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Citation for final published version:

Newman, Daniel 2022. Access to justice for vulnerable and energy-poor consumers: Just energy? Naomi Creutzfeldt, Chris Gill, Marine Cornelis and Rachel McPherson (Oxford: Hart, 2021) [Book Review]. *Journal of Law and Society* 49 (3) , pp. 629-632. 10.1111/jols.12374

Publishers page: <https://doi.org/10.1111/jols.12374>

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Daniel Newman Review for Journal of Law and Society (2022)

*Access to Justice for Vulnerable and Energy-Poor Consumers: Just Energy?* Naomi Creutzfeldt, Chris Gill, Marine Cornelis and Rachel McPherson (Oxford: Hart, 2021)

This book offers a compelling and original contribution to the socio-legal literature on access to justice. It succeeds in its purpose of helping to further scholarly understanding of how people do (or do not) access justice. It does so through an investigation into three related issues; alternative dispute resolution; vulnerability, and; energy poverty. Thus, not only does the book add to empirical socio-legal research ‘that has sought to understand the prevalence and extent of access to justice problems’ (p. 6), it does so through offering the first such study of access to justice relating to the European energy market. It addresses questions around what barriers vulnerable and energy poor consumers face in trying to access justice; how effective current law and policy frameworks are for such consumers; how effective alternative dispute resolution has been for these consumers, and; how to improve access to justice for these consumers in future. In tackling these questions, the book also drives forward ideas around how best to define and conceptualise the concept of access to justice having considered real experiences of citizens, laws and justice systems. This latter contribution to helping further understanding on access to justice is especially valuable considering the growing prevalence of access to justice scholarship, which has spread across a disparate range of theoretical and methodological approaches and – as such – is a concept still very much in development for socio-legal studies.

What is offered in sum is a book that takes forward access to justice scholarship with its valuable empirical research into access to justice. At various points, the authors refer to Albiston and Sandefur’s important and inspiring paper setting out a future for empirical studies of access to justice, for ‘intellectually exciting and pragmatically useful access to justice research’. For Albiston and Sandefur:

Researchers should consider not only individuals, but also institutions, such as courts, administrative bodies, and other potential structural constraints on access to justice. Researchers should consider how access to justice is impeded not only by lack of resources, but also by constructed social meanings, such as the stigmatized identity of rights claimants or the failure to understand a problem as a legal one. Finally, researchers should consider not only demand for civil legal services, but also the many potential supply-side models for addressing civil legal concerns, including non-legal approaches and service delivery models that may not yet exist.

The authors have surely realised that vision in putting together this book. They shed light on what they term as ‘the access to justice challenge’ (p. 8), through drawing out the gap between the ideal and reality of access to justice. Such is a gap that has been discussed in criminal, family and social welfare law but that the authors provide a great addition to understanding through their nuanced, layered consideration of the issue of energy poverty for vulnerable consumers.

The situation outlined by the authors is that of a European energy market characterised by largely passive consumers with little engagement in the market – or in pursuit of their

rights. The authors detail the way structural social factors such as class and race combine with cultural and social norms, individual cognitive processing and practical matters of institutional design to provide challenges for accessing justice for many when things go wrong with their energy services. Thereon, the authors consider the way alternative dispute resolution has been offered to provide access to justice and overcome such problems. Vulnerable and energy-poor consumers, though, have often been ignored in devising and designing such systems meaning that access to justice challenges remain. Alternative dispute resolution in its current formulation is shown to have a limited reach that often works to further marginalise the most vulnerable.

The authors suggest, then, that alternative dispute resolution frequently fails to reach the vulnerable and, as such, does not help those who most need to access justice when considering issues of energy poverty. They rather argue that alternative dispute resolution 'is an "elite" remedy that serves a narrow demographic and which is largely reactive to the needs of individuals with significant intellectual, financial and personal resources' (p. 155). The result is that alternative dispute resolution can make a difference but only for a limited few; there are too many barriers that mean mainstream approaches alternative dispute resolution does not bring about access to justice for many. The risks of energy injustice are entrenching deprivation and suffering for the most vulnerable so the way the authors unpick the practice of alternative dispute resolution and provide a fresh reading of how it can work to realise the hope of access to justice is compelling.

There is an impressive scope to the study that lies at the heart of the book, providing rich and robust data to underpin the exploration of the failings in current approaches to access to justice and hope best to move forward to attain it. In order to achieve this, the book brings together the findings of an interdisciplinary, transnational research project into energy poverty. Five case studies are offered, of Bulgaria, Catalonia, France, Italy and the UK. These examples were chosen for the different historical, legal and political approaches taken on alternative dispute resolution and access to justice as well as their varying policy approaches to consumer vulnerability and energy poverty. Qualitative methods have been used, including 80 semi-structured interviews intended to provide lived experience of those providing and seeking access to justice. These interviews featured alternative dispute resolution providers, practitioners, regulators, energy companies, non-governmental organisations and policymakers. There were also interviews with vulnerable and energy-poor consumers, giving voice to the group most likely to have been ignored in existing debates.

