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Lawyers and Social Justice

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I. INTRODUCTION

At its most basic, access to justice involves the provision of legal advice and representation to people who need and seek those services. It may also include providing legal knowledge and services as a means of raising consciousness about legal options, empowerment, and promotion and vindication of people's rights against the state and other powerful actors; and using law as a tool to challenge social inequities and injustices and promote perceived public goods. This chapter focuses on the provision of legal services to disadvantaged individuals rather than on lawyering directed to particular causes. In the US, for example, cadres of cause lawyers champion specific interests across the political spectrum, ranging from classical poverty law issues, such as employment, housing, and access to health care, to conservative/right-wing causes such as restrictions on abortion, union activity, or immigration. Several country reports describe cause lawyering for the poor and vulnerable (eg Bonelli and Fortes Vol 1, ch 19; Nicholson and Ha Vol 1, ch 43) and to promote human rights and the rule of law (eg Bernard-Maugiron and Omar Vol 1, ch 28; Crouch Vol 1, ch 6; Klaaren Vol 1, ch 26; Kim Vol 1, ch 40; Hsu Vol 1, ch 41) (see chs 14 and 15 below).

Access to justice has traditionally focused on people with limited financial resources and has therefore generally been provided through public defender and legal aid schemes, in which lawyers have played a central role. In many countries, publicly-funded criminal defence and civil legal assistance are provided exclusively by the private legal profession and organised by either national or regional law societies and bar associations (eg Villalonga Vol 1, ch 20; Kober Vol 1, ch 14; Bernard-Maugiron and Omar Vol 1, ch 28; Qafisheh Vol 1, ch 32; Moiseeva and Bocharov Vol 1, ch 16; Boni-Le Goff et al Vol 1, ch 13; Munger Vol 1, ch 42; Nicholson and Ha Vol 1, ch 43) or a state-funded coordinating body (eg Gibens et al Vol 1, ch 7; Ballakrishnen Vol 1, ch 36; Uzebu-Imarhiagbe Vol 1, ch 25). Other countries (eg Thornton and Wood Vol 1, ch 2; Dinoviter and Dawe Vol 1, ch 3; Katvan et al Vol 1, ch 30; Murayama Vol 1, ch 38; Doornbos and de Groot-van Leeuwen Vol 1, ch 12; Kim Vol 1, ch 40) operate on a mixed model of legal aid, providing state-funded legal services through a combination of salaried lawyers employed by public legal aid agencies and private lawyers. In a handful of countries, legal aid is exclusively provided by a public body, such as public defender's offices in Brazil and Mexico, the Taiwan Legal Aid Foundation or Legal Aid South Africa. A very interesting public legal aid scheme is described in the Libyan country report (Carlisle Vol 1, ch 31). While each model relies on state funding, they differ in how they distribute responsibilities for administering the scheme and the engagement, regulation and quality control of lawyers. Debates over the merits

of each model have revolved around questions of lawyers' independence, quality of services delivered, efficiency and cost control.

A fundamental issue for all legal aid schemes, however, has been how much access to justice the state has been willing to subsidise, defined by the kinds of legal problems and services covered, overall funding and the level of fees paid to lawyers undertaking legal aid work. Low fees for criminal defence work have raised concerns about the quality of services in Russia and Vietnam, for example, while French lawyers have periodically gone on strike over the level of reimbursements for legal aid cases. According to the Nigerian country report (Uzebu-Imarhiagbe Vol 1, ch 25), the relatively few lawyers willing to accept legal aid work have sometimes foregone pay because it is not worth the trouble to claim the low fees. With a small number of exceptions (eg Gibens et al Vol 1, ch 7; Bonelli and Fortes Vol 1, ch 19; Katvan et al Vol 1, ch 30), total legal aid budgets in most countries in the recent past have either stagnated or suffered cuts, reflecting neoliberal shifts away from universal state welfare provision (Sommerlad and Hammerslev Vol 1, ch 1). Although, as discussed in the case studies below, governments have sought to justify 'targeting' legal aid at restricted categories of citizens and legal issues, in several countries, including Australia, Canada, Ghana, India, Nigeria and Thailand, provision is inadequate to meet most conceptions of legal need (see eg Pleasence and Balmer 2018). National levels of eligibility for legal aid vary considerably, but even in the Netherlands, where over one third of the population would still qualify, the services available have been reconfigured to emphasise the provision of legal information and advice rather than traditional legal representation, consonant with neoliberal preferences for efficiency (particularly making use of new technologies), individual responsibility and self-help.

In recent years, access to justice has attracted supranational attention as part of the European Union's fundamental rights agenda and the World Bank's and OECD's development agendas. The OECD's focus illustrates the global neoliberal turn. Rather than framing access to justice as a matter of human dignity, equal citizenship or social justice, it promotes the 'business case' for access to justice as promoting stronger national economic performance, growth and sustainable development (OECD and Open Society Foundations 2016). Accordingly, it has gathered and disseminated evidence and resources on international best practices in achieving access to justice, measuring impact and outcomes, and ensuring cost-effectiveness and efficiency. These hallmarks of New Public Management also illustrate the move away from legal professional control of access to justice, as demonstrated in the case studies below. Nevertheless, the definition and implementation of access to justice remain primarily a matter for national states rather than supranational institutions (see also European Parliament 2017). Consequently, the interaction of neoliberal agendas with national histories, structures, cultures and contingencies has resulted in varying configurations of access to justice and the role of lawyers within it.

The three case studies in this chapter document the retrenchment and reconstruction of access to justice over the last 30 years in the US, Scandinavia (Hammerslev Vol 1, ch 8) and England and Wales.[1] Although developments in each setting have been very different, two common and interlinked themes emerge, which have undermined the legal profession's autonomy in defining and providing access to justice. First, lawyers have been displaced from their central role as providers and been forced to share the stage with other actors. Second, as states have withdrawn funding from legal aid, they have intervened more actively in determining what constitutes access to justice and who is entitled to it. Lawyers, in turn, have regrouped, responded to and resisted these developments to varying degrees. The three case studies

[1] See the relevant country reports for general discussions of the legal profession and legal aid.

represent points on a spectrum. The US is the furthest advanced in the fragmentation and marketisation of access to justice; the Scandinavian countries have advanced a considerable way down that route; while England and Wales stands uncomfortably on the threshold, unable to return to the past but uncertain of its future.

