes to both the self-actualization of democratic communities and more comprehensive articulation of the needs and demands of citizens depends on the unfettered access to democracy's institutions for all members of society.

Central to the ideal of people's participation in development, however diverse and contested its definition and scope, is inclusiveness—the inclusion, in decisionmaking, of those most affected by the proposed intervention. Bina Agarwal, in chapter 2, on “participatory exclusions,” examines how women are excluded from decisionmaking in community forestry groups in India. In the context of natural resource management (be it forests or water), devolving greater power to village communities is now widely accepted as an institutional imperative by governments, international agencies, and nongovernmental organizations. Rural community forestry groups (CFGs) represent one of the most widespread and rapidly expanding attempts at participative development. Ostensibly set up to operate on principles of cooperation, CFGs are meant to involve and to benefit all sections of the community. Yet despite these stated egalitarian aims, Agarwal shows that those in power can still effectively exclude significant social sectors, such as women. These “participatory exclusions” (that is, exclusions within seemingly participatory institutions) stem from systemic factors and can in turn unfavorably affect both equity and institutional efficiency. Drawing on South Asian experience in addition to Agarwal's own extensive fieldwork among such groups in India and Nepal, Agarwal analyzes the nature of such exclusions, their outcomes, and ways these results can be improved. She argues that participation is particularly determined by rules, norms, and perceptions, in addition to the endowments and attributes of those affected. These factors can disadvantage women, both separately and communally. Women's ability to alter these norms

will depend on their bargaining power vis-à-vis the state, the community, and the family.

Exclusionary processes also take place at other levels of participation. Susan Rose-Ackerman (chapter 3) discusses the problems associated with access to government policymaking on the national level in eastern Europe. Lobbyists and pressure groups have been able to influence environmental policymaking in Hungary, but the weaker voices have not been able to weigh in on the consultative process. She points out that formal hearing procedures and consultative rounds tend to work to the advantage of groups that have already established themselves as discussion partners in the policymaking process. Getting a seat at the table is very much the result of long-term lobbying and a strong organizing capacity, and a seat at said table generally endows stakeholders with more opportunities to further advance their agendas. Creating better opportunities for weaker voices to develop lobbying capacity involves more than just making consultative processes more accessible. Rose-Ackerman argues that a vital civil society requires adequate and stimulating legal and financial arrangements. If organizing citizens around issues that concern them is hard to accomplish legally, or is difficult to afford for common people, formal access to the table does not have much meaning. If it is relatively easy to engage in politics, citizens are more likely to organize themselves. Governments will also benefit from improving access: policies are more likely to gain legitimacy if they are the result of a broader deliberative process, and they are more likely to be effective if more people, interests, and ideas have been mobilized to create them.

### *Access to the Economy*

Today, very few people disagree with the view that markets are an essential institution for welfare growth in societies. Nevertheless, there is much discussion as to when, where, and how to employ market mechanisms. The free trade of goods and services in general may not be contested, but in many specific situations, dilemmas emerge. When one considers international trade agreements negotiated to stimulate economic activity as well as to protect specific national and economic interests via various types of trade barriers, one might conclude that we hardly have a free market economy in the world at all. Trade barriers typically disadvantage the weaker states and their economies. Farmers in sub-Saharan Africa and Latin America, who are not able to compete on the world market to sell their sugar and coffee because Western countries subsidize their own farmers or establish import restrictions, would very much favor a more liberalized world economy. At the same time, if free market policies are promoted without the necessary conditions under which they will actually produce market efficiency (for example, transparency, information, and access), globalization has devastating effects on local economies. In such cases, people depend on their governments to deal with market failures (Stiglitz 2002).

The lack of government intervention in and regulation of market economies may indeed exclude people from economic participation in many ways. Discrimination based on ethnicity or race or gender may exclude people from the labor market, even though they have a formal right to work. Price agreements and cartel formation may push smaller parties out of the marketplace. Free markets do not equal economic freedom, and regulated economies do not necessarily limit or improve access. Government interventions to create level playing fields and deal with market failures are crucial to ensure economic freedom. As Amartya Sen notes in *Development as Freedom* (1999, 3): “Development requires the removal of major sources of unfreedom: poverty as well as tyranny, poor economic opportunities as well as intolerance or overactivity of repressive states.” Sen defines his notion of instrumental freedoms and, more specifically, economic facilities as “the opportunities that individuals respectively enjoy to utilize economic resources for the purpose of consumption, production, or exchange” (38–39). Democratic governments willing to fulfill the full potential of the least advantaged members of the societies they serve share an interest in improving and possibly even guaranteeing access to economic facilities.