The organisation of the book is novel, working to provide both breadth and depth into this exploration of access to justice. The book is comprised of two parts; the findings of the empirical project is detailed in part one before experts from within the jurisdictions studied analyse the findings of the project in part two. Across part one, seven chapters outline the theoretical foundations of the research, offer awareness into the legal and policy situation, and document the fieldwork findings. The reader gains much in terms of access to justice, alternative dispute resolution, vulnerability and energy poverty, as topics in their own right and, crucially, also intertwined. Part two involves a chapter from experts in each case study – including academic, policy and practitioner representatives – that consider the situation of energy injustice from the local perspective. This device provides a whole extra layer of

understanding around access to justice, alternative dispute resolution, vulnerability and energy poverty meaning the reader's understanding of the authors' research is augmented via the insight of these most knowledgeable stakeholders.

A book with such an innovative structure could readily become unwieldy but not here where the narrative is easy to follow and the arguments flow well. It is all too easy to overlook the importance of communicating what a book is doing, how and why, when dealing with such a range of specialist subject matter. The success of the book's readability is testament to the assistance that the authors provide to the reader. There is plentiful explanation on hand, whether it is of key concepts or of how the book is to be plotted. This is an accessible book that should offer a manageable entry point for any reader looking to expand their knowledge of access to justice more broadly, better understand the reality of alternative dispute resolution, consider examples of how vulnerability plays out, or specifically assess the nature of energy poverty today. And crucially, the book is always working with the aim of progressing the rights of those who would otherwise be neglected; the methodological and design innovations always work with such a purpose in mind. This is a key reason for the success of the approach to forwarding access to justice that underpins the book.

The authors' investigation of access to justice always has at its heart the notion of how best to maximise the chances of delivering access to justice to the vulnerable, energy-poor consumer. The culmination of their wide-ranging empirical data and the expert analysis that engages with this is that they are able to develop comprehensive, informed and, ultimately, convincing plans to realise the access to justice they desire. To return to Albiston and Sandefur, when they talk about expanding the empirical base for access to justice scholarship, they note that:

We also urge that scholars consider the diversity of civil legal concerns, and not presume a one-size-fits-all solution is appropriate or even available. Indeed, improving access to justice will likely require a multitude of systems working together. It will also require a much better theoretical and empirical understanding of both the problem and the potential solutions, including those we have not yet begun to imagine.

The way forward charted by the authors in this book offers just such a vision. Over the course of the book, theory and empirical data are brought together, understanding and engagement with a variety of systems is developed, and nuanced, grounded conclusions are reached about how best to deliver the promise of access to justice for vulnerable, energy-poor consumers.

The authors have ambitions of combining top-down and bottom-up solutions to access to justice. Top down solutions focus on designing institutions to minimise procedural barriers to access, while bottom up solutions concentrate upon on the ground issues to access such as social inequality, cognitive or cultural barriers. Tackling both – through a reimagined ombuds model of alternative dispute resolution – has the potential to enhance processes while also exerting broader systematic action. As the authors show in the book, the ombuds model already exists and has been championed for its value solving consumer disputes but the authors' intentions to use the ombuds model involves moving beyond its present status

as more a tool of the middle classes. Instead, the book details that the ombuds model should be recast to combine improving basic standards of legal justice with also delivering some manner of collective justice and, specifically, redressing the systemic injustices of the energy sector. This needs to be rendered accessible to ensure it is more inclusive to thus avoid excluding the vulnerable consumers under investigation in the book. Crucial for the authors is the creation of a new system of access to justice that deals with people's problems in a holistic manner. What the authors of this book want are 'more therapeutic, preventative and inclusive approaches to access to justice' (p. 165). A more powerful, more purposeful ombuds model would be vital to realizing that aim. Thus the culmination of the authors exploration of access to justice here, is a practical, achievable proposal that hold great transformational potential for the most marginalised.

This book succeeds in advancing understandings of access to justice in the round; providing a powerful model for how empirical access to justice scholarship can be conducted. It should appeal to any scholar – experienced academic or student – with an interest in access to justice for the insight it provides into the practice of access to justice, and that challenge the authors pick out between the ideal and reality. In being taken up as a general access to justice text, it is thus likely to introduce many access to justice scholars to the particular issues of alternative dispute resolution, vulnerability and energy poverty, which provide illustrative examples of the problems faced realising access to justice. At the same time, the book will surely take be of great values to those working in or on energy poverty because it makes a powerful and well-informed argument for reform and ensuring that systems of alternative dispute resolution feel accessible to those who need them. Despite the vast ground covered by these diverse case studies, the heart of the book is a coherent, consistent argument for change that deserves to be influential in helping those most in need of access to justice but, presently, most failed by the existing systems.