II. ACCESS TO JUSTICE AND AMERICAN LAWYERS

The forces of globalisation, neoliberalism and market fundamentalism shaping the Big Law sector in the US also affect access to justice. By contrast to countries where the global spread of market fundamentalism undermined expansive welfare states, however, markets have always been the principal mechanism for allocating legal services to all segments of the US population. This is equally the case for poor Americans eligible for civil legal aid: most of those who take their problems to lawyers (and many do not: Sandefur 2016) purchase legal services on the market. Outside of markets, legal services for poor people are funded by private philanthropy, both cash and in-kind, as well as by agencies of local, state and federal government. For most criminal matters there is a constitutional right to counsel, implemented by mandating that local governments organise and pay for public criminal defence. While this means that government plays a role in funding and regulating public criminal defence, jurisdictions differ widely in how such services are provided, at what rates of pay and with what quality assurance (if any). By contrast, no such right exists on the civil side; civil legal aid work is supported by a wide range of funding sources, resulting in a diverse ecology of services for poor and other disadvantaged populations.

A. Restrictions on Federally-Funded Legal Aid Lawyering

The centrepiece of American civil legal aid, the federal Legal Services Corporation (LSC), provides only about 40 per cent of the funding received by the organisations it supports (Legal Services Corporation 2015). It funds services only for people below 125 per cent of the federal poverty level, or an annual income of around $US30,000 for a family of four; these eligibility standards encompassed about 16 per cent of the US population in 2018. The LSC is periodically under attack, with Republican presidential administrations, including, famously, Ronald Reagan's and, later, Donald Trump's, proposing to end all funding. Although efforts to abolish the LSC have been unsuccessful, lawyers' scope of action has been restricted. In 1996, Congress passed legislation prohibiting LSC-funded organisations from engaging in legal work related to:

> legislative redistricting, challenges to welfare laws or regulations, and civil lawsuits on behalf of prisoners and many categories of immigrants. Congress also prohibited LSC-funded lawyers from participating in class actions, claiming court-ordered awards of attorneys' fees, and engaging in lobbying (Powell 2001).

These restrictions apply to *all* activities of LSC-funded organisations, whether or not those activities are funded by the LSC. Their intent, and to some extent effect, has been to limit legal aid lawyers to helping individuals facing justice problems rather than advocating for groups with shared interests or for systemic change. And while funding has not been eliminated, it is miserly compared with that provided by many peer nations: $US410 million was allocated to the LSC by the US Congress in 2018, out of over $US4 trillion in federal spending (0.01 per cent) (see Johnson 2013).

While the restrictions limit legal services organisations' scope of action, within that scope the LSC permits considerable autonomy. Grantees largely set their own service priorities, determining the types of legal problems their staff will work on: for example, focusing on housing, domestic violence, or military veterans. They also determine their own quality assurance procedures, if any. Unlike other jurisdictions, where quality assurance processes have been used by central funders of legal services to shape which services are provided and how they are performed (see the England and Wales case study below) what constitutes appropriate and competent practice continues to be left largely to practitioners and professional disciplinary bodies when clients or others complain (as is true of the profession generally). A particular issue has been how lawyers manage the imbalance of power between themselves and their disadvantaged clients. Several studies have explored how lawyers interested in emancipating oppressed groups through their legal work try to negotiate the use of their superior power and expertise while respecting their clients' wishes to define their own problems and choose among possible solutions (eg Shdaimah 2009; Southworth 1996; White 1990).

B. New Providers of Access to Justice

Employed legal aid lawyers' work is supplemented by hundreds of thousands of hours of pro bono services annually (Cummings and Sandefur 2013).[2] The American Bar Association's Model Rules of Professional Conduct encourage lawyers to contribute at least 50 hours per year of uncompensated service to the poor or to programmes that benefit the community; although a 2017 survey found that just half of respondents provided *any* pro bono services in 2016 (an average of 37 hours), and less than 20 per cent reached the ABA's goal of 50 hours (American Bar Association Standing Committee on Pro Bono and Public Service 2018).

The heavy reliance of legal aid offices on labour donated by the private bar is characteristic of American-style human and social services provision, which draws on volunteers and donations to provide food, shelter, health care and many other life essentials to people who cannot afford to purchase them. But while lawyers' pro bono service expands direct service provision, it also make legal aid more market-dependent in two respects. First, the supply of pro bono hours is counter-cyclical with respect to legal need: the same economic contractions that push people out of employment and into foreclosure, eviction and debt collection also reduce the supply of pro bono legal services, as was demonstrated in the recession of the early twenty-first century. Second, reliance on volunteer labour from the private bar shapes service priorities. Private practitioners may encounter real or positional conflicts of interest in representing pro bono clients. Conflicts rules typically mean that lawyers in a firm cannot appear on both sides of a case. Lawyers also attempt to avoid positional conflicts of interest, which occur when a lawyer or firm appears in opposition to a class of clients it typically represents. Lawyers who work for businesses in a specific industry – for example, real estate, energy, or health care – or represent one side in common disputes, such as management in labour disputes, will often avoid pro bono work involving claims against any businesses in the industry of their paying clients or against any parties of their paying clients' type. Real and perceived conflicts shape what pro bono work actually gets done, leading to specific types of cases being under-served

[2] Pro bono provision is also a major form of legal aid in the Czech Republic. For discussions of pro bono lawyering and mandates in other jurisdictions, see the country reports of Böhmer Vol 1, ch 10; Thornton and Woods Vol 1, ch 2; Dinovitzer and Dawe Vol 1, ch 3; Ballakrishnen Vol 1, ch 36; Katvan et al Vol 1, ch 30; Uzebu-Imarhiagbe Vol 1, ch 25; Kim Vol 1, ch 40; Nicholson and Ha Vol 1, ch 43.

regardless of significance or need. For example, because the large law firms that provide many of these pro bono hours have many large employers among their clients, these firms invest less of their volunteer time on employment cases, instead working on cases in areas less likely to bring them into opposition with organisations similar to their clients, such as children's issues (Boutcher 2013).