Access to the economy starts with the right to enter the market as an entrepreneur. In many countries there are very few restrictions with respect to the basic right to entrepreneurship, but there are many specific licenses that business owners need to obtain before they can officially open their doors for trade. Business licensing can be extremely inhibitive, especially in developing countries (de Soto 1989). According to the World Bank’s annual *Doing Business* reports (World Bank 2005, 2006), an important reason why access to the formal economy is so difficult is that the gatekeepers who monitor licensing for entrepreneurs make part of their income out of bribes. Every obligatory encounter of an actual or potential business owner with the government is an opportunity for a gatekeeper bureaucrat to ask for a bribe. There are very few incentives for bureaucrats to change this practice. Given the expense, there are also very few incentives for business owners to enter a formal economy. Hernando de Soto (2000) has pointed out that the poor would be much richer if only they were able to become part of the formal economy, because without the legal documents that prove ownership of a small business, it is very hard to get a mortgage, attract investors, or borrow money. Therefore, limited access to government licensing also limits economic opportunities and social mobility for poor families. This is the case not only for developing countries but also for certain social groups in postindustrial countries, as de Jong and Kasbergen point out in chapter 4 of this volume.

Non-Western immigrants in urban areas are often entrepreneurs by necessity, not by choice. For many immigrants the only way to make a living and secure a sustainable income is to start a business; it is easiest in the food sector, yet the food sector is a highly regulated branch of the economy. Although in many Western countries deregulation and regulatory reform have been high on the agenda for

the past couple of decades, immigrant entrepreneurs have scarcely benefited from these policies. De Jong and Kasbergen argue that most attempts at regulatory reform have focused on macro-level strategies from an economic point of view and have neglected the micro-level economy operating in urban neighborhoods. Reform agendas that could really be of benefit to these “entrepreneurs by necessity” would have to focus on the social economic contexts of the target groups. The role of the government in improving access to the formal economy may be not only that of rule maker and enforcer but also that of facilitator and manager of compliance.

One other very important precondition for successful entrepreneurship is possession of or access to capital. It is always easier for rich people to borrow money than for poor people. The reason is simple: it is assumed that rich people are more likely to repay the loan and poor people are more likely to default. There is another reason: for financial institutions such as banks it is simply not worth the transaction costs to deal with small loans. The micro-finance revolution, led by Muhammad Yunus of the Grameen Bank and Fazle Abed of BRAC (originally, the Bangladesh Rural Advancement Committee), has shown that the default rate is actually extremely low among poor populations. Access to financing, although not a sufficient condition to escape from structural deprivation, is the first step in a long chain of small steps toward improvement of the economic status of families and communities. Guy Stuart points out, in chapter 5, that there is another important explanation for the success of microfinance institutions (MFIs): the very manner in which the delivery mechanism works is itself an innovation. Typical MFIs involve groups (often of women) within communities that identify needs, administer loans, and manage risk. The group as a whole becomes responsible for loan repayment, even though loans are given to individuals in the group. Stuart argues that the true genius of successful microfinance institutions lies in their having invented a way to accommodate local needs on a large scale, through a postbureaucratic delivery mechanism. Because of this mechanism, millions of people who were previously denied access to financial services have gained access to the economy. Financial services for the poor are not a guarantee of success, but at least they create more equal opportunities for people to improve the lives of their families.

### *Access to Public Services*

The faces of limited access are perhaps most visible in the delivery of public services. Nitpicking bureaucratic behavior, flawed agency performance, poor coordination between agencies and sectors, and lack of responsiveness to local contexts and changing circumstances are obstacles with which citizens the world over are all too familiar. This is often problematic because public services are typically delivered by a monopolist government. For many public services, such as health care, education, or welfare, there is no other provider within the reach of common



people. Although initiatives for privatization and, more important, the introduction of competition to public service delivery have been attempts to provide citizens with customer choice, many people remain dependent on the government service provider assigned to them. Given this necessity, it is all the more important that state service providers function well in terms of effectiveness, efficiency, and accessibility. One explanation for the fact that public organizations do not always particularly exemplify these ideals is that they are rule-bound organizations, subject to a politicized environment. The popular assumption is that bureaucracies are inherently rigid organizations that must be responsive to their political masters rather than to the communities they serve. Fortunately, many innovations in government have proved over the past decades that this assumption is based on a false dichotomy. Public managers all over the world have shown that public service delivery can be both customer friendly and accountable, both effective and obedient, both efficient and respectful of administrative law (Altshuler and Behn 1997; Bogdanor 2005; Borins 1998; Moore 1995; Shah 2005; United Nations 2007; Sparrow 2000).