Legal aid is further augmented by other non-traditional providers. The formal law school curriculum may require students to provide legal aid, while some states, notably New York, now require pro bono service during law school for bar admission. An experiential component of US legal education (six hours of which is required for ABA accreditation[3]) sometimes involves law students, supervised by qualified attorneys, providing direct services to indigent clients. Most law school clinics are very small and focused much more on training than service, with groups of 10–15 students spending an entire academic term working up one or two cases. But a few law school clinics operate like legal aid offices, serving hundreds of clients each year, such as the East Bay Community Law Centre, run out of the University of California-Berkeley. Though there are many clinics – a recent survey counts over 1,400 – their contribution to legal services is small, serving at most 2 per cent of civil legal aid clients (Houseman 2015; Kuehn et al 2017).

In most US jurisdictions, lawyers maintain a strong monopoly on the provision of legal advice and representation in most kinds of forums. But in some contexts, the devolution of lawyers' functions to other people and computer programmes is being supported by regulatory changes that will permit new forms of non-lawyer practice and capital investment and non-lawyer control of legal service-providing organisations. By the end of 2019, two states, Arizona and Utah, had adopted rules intended to open legal services to new practice models, while other states, including California and Illinois, were exploring similar changes. Thus, expanding access to justice has become one rationale for market liberalisation to end legal professional monopolies (Hadfield 2010). The most prominent examples of the new kinds of multi-disciplinary practice models involve 'medical-legal partnerships', where lawyers and medical services providers collaborate, and partnerships between lawyers and social workers serve specific populations, such as veterans or the elderly.

C. The Profession Responds

The profession's ideas about how to respond to the continuing shortfall in access to civil justice are divided between those advocating greater lawyer involvement and those focused on new models of service delivery not involving lawyers.

i. Increasing Access to Legal Aid Lawyers

Some call for expanding access to traditional lawyers; these advocates tend to be lawyers, whether or not they do legal aid, who hold traditional views on the practice of law, including concerns about protecting the profession's monopoly. The perennial calls for more pro bono service, which come from both the bench and the bar, are part of this chorus (eg Rhode 2005). Another strand is a small civil right-to-counsel movement, which seeks a right to counsel in specific civil matters, by analogy to the constitutional right to counsel in criminal cases

[3] See ABA Standards and Rules of Procedure for Approval of Law Schools 2019–2020 Standard 303(a)(3).

(eg Engler 2010). This movement has won victories when some states and cities declared a 'right to counsel' for all litigants in particular kinds of cases, such as termination of parental rights (45 states), or indigent tenants threatened with eviction (a few major cities). What a 'right to counsel' means in terms of which services, at what level of quality, for which clients, remains an open question, because many jurisdictions that recognise the right cannot now, and probably will never be able to, fund full representation by a traditional attorney for every eligible person.

Lawyers providing legal services to disadvantaged people now look to a wider range of sources of financial support. Some legal aid agencies refuse federal money so they can freely choose service priorities and legal strategies (Udell 1998). Few studies have systematically explored how legal aid agencies make this decision, but some observers find that cause-focused organisations are more likely to do so (Mentor and Schwartz 2014). Currently, additional funding for legal aid comes from Interest on Lawyers' Trust Accounts (IOLTA) and other state and local sources of public funding, as well as private foundations and the bar (Houseman 2015).

Nevertheless, salaried legal aid provision remains a minority professional activity. The 13,000 criminal and civil legal aid lawyers comprise about 1 per cent of the 1.3 million lawyers in the US (Carson 2012: Table 5). Like the American profession as a whole, most legal aid lawyers are white (Chambliss 2017: Tables 1 and 7). Unlike the profession as whole, legal aid lawyers are more likely to be women (Carson 2012: 9). Salaried attorneys in the civil legal aid system receive some of the lowest pay in the profession. Among attorneys entering practice around 2000, legal aid lawyers' initial salaries averaged about $US39,000/year, compared with $US135,000/year for lawyers in the largest firms – roughly 3.5 times higher (Dinovitzer et al 2009: Table 5.1). The low pay, combined with the high levels of educational debt that many American law students accrue, mean that legal aid lawyers labour under some of the largest debt burdens in the profession (Dinovitzer et al 2004). In this context, observers have raised concerns about the future supply of legal aid lawyers (McGill 2006).

Lawyers' motivations for doing access to justice work, given its low pay and professional prestige, have been of perennial interest to scholars of the American profession (for example, Epstein 1999; Granfield and Koenig 1992; Mertz 2007; Stover and Erlanger 1989). Much of this research emphasises law schools' role in diverting, discouraging, or destroying aspiring lawyers' desires to do legal aid or other public interest legal work (Sandefur and Selbin 2009). For example, Schleef has shown how law school may divert students from public service by supporting the development of an ethic of 'reasonable responsibility'. This ethic includes the belief that 'public service should only be undertaken when time and resources permi[t]', the 'compartmentalization of day-to-day work and social responsibility' and 'the redefinition of responsibility as any action that was not irresponsible' (Schleef 2005: 131). A more encouraging finding for the supply of legal aid lawyers is the demonstration that early motivations for doing access to justice work are more likely to be realised when supported by participation in access to justice activities in law school, such as clinics (Erlanger et al 1996).

ii. New Roles for Non-Lawyers

At the same time, many lawyers believe that the US will never commit sufficient resources to provide comprehensive representation by fully qualified attorneys to every person in need. Accordingly, courts, bar associations and lawyers have focused their energies on new models of legal services provision. Some of the most significant work of lawyers in responding to what organisations such as the LSC, the World Justice Project and the American Bar Association term the 'justice gap' has been devising new models of service delivery without lawyers.

These vary widely, but all involve distributing functions previously reserved to lawyers to non-lawyer providers, software programmes, or the people actually facing justice problems. One common model involves workshops where many people in a specific situation – responding to a court summons or seeking to regularise their immigration status – can receive information about how to handle it. A variant is court-based 'self-help' centres, which offer assistance, often from non-lawyers, with basic legal activities like completing legal forms, such as petitions for divorce. The expansion of such self-help efforts rests on a key procedural change: replacing complex legal documents like pleadings and motions with simpler, standardised, plain language forms offering a codified set of legal options, such as defences to an eviction (Zorza and Udell 2014). An important growth area uses computers, with a rapid expansion in recent years of software that seeks to empower people to respond to civil justice problems on their own. While these innovations are popular with their developers, observers offer many reasons to suspect that most are not yet effective routes to justice for many people (Hagan 2019; Sandefur 2019).

Lawyers have also been at the forefront in designing non-lawyer roles that assume responsibilities traditionally handled by fully qualified attorneys.[4] For example, the Washington State Bar created the Limited License Legal Technician (LLLT), who may practise independently within a limited scope after being trained, examined, licensed and insured. Other new roles are sponsored by the courts and offer free services, such as Court Navigators in New York City, who assist unrepresented litigants in housing and consumer debt cases (Sandefur and Clarke 2016). Debate continues about the effectiveness of these innovations (Carpenter et al 2017; Steinberg 2011). The US case study illustrates the inevitable centrifugal force of the search for market solutions to unmet demands for access to justice. While the legal profession continues to be concerned about this issue, market logic dictates that answers must lie in cheaper and more limited services than those traditionally provided by lawyers.

III. LAWYERS AND ACCESS TO JUSTICE IN THE SCANDINAVIAN WELFARE STATES

The Nordic countries' ideal of access to justice for all has been, and to some extent still is, closely related to the 'universalist' welfare paradigm, promoting equality and individual autonomy by making the tax-financed public sector the main provider and regulator of social security and 'caregiver' for all in need (Esping-Andersen 1990).[5] Providing access to justice for all citizens was highly prioritised in the 1970s (Muther 1975; Johnsen 1994). But the golden years of welfare ended during the 1980s economic crises (Christiansen et al 2006; Erikson et al 1987). The Scandinavian welfare states met with domestic criticism linking public sector growth with uncompetitive economies undermining private investments and private entrepreneurship (Agell et al 1997). The impact of such thinking widened concurrently with growing crisis symptoms and prepared the ground for a neoliberal formula. Market-oriented solutions became a serious competitor to public sector welfare strategies, resulting in the partial privatisation or contracting out of welfare services, including legal aid (Bonoli et al 2000; Kangas and Palme 2005).

Access to justice has consequently gone from being a responsibility of the welfare state to a 'service' that is more frequently outsourced to private legal expenses insurers (LEIs),

[4] See also ch 12 above on paralegals.

[5] The Nordic countries include Finland and Iceland; however, this chapter focuses only on Scandinavia. For information about access to justice in Iceland and Finland see Antonsdottir (2018) and Rissanen (2018).

membership organisations and Not-for-Profit (NFP) Organisations (Hammerslev and Rønning 2018). This, in turn, has resulted in a shift in the role of lawyers in providing access to justice. From being the central actors in state-funded legal aid schemes, lawyers have been downgraded in two ways. First, they now offer limited services for little or no payment in administratively burdensome circumstances; second, they now share the legal aid field with non-lawyers who are less constrained. The resulting access to justice, however, is patchy and often unsatisfactory.

A. The Marginalisation of Publicly-Funded Legal Aid Lawyers

There is no common Scandinavian access to justice approach beyond free, brief advice on any legal matter.[6] This is delivered by legal aid offices, supplemented by 'lawyers on call' – lawyers and assistant attorneys-at-law (see Hammerslev Vol 1, ch 4) available a few hours a week in public libraries, court buildings or occasionally law offices (Danish Bar and Law Society 2011). The Danish initiative of 'lawyers on call', for example, was launched in 1978 to strengthen access to justice, supplement the work of legal aid offices and, perhaps even more importantly, improve the negative image of lawyers. Beyond this basic service, Scandinavian residents have faced a mobilisation of neoliberal privatisation and individual responsibilitisation. They are now obligated to use other means of legal assistance before applying for legal aid, which is subject to means and merit tests in most civil matters.

For decades, Sweden had a system of public legal aid offices (Johnsen 2006). In 1997, however, to cut the public budget and forestall an economic downturn, it introduced a Legal Aid Act to make the legal aid scheme – previously one of the most generous and comprehensive in the world – subordinate to LEI (Kilian and Regan 2004). Concurrently, financial eligibility criteria were tightened, user-charges based on income level were introduced, and most civil and family law disputes previously funded by public legal aid were directed to alternative dispute resolution procedures (Regan 2003). The public legal aid offices were closed in 1999 (Schoultz 2018). These measures to reduce the cost and target the provision of legal aid were accompanied by wider regulatory changes stripping lawyers of their monopoly on legal advice and representation in court (Regan 2003).

By contrast, Denmark and Norway adopted a judicare model in 1974 and 1980 respectively, in which private lawyers and law firms received public subsidies along with clients' co-payments to handle eligible cases (Johnsen 1999; Hammerslev and Rønning 2018). However, LEI supplanted the Norwegian legal aid scheme in 1997 and the Danish in 2007. Services have been reconfigured to exclude business law, penal law, debt relief and social security. Since the changes in Denmark, public expenditure on legal aid by lawyers has decreased by 75 per cent (Danish Lawyers and the Danish Bar and Law Society 2012). Norway has been criticised for randomly selecting legal areas for means testing (Botheim et al 2008; Rønning 2018; Schoultz 2018). For example, cases concerning immigration, child welfare and domestic violence are not means tested because they are deemed to be of vital importance to the individual, whereas cases regarding child custody, employment, tenancy and marriage *are* means tested (Rønning 2018). The main concern expressed by lawyers, however, has been the complex and time-consuming bureaucratic administration of the tests (Danish Lawyers and the Danish Bar and Law Society 2011).

[6] Belgium has a similar model of 'front line' legal aid (information and advice) for all, provided by private attorneys but centrally organised by the Commission for Legal Aid.

Although the proportion of civil cases brought to Norwegian courts with 'litigation aid' from legal aid lawyers remains relatively high (Rønning 2018), Danish and Swedish litigants are highly dependent on LEI as legal aid has been substantially reduced through means testing and user charges. For example, litigation aid by legal aid lawyers to couples in a registered relationship in Denmark covered 67 per cent of the population in 1988 but only 17 per cent in 2009 (Justitia 2016; for the situation in Sweden see Regan 2003).