Despite this potential for efficiency and good service, politicians and taxpayers hardly ever let public organizations off the hook: if they are underperforming they are criticized by everyone, and if they do better than expected, they will be the first to face budget cuts. Michael Lipsky points out, in chapter 6, that this phenomenon is a symptom of broader trends in Western societies. According to Lipsky, in a political and social climate that favors the general shrinking of the welfare state, public managers faced with budget cuts have to make decisions that are bound to affect the accessibility of public services. When funding falls short of public demand, rationing strategies become inevitable. Strategies more in line with the social compact—that is, with acts of solidarity involving individuals' paying tax money for services from which they themselves may never benefit—would involve more serious attempts at innovation. Finally, Lipsky argues that the process of limiting access to public benefits should be at least as transparent as the process of creating public benefits.

Information and communication technology has enabled public managers to improve many of the processes of public service delivery. Customized communication strategies and transactions via the Internet or e-mail are among government's new repertoire of tools. Data mining and information exchange have also enabled agencies to detect fraud and abuse of public benefits. In chapter 7, Arre Zuurmond shows that this same information technology can be extended to enable agencies to detect the non-use of public benefits (also called non-take-up). Comparing data from different agencies may lead to the identification of eligible nonrecipients who are not taking advantage of public services such as welfare, Medicare, or child support. Zuurmond asks to what extent managers and agencies should feel responsible for the delivery of services to those who are not ask-



ing for them. Evidence from Belgium and the United Kingdom suggests that many eligible nonrecipients are less-educated, low-income citizens who are often afraid of encounters with the government. Some of these people live in social environments that lead them to fundamentally distrust authorities. They perceive the government as being against them rather than helping them. Again, we can see that contextual factors such as popular perceptions in society determine to a large extent the ability that people have to enjoy their rights. Another explanation is that people are simply not aware of their rights and entitlements. In the United States, for example, each year billions of dollars in tax refunds remain unclaimed by taxpayers (Files 2006).<sup>5</sup> More proactive strategies of service delivery may be able to counter this waste of opportunity.

The least advantaged members of society are generally the most dependent on public services. They typically find themselves in situations where multiple problems collide: joblessness, financial problems, health problems, and others. If public services are available to these people at all, they are not likely to have much effect because they only address a part of the overall problems facing these individuals. People at the bottom of society may have much potential for improvement, but if their context is not taken into account, the cycle of poverty is hard to break. To give an example, if a single mother is provided with a job, but not with day care for her children, the solution is not sustainable. If children are sent to school free of charge, but no replacement income is guaranteed for their labor, parents may not be able to feed them when they come home. In Western societies, Albert-Jan Kruiter and de Jong write in chapter 8, social services for the people at the bottom of society often show the negative effects of a similar lack of context orientation. Despite political mandates, financial resources, and extensive organizational capacity, the service-delivery system suffers from fragmentation and bureaucratization. Social workers, police officers, teachers, and nurses all feel constricted by rules and regulations governing their ability to help the disadvantaged. Kruiter and de Jong argue that despite general developments in society and in delivery systems that have added to the complexity of their work, public servants still can exercise a fair amount of discretion to take action customized to particular clients with particular problems. Unfortunately, evidence from the Netherlands shows that frontline workers may make up their own rules to avoid the responsibility that comes with exercising discretion. These rules may provide the professional with a sense of protection, but they seriously inhibit an agency's capacity to assist social service clients adequately. Strategies to improve access in this field would involve not deregulation but rather a reform of management strategies to empower frontline professionals to be more effective on behalf of clients.