In addition, some areas of law are ineligible for legal aid (see eg Rønning and Bentsen 2008; Botheim et al 2008; Justitia 2019; Schoultz 2018), such as claims against public authorities, or cases processed by public authorities or heard by boards of appeal, which are fundamental to a large part of the Scandinavian populations, especially the most vulnerable (Kristiansen 2018; Rønning 2018). This exception is justified by the claim that public authorities are obligated to assist people with their justiciable welfare rights. Public administration remains a legal professional stronghold, employing about a third of law school graduates (Hammerslev 2003), but its contribution to access to justice is ambiguous. On one hand, the public sector claims responsibility for being a 'caregiver' and for remedying many social ills, including its own administrative failures. It facilitates access to welfare and fundamental rights, helps people solve problems arising from the private market (for example through consumer councils and housing complaints commissions), and ensures that official acts are consistent with the law through complaints commissions, appeal committees and ombudsmen. On the other, the powerful public administration is criticised for its weak commitment to the rule of law. The decisions of Danish public authorities, for example, are reversed by the appeals board in a high proportion of cases: 36 per cent of reviewed social security decisions, 47 per cent of reviewed disabled children decisions, and 32 per cent of reviewed disabled adults decisions in 2018 (Ministry of Social Affairs and the Interior 2019). Despite the power and failings of the administrative state, neither Denmark nor Norway has administrative courts, so disputes concerning the exercise of public powers must be pursued in the ordinary courts. Henrichsen (2019) suggests that fragmented, complex welfare legislation and a global competition economy relying more on employment policy than social policy helped to reconfigure the Scandinavian public sector into a service provider and rule of law protector for the middle class rather than the poor, marginalised and vulnerable (see also Kolstrup 2014; Jensen 2017). For example, a person cannot seek legal aid concerning the placement of a child in care until the public authorities have made their decision and the person lodges a complaint. Studies of Danish legal aid offices, however, show that vulnerable people often need legal aid at the outset of these cases because they distrust the impartiality of public authorities and struggle to comprehend the advice they give (Danish Lawyers and the Danish Bar and Law Society 2012). Danish legal aid offices (but not private lawyers) still provide legal assistance to some clients with such cases even though they are no longer eligible for subsidy, making access to justice available to a smaller number of clients and dependent on the goodwill of the lawyers involved.

B. The Challenges of Quality and Recruiting Lawyers

Following the cuts outlined above, the residual legal aid schemes face challenges in attracting lawyers, aggravated by the law firm mergers that occurred in the 1980s. Influenced by Anglo-American law firms, the landscape of solo practitioners and smaller law offices slowly changed, resulting in a division of labour between a 'hemisphere' of lawyers in (the few) large law firms situated in the largest cities, serving corporations, labour unions, the government, and larger organisations, and another 'hemisphere' of regional solo practitioners and lawyers

from smaller law offices serving private clients and smaller businesses (see Heinz and Laumann 1994). Highly specialised lawyers from the largest firms no longer handled individual legal problems, tacitly leaving solo practitioners and lawyers from smaller law offices with more generalised expertise responsible for doing traditional legal aid work for individuals, including 'lawyers on call' (Olesen and Hammerslev forthcoming). Difficulties recruiting lawyers and assistant attorneys-at-law[7] to legal aid work and 'lawyers on call' thus arose from the legal industry's focus on more profitable market segments at the expense of individual clients, the complexity of the law and the focus on specialised legal knowledge that now permeates the legal profession. Even though law students are trained to be generalists they often develop a specialised profile to meet the needs of the larger law firms (Kristiansen 2018; Rønning 2018). Furthermore, lawyers from larger law firms practising legal aid may be challenged by their limited knowledge of the complex legal aid schemes, unfamiliarity with client groups and lack of language skills (see eg Andenæs 2001).

Another obstacle is low pay. The Norwegian Bar Association has argued that fixed fees undermine the quality of the legal aid scheme by encouraging lawyers to minimise the time devoted to cases or work without remuneration (Norwegian Bar Association 2015; see also Rønning 2018 and the England and Wales case study below). A Danish report has shown that the relatively few lawyers still participating in the legal aid scheme (fewer than one in five) do so in spite of the low fixed rates and time-consuming bureaucratic impediments, mainly because they view their contribution as pro bono work or know and sympathise with their clients' legal needs (Danish Lawyers and the Danish Bar and Law Society 2011). Previously, work as 'lawyers on call' offered an opportunity to cultivate new client groups, but this is no longer true because solo practitioners and lawyers from smaller law offices are also more specialised, and their business model seldom appeals to the clientele of 'lawyers on call' (Kristiansen 2018). Simultaneously, rural areas face a severe need for competent legal aid lawyers and 'lawyers on call' (Hammerslev and Rønning 2018).

A working group under the Danish Lawyers and the Danish Bar and Law Society (2016) has drawn up proposals to recruit more lawyers and assistant attorneys-at-law to participate in 'lawyers on call' by offering free courses that satisfy the postgraduate training requirements of assistant attorneys-at-law and lawyers who are or plan to be 'lawyers on call'. Another suggestion is to certify 'lawyers on call' work as a postgraduate course.

In summary, what remains of legal aid seems to be critically dependent on goodwill from regional solo practitioners and lawyers from smaller law offices, while strategies to recruit lawyers to legal aid work rely on appeals to their financial and educational interests rather than their sense of responsibility to facilitate and enhance access to justice.

C. Alternative Providers of Access to Justice

In place of the former legal aid schemes, a plethora of alternative sources of legal advice and assistance have emerged. Some continue to rely on private lawyers, while others sideline lawyers and law firms in favour of different organisational and professional arrangements.

[7] To become a qualified lawyer in Denmark one must hold a master's degree in law, complete a three-year apprenticeship in a law firm as an assistant attorney-at-law which includes a law clerk program, complete mandatory basic training and pass a bar exam.

i. Private Lawyers, LEI and Pro Bono Work

More than 90 per cent of the Scandinavian populations have LEI as part of their household insurance policy, making it the primary source of legal assistance (Hammerslev and Rønning 2018).[8] LEI mainly covers assistance in litigation and arbitration. In determining whether a complaint should be pursued, an insurance company will normally consult an external law firm with professional qualifications in the relevant legal area. However, many law firms decline to review LEI complaints, mainly because of their low profit margin. Those that do tend to be small businesses which, like their counterparts doing legal aid work, handle these cases because they understand their clients' needs and feel a moral obligation, despite disagreements with the insurance companies about fees and administration. Lawyers find LEI cases administratively burdensome. More than one fifth of Danish lawyers undertaking LEI work reported arranging for clients to pay privately instead of using the insurance coverage (Danish Lawyers and the Danish Bar and Law Society 2011: 28). Thus, lawyers have resisted cooperation with LEI both by refusing to undertake this work and, when they do so, circumventing the scheme.

Another shortcoming of the LEI schemes is that entire legal areas, such as property, succession and child custody, are not covered by insurance, while others like lost earning capacity, have limited coverage (Justitia 2016). In addition, policyholders are obliged to pay substantial amounts before insurance coverage begins and are often also required to pay for preliminary legal work and legal costs that exceed insurance coverage. Consequently, many low-income policyholders cannot afford to assert their rights and may, therefore, be in a worse position than those without LEI who are entitled to free litigation aid (ibid). Another criticism is that LEI almost never covers pre-trial processes. Regardless of the need for help in naming, blaming and claiming before trial (Felstiner et al 1980; Olesen et al 2017) or the desirability of advice and assistance in resolving matters without going to court, this is unavailable from LEI (see eg Danish Lawyers and the Danish Bar and Law Society 2016; Swedish National Courts Administration 2009). It has therefore been argued that LEI not only contributes to unequal access to the courts but also creates an access to justice gap among the most disadvantaged (Justitia 2016).

Pro bono legal work may fill some of the gap in access to justice, but even though Scandinavian Bar Associations encourage such work, this is not mandated, and pro bono culture is still in the process of development. The term 'pro bono' was not part of the Danish vocabulary until the early 2000s, after which the concept – heavily inspired by global Anglo-American law firms – slowly took root in the larger Scandinavian firms, which systematised and professionalised their voluntary activities through pro bono budgets, programmes and policies and re-established their branding profiles (Olesen and Hammerslev forthcoming). Two business surveys of Norwegian law firms and lawyers showed that awareness of pro bono increased from about 65 per cent to 90 per cent between 2013 and 2015, and the number of pro bono hours increased. While only 25 per cent of firms with more than 50 lawyers performed an average of 150 hours of pro bono services in 2013, 92 per cent of those firms offered an average of 850 hours in 2015 (Norwegian Bar Association 2014; 2016).

The surveys do not describe the types of pro bono work Norwegian lawyers perform. According to a qualitative analysis, it includes legal advice to national and international organisations, collegial work in the Bar Association, work for disciplinary councils, teaching and giving donations. It appears that the marketisation, globalisation and specialisation of legal services has also shaped the larger law firms' voluntary strategies: highly specialised lawyers

[8] This is also true in Germany, which has the world's largest LEI market.

devote their pro bono hours to larger organisations and associations rather than individuals. In 2009, the first Danish law firm included pro bono in its corporate social responsibility (CSR) programme to demonstrate its philanthropic contribution and central community priorities. This trend of interlinking pro bono and CSR while downgrading advice to individuals indicates a corporate focus, which is supported by the largest law firms' collaborations and partnerships with local communities, educational institutions, and NGOs (Olesen and Hammerslev forthcoming).

ii. New Service Providers

The significant drop in public expenditure on legal aid by lawyers in Denmark since 2006-2007 has been accompanied by a significant increase in public expenditure on legal aid offices staffed mainly by volunteer law students (Justitia 2019). Throughout Scandinavia, student-run legal aid clinics, membership organisations and NFP organisations seek to fill the gaps in access to justice for applicants no longer eligible for legal aid.[9] As in the US, these entities often rely on a wide range of private funding sources and therefore are not bound by the same restrictions (on clients and cases) as the publicly-funded legal aid offices. Alternative suppliers can therefore provide legal and paralegal assistance to specific target groups through specialised outreach strategies without limitations on their work.

One source of demand for assistance from legal aid offices has been the small claims court introduced in Denmark in 2008 (a similar initiative has been launched in Sweden). The court was intended to ensure easier access without a lawyer and to lower the cost of claims through a simplified procedure based on self-representation supplemented by directions and guidance from the court. This guidance, however, does not include support to complete the summons, with the result that legal aid offices face a bottleneck of requests for help with small-claim court cases.

While legal aid offices mainly use volunteers with a law degree, membership organisations and NFPs deploy volunteers with a wide range of social and professional skills. A recent study found that Danish trade unions and health and refugee organisations offer legal advice primarily by social workers supplemented by law students, and occasionally by a single jurist[10] or lawyer for specialised problems (Olesen and Hammerslev 2019). These trends suggest that social workers and law students are coming to dominate the pathways to justice at the expense of the legal profession. At the same time, there is no central coordination of the many initiatives offering fee-charging or free legal assistance and little information about their extent or quality (Kristiansen 2018; Johnsen 2009).

D. The Professional Response

The major changes in Scandinavian legal aid schemes have been discussed and criticised by Bar Associations, Associations of Law Firms and judicial think tanks (see eg Regan 2003; Justitia 2019). For years, the Danish and Norwegian associations have tried to convince their respective parliaments to reform and simplify the legal aid systems (Norwegian Bar

[9] For legal aid provision by NGOs and welfare organisations in other jurisdictions, see the country reports by Gibens et al Vol 1, ch 7; Kober Vol 1, ch 14; Vuković et al Vol 1, ch 17; Karekwaivanane Vol 1, ch 27.

[10] Degrees and titles are discussed in Hammerslev Vol 1, ch 8.

Association 2017; Danish Lawyers and the Danish Bar and Law Society 2016). Recently, the criticism of legal aid schemes and the social imbalance they cause have attracted political attention (Danish Lawyers and the Danish Bar and Law Society 2016: 3; Rønning 2018: 36), but no reforms have been enacted. Rather, it appears that the new legal aid providers are here to stay and are taking a leading role in filling the access to justice gaps. That mission calls for a strong civil society able to create a new space for generating legal assistance, a challenge for Scandinavian countries with long traditions of entrusting social responsibility to the public sector (Hammerslev and Rønning 2018; Enjolras and Strømsnes 2018).

IV. ENGLISH LAWYERS AND ACCESS TO JUSTICE

The legal aid scheme in England and Wales was initially established under the control of the private legal profession, but from the late 1980s the state has progressively asserted the right to define the meaning of access to justice and how it will be provided. This process has resulted in the transformation not only of the legal aid scheme but also of legal aid lawyers and their clients. Thirty years later, legal aid functions as a residual welfare benefit providing minimal legal assistance only to those judged to be the most needy, while questions of the meaning of access to justice and the role of lawyers in providing it remain unresolved.