5. J. Files, "Washington: Deadline to Collect 2002 Tax Refunds," *New York Times*, February 22, 2006.

*Access to Accountable Government*

In the previous section we discussed strategies to improve the accessibility of public services from an institutional or managerial perspective. However, as we discussed earlier, institutions and managers have limited knowledge of the outside world. They do not see problems the same way or to the same extent that citizens do. They also do not necessarily know if their policies and interventions actually work. They need feedback, which they can get via procedures that allow citizens to voice complaints and hold governments accountable for their performance or lack thereof. It is important for every government and public organization to have accountability mechanisms in place. The ultimate accountability mechanisms in democracies are, obviously, periodic elections: citizens can vote to reelect executive leaders with which they are content, or they can vote for other candidates if they are looking for change. But the time between elections is usually considerable, and the issues on the candidates' electoral agendas are usually much bigger and more abstract than those day-to-day issues that citizens face. Having access to the government to voice complaints and to pressure it to do a better job is thus an essential feature of responsive governance.

The 311 systems in place in many American cities—whereby one easy-to-remember telephone number, 311, is used for all questions and complaints citizens may have—have become a symbol of accessible and responsive local government. The potential of the 311 systems has not yet been plumbed, however. Although many cities have acquired the technologies and call centers required for the service, very few have managed to utilize the data from the vast number of telephone calls to reinvent their organizations. One can deal with questions and complaints by answering the former and solving the latter, but this will not structurally improve the quality of the organization or prevent similar problems from recurring. Another, more effective, way of improving local service delivery is to analyze patterns of information requests and complaints to develop recommendations for structural improvement.

Effective accountability mechanisms are not just channels to air frustration or help desks for the citizen, but rather, they are fundamental elements of a learning organization. Alexander Schellong introduces the term “citizen relationship management” in chapter 9. Adapted from “customer relation management” in the private sector, CiRM systems such as the one in Miami-Dade County are advanced information and communication systems that facilitate two-way communication between government and its citizen, while at the same time detecting patterns and informing policy divisions. By using multiple channels such as physical city hall counters, Internet sites, email, and telephone centers, Miami has been able to make the system accessible for many different groups of citizens. The more accessible the system, the more effective the policy information becomes. According to Schellong, the key to a successful implementation of the system is openness to

organizational realignment. Adaptiveness to signals from citizens must be a widely shared value throughout the organization.

Over the last two decades, many strategies to improve government accountability to citizens have been proposed. An absence of mechanisms holding governments accountable for service delivery, especially in developing countries, has become a nagging problem. According to Anwar Shah (see chapter 10), the roots of the problem lie in the fact that many of the approaches tried have not taken into account the complexity of the task environment in these countries. In developing countries public managers' scope for action is usually impaired by a combination of limited operational capacity, insufficient funds, a difficult and politicized authorizing environment, and immense challenges in terms of the creation of public value. Focusing on only one of these elements is not likely to be successful. Shah argues that in order to hold governments accountable for access to services, mechanisms should be tailored to the local configuration of these elements, while putting citizens at the center of all policymaking decisions. Empowering citizens to act as principals rather than imposing external assistance or replicated management concepts from the developed world ensures context-specific and citizen-focused governance. Evidence from both developed and developing countries show that "citizen charters" are among the most successful tools to implement the concept of citizen-centered governance, but the potential for innovation in accountability mechanisms, especially with respect to access, is far from exhausted. After all, most accountability mechanisms work best for those who already have access to government. The big challenge is to give outsiders a voice. A. O. Hirschman (1970), in a classic study of responses to decline and poor performance of organizations, identifies three options for individuals (customers, clients, organization members) to deal with their dissatisfaction: "exit" (stop buying, leaving the organization), "voice" (staying, but expressing dissatisfaction to authorities) and "loyalty" (exercising neither option). But the people we write about in this book may not even have these options. Those who are not 'in' obviously have no exit option to exercise. Those who are not heard, have no voice option vis-à-vis the powers that be. The people we refer to are still looking for the option of "entry" into markets, hospitals, schools, courts, social groups, and democratic processes. The challenge, therefore, is to create mechanisms that mobilize and amplify the messages of outsiders in order to identify those who are left behind, and to reduce the barriers that limit their ability to participate in the areas that are important for their well being.