A. The Quality Debate

Under the legal aid scheme as originally established, lawyers provided the same services to privately paying and legally aided clients, leaving the quality of lawyering to be determined by traditional notions of professionalism. When the Legal Aid Board assumed the administration of legal aid in 1988, it introduced a range of efficiency measures under the aegis of New Public Management (a capped budget, franchising, fixed fees), but it also sought to ensure that these measures would not lower the quality of services. It has been argued, however, that the new quality assurance measures were destructive of both professional autonomy and the service ethos underpinning the quality of legal services. The standardised, auditable 'transaction criteria' on which quality assessments were based operated as a 'mechanism of governance' which 'define[d] a new type of professional' (Wall 1996: 115). They represented a 'mechanistic, unidimensional vision of professional work', a 'supermarket' as opposed to 'craft shop' model of practice (Sanderson and Sommerlad 2002: 1002, 1011), which neglected relational, creative and human dimensions of lawyering, ignored the complexity of poor people's problems, and produced goal displacement and superficial compliance. The subsequent introduction of contracting after 1999 tightened central control over lawyers' working practices and further challenged the lawyer-client relationship (Welsh 2016: 124–25, 132).

This process was accompanied, and exacerbated, by a policy discourse which accused legal aid lawyers of putting their own financial and professional interests above those of their clients (Lewis 2000; Moorhead and Pleasence 2003: 3–4; see also Sommerlad 1999: 311; 2001: 350). One consequence of this 'discourse of practitioner greed and mediocrity' (Sommerlad 2004: 360) was the introduction of new service providers in the mid-1990s. Not-for-profit (NFP) advice agencies were seen to offer better value for money than solicitors and to take a broader, more holistic approach to clients in social welfare areas such as debt, employment and welfare

benefits (Moorhead et al 2003: 766–67). In family law, mediators were introduced as a means of reducing costs and better serving clients and their children by taking a conciliatory approach to disputes, rather than lawyers' allegedly adversarial approach.

B. Supplier-Induced Demand

The introduction of fiscal discipline in the late 1980s did not succeed in curbing the costs of the legal aid scheme. The continued rise in expenditure was attributed to supplier-induced inflation: the notion that lawyers were seeking to maintain a target income over time, by increasing either the amount of legally-aided work they undertook (where fees were fixed) or the amount of work done on cases, and hence the fees charged, where that was possible (Bevan 1996). This argument was taken as evidence that lawyers were milking the legal aid scheme by over-servicing, a problem exacerbated by the 'moral hazard' of clients having no incentive to control the costs of their cases (Tata 2007: 490–93).

The supplier-induced demand thesis was vigorously contested; and research demonstrated that much of the increase in costs was due to a plethora of new legislation and institutional changes in the criminal and civil justice systems resulting from government policy, well beyond the control of legal practitioners (Cape and Moorhead 2004; Moorhead 2004: 177–78). Nevertheless, ever more stringent measures to hold down costs were justified, and opposition stifled, by reference to the need to contain the rent-seeking behaviour of 'fat cat lawyers' (eg Sommerlad 2004: 163). This argument was also extended to the NFP agencies which had previously been seen as providing better value-for-money than lawyers but now were also accused of over-servicing and consequently subject to fixed fees and more stringent auditing, while face-to-face services began to be replaced with web-based information and telephone advice (Sommerlad 2008: 187; Sommerlad and Sanderson 2013: 310–11).

As Tata has noted, however, the relationship between the client's interest and lawyers' self-interest is 'subtle and complex' (2007: 494). Lawyers may seek to maximise their financial position without disadvantaging their clients; and if they do reduce the level of some kinds of service in response to fixed fees, it is not clear whether this represents a reduction of over-servicing or a compromise in quality. Tata argues that the assumption that clients or cases have inherent and essential needs is sociologically unrealistic and that supply and demand are in fact mutually constitutive (ibid: 516–19).

Nevertheless, as in the US and Scandinavian case studies, the trajectory of legal aid policy has increased state control over the definition of client needs – not only *how* services are delivered but also *which* services are delivered. This also has been evident, for example, in reductions in the number of contracted legal aid suppliers in the name of efficiency, resulting in 'advice deserts' and service gaps (Moorhead 2004: 162; National Audit Office 2014). In addition, areas of law have been progressively removed from the scope of the legal aid scheme, beginning with personal injury in 1999 and extending to large swathes of civil and family law in 2013. In each case, access to justice is supposedly provided by other means: conditional fee agreements for personal injury cases (see eg Higgins 2012; Sommerlad 2004: 361), legally-aided mediation in family law (see eg Hunter 2017b), and the new category of 'exceptional case funding', which in theory provides legal aid coverage in those 'exceptional' civil and family law cases where a failure to fund would result in a violation of the applicant's human rights. Moreover, for a range of matters that remain within scope, clients are required to contact a telephone gateway before being referred for face-to-face advice and assistance. That these alternatives present major barriers to access to justice, with huge declines in take-up

(Brookes and Hunter 2016; Logan Green and Sandbach 2016; House of Commons Justice Committee 2015; Law Society 2017; National Audit Office 2014), is attributed to the shortcomings of clients, not the system.

C. Redefining the Client

In the limited neoliberal state, citizens are reconfigured as active consumers, and material inequality is depoliticised. The interests of taxpayer-citizens predominate, while welfare recipients who rely on public services but pay no tax are effectively excluded from citizenship. Hence, legal aid has been reframed in terms of affordability, and legal aid clients have been reconstructed as 'flawed consumers', irresponsible parasites gaining an unfair advantage over their opponents (Sommerlad 2004: 359; see also Sommerlad 2008: 181, 188). Legal aid has retreated from universalism to a residual scheme, which now caters only for the most marginalised, through the removals from scope described above and increased means testing.

The process of residualisation (Crouch 2000) has been accompanied by abandonment of the quality control concerns which characterised the legal aid scheme in the 1990s and 2000s. For example, recent proposals to introduce price competition in the award of criminal legal aid contracts ignored potential impacts on quality (Smith and Cape 2017: 72; Welsh 2013: 29). Proposals in 2014 would have seen many criminal defendants lose their right to choose a representative, instead being allocated to one of a small number of contracted firms. As Sommerlad argues, the 'true client' of legal aid has become the taxpayer, while recipients have become the product, the 'matters' to be processed (Sommerlad 2004: 358; 2008: 188). 'The logic of [neoliberalism] in the legal aid sector is to produce a market *in* rather than *for* clients, as the level of service judged applicable for these units of production is both standardised and set at a low level' (Sommerlad 2001: 359).

D. Resistance and Accommodation

Sustained cuts to legal aid rates (both erosion by inflation and actual reductions), deliberate reductions in the number of suppliers through franchising and contracting, and increasing transaction costs of administering legal aid contracts, have resulted in many solicitors' firms giving up legal aid work, firms and NFPs closing, and rising concerns about the sustainability of the legal aid supplier base (Anonymous 2013; Black 2015; Brookes and Hunter 2016: 167–68; Burridge and Gill 2017: 28–29; Emmerson 2003; Law Society 2017: 14; Maclean and Eekelaar 2016: 19–20; Moorhead 2004: 162; Robins 2015; Smith and Cape 2017: 78; Young Legal Aid Lawyers 2013). For example, adjusted for inflation there was a 34 per cent reduction in the fees paid for civil legal aid between 1998/99 and 2017, while fees for criminal legal aid work were cut by 17.5 per cent in 2014–15 (Law Society 2017: 14; Smith and Cape 2017: 73). A report commissioned by the Ministry of Justice in 2013 found the financial position of many criminal legal aid solicitors' firms to be 'fragile' and the supplier base 'not financially robust'.[11] And in 2014 the National Audit Office recommended that 'The Ministry of Justice should develop its understanding of the challenges facing civil legal aid providers' and should 'use this improved understanding to ensure sustainability in the market' (National Audit Office 2014: 8).

[11] *R (on the application of the Law Society), London Criminal Courts Solicitors' Association v The Lord Chancellor* [2015] EWCA Civ 230 [23].

Given that women and Black and minority ethnic (BAME) lawyers were over-represented as employees and partners of firms with legal aid contracts in the mid-late 2000s (Legal Services Research Centre 2009; Sommerlad et al 2013: 18), subsequent cuts and firm closures probably had a disproportionate impact on these groups. (Unfortunately, one by-product of the most recent reforms is that diversity statistics on legal aid suppliers are no longer published.) Certainly, aspiring lawyers joining legal aid firms receive some of the lowest training salaries, and the concentration of BAME trainees in such firms partially accounts for the observed pay gap between white and BAME trainees (Solicitors Regulation Authority 2017: 8–9, 28).

Lawyers have resisted implementation of many proposed changes in their conditions of work, often through court challenges, which have enjoyed some success (eg Harris 2015: 268–69; Paterson 2012: 95; Smith and Cape 2017: 72–74; Welsh 2016: 129, 135)[12] and, more recently, through direct strike action by criminal barristers and solicitors (Black 2015; Robins 2015). The ability to mobilise and resist, however, has been restricted by a number of factors: the risk of accusations that lawyers are simply defending their own comfortable livelihoods (Byrom 2017: 230), the limited scope of judicial review to address fundamental policy directions, and the fragmentation of the legal aid sector (between solicitors and barristers, civil and criminal lawyers), which impedes solidarity.

More generally, however, legal aid lawyers have largely accommodated successive changes to the legal aid scheme by converting their business models from individualised client service to routinised volume processing (Moorhead 1998: 380; Sommerlad 2001: 350, 357–58, 2008: 179; Welsh 2016: 129, 222). While it is politically impossible for lawyers to oppose legal aid fee restrictions on the ground that the level of service they offer will suffer, several empirical studies have shown that the introduction of fixed fees and contractual risks of non-payment have indeed resulted in lawyers doing less work for individual clients, or lowering costs through greater use of paralegals, discontinuous service, less face-to-face contact and limitation of client choices (Barlow et al 2017: 92–94, 115; Burridge and Gill 2017: 35; Byrom 2017: 223–24; Fenn et al 2007: 678; Newman 2013: 83–84, 87–89, 107; Smith 2013: 911; Sommerlad 2001: 352; 2015: 261; Welsh 2016: 142, 217–20). Maximising income from legal aid under the franchising and contracting regimes required specialisation to achieve a sufficient volume of work to be economical (Flynn and Hodgson 2017: 2; Paterson 2012: 103), resulting in the rise of 'conveyor-belt' or 'factory' firms (Newman 2013; Sommerlad 1999: 313). Even while some lawyers continued to decry managerialism and assert their client focus and public service orientation, legal aid practice necessarily entailed the mass processing of clients (Newman 2013: 39, 58–59, 92–95). Ironically, having become specialised in legal aid work and hence dependent on legal aid payments, many firms found themselves bereft of clients and sufficient income following the latest round of reductions in rates, and unable to switch to other areas of work to make up the shortfall (Flynn and Hodgson 2017: 2; Paterson 2012: 103; see also Maclean and Eekelaar 2016: 46–47).

Family law firms which previously relied on legal aid have adopted a range of imaginative strategies to stay in business, including fixed-price packages, unbundling, improved marketing, cutting overheads, pooling resources among firms, working with online providers, and providing new services such as mediation and life coaching (Maclean 2014: 179–81; 2015: 329–30; 2016: 203; Maclean and Eekelaar 2016: 31, 47; Maclean and Eekelaar 2019: chapter 3).

[12] See also ibid, and *R (on the application of Ben Hoare Bell Solicitors) v The Lord Chancellor* [2015] EWHC 523 (Admin).

However, family law was always a mixed economy serving both private and legally-aided clients (together with child protection work which remains legally-aided). There is much less capacity for criminal or welfare lawyers to find a paying market for unbundled, fixed-price and tiered services (Low Commission 2014: 49). Moreover, these strategies are less helpful for more vulnerable clients with more complex problems (Maclean 2014: 181).

E. Rethinking Access to Justice

Finding alternative ways for lawyers to stay in business is not the same as finding alternative ways to provide access to justice. This remains a work in progress, and efforts to date have been piecemeal and uncoordinated (Maclean and Eekelaar 2019). The spotlight has fallen on pro bono work, but this cannot possibly meet the demand; and it is politically problematic to suggest that pro bono might become a substitute for publicly-funded legal aid (ibid; Robins 2014; Yates 2016: 251). Commercial firms have universally rejected proposals that they contribute by sponsoring legal aid firms or paying a levy on turnover or on the salaries of high-earning lawyers (Anonymous 2013; Bindman 2016; Byrom 2017: 234). As observed in the Scandinavian case study, firms servicing corporate clients in the global economy are far removed from the concerns of individuals with welfare or family law problems. Some think tanks and consumer bodies have advocated the use of unregulated and semi- or unqualified providers, such as student law clinics