### *Access to Justice*

The modern legal foundation for the right to access to justice can be found in international treaties such as the European Convention on Human Rights (Article 6) and the International Convention on Civil and Political Rights (Article 14). This codification of access to justice signifies that "the right to court" is a fundamental

right much like freedom of speech and freedom of religion. As with so many human rights, however, there is a gap between the ideal of access and the reality of practice. Several problems with access to justice emerge from practice. The first is perhaps the most obvious: some citizens do not know their rights and cannot afford legal aid to advocate on their behalf. A second challenge is complexity of adjudication: legal proceedings are lengthy and costly. The third problem is fairness of access when the people involved in legal proceedings are not voluntary participants, as in the case of criminal prosecutions. Each of these obstacles to access to justice requires its own solution.<sup>6</sup>

In chapter 11, on access to justice in the United States, Deborah Rhode analyzes the various obstacles that low-income individuals face in both criminal and civil cases. According to Rhode, the systems of legal aid and pro bono litigation are both seriously flawed. There are perverse incentives for lawyers that disadvantage the client's interests. Moreover, attorneys are not held accountable for their performance in a transparent manner, so even if legal assistance is available in theory, in practice, working-class and underclass citizens do not have equal opportunities to represent themselves in court. Strategies to improve access to justice must include more substantial funding for legal representation, governance mechanisms to ensure quality and account for malpractice, and alternative forms of dispute resolution that empower people to solve problems among themselves instead of taking cases to court.

In the developing world, the neglect of the legal needs of the common people is widespread. The Commission on Legal Empowerment of the Poor, a high-level commission of the United Nations, was set up in 2006. The jumping-off point of the commission was the observation that, around the world, for the poorest and most disadvantaged groups in society the majority of their social, economic, and even political transactions and interactions occur in what is called the informal sector, also called the informal economy or the "extralegal sector"—meaning these transactions are outside the rule and the protections of the law. The work of the commission clearly showed how access to justice is related to access to the economy: individuals who don't have legal documents, licenses, or land titles cannot engage in informal economic traffic. Also, if their property rights are violated, they cannot take the case to court, and if they are charged with an offense, whether they are innocent or not, the chances that they will be able to defend themselves against parties that do have proper legal assistance are not very high (United Nations 2008).

Drawing on case studies from Africa, Maaïke de Langen and Maurits Barendrecht show in chapter 12 that there are some obstacles even more inhibitive and harder for poor people to overcome than the most obvious barriers, which are

6. A. Brenninkmeijer, "Introduction to the Panel on Access to Justice," paper presented at the conference "Improving Access," The Hague, November 7, 2007 (see [www.improvingaccess.org](http://www.improvingaccess.org)).

geographic, financial, and educational disadvantages. Widespread corruption among underpaid lower-level officers has led to the phenomenon of “gatekeepers” in the justice system who demand payment of bribes in return for access to judicial buildings and procedures, adding an invisible cost to the legal expenses of the poor. In addition to that, cultural norms of communities often stigmatize the court system as something external to the community. People may be kept from seeking justice in court by their own community members, because to do so would be seen as an insult to customary dispute resolution. De Langen and Barendrecht conclude with an examination of the shortcomings of institutions of justice themselves in developing countries. Dysfunctional agencies and a dearth of laws and regulations guiding the practice of law (called secondary laws) mean that entering the justice system is hardly a guarantee that justice will be done fairly and equitably. Rather than overhauling the legal system and its institutions from the top down, however, the authors argue that a more promising approach is to focus on legal needs, alternative forms of justice, the introduction of paralegals (lay practitioners of law), and closer cooperation with civil society organizations.

To return to *The Castle*, the land surveyor K. and the authorities at the castle have only one thing in common: they have limited knowledge of the nature and impact of all the mechanisms that keep K. from accessing the castle. Obviously, if one could combine both perspectives, the puzzle might be easier to solve. But that is the key to the problem: the twain shall never meet. This is the paradox of access: in order to fully understand the hidden mechanisms that exclude people, we need to have access to their experiences. Unless we listen carefully to those who experience inequalities in their lives, we are likely to remain subject to the fallacies of the institutional perspective. Methodologically, resolving this conundrum requires a blended research approach: empirical observations and grounded theory contrasted with institutional and organizational analysis. Only then will researchers be more likely to reveal obstacles in the long chain of access. It is our hope that this book will contribute to an awareness of those impediments and to forceful analytical and practical efforts to remove them.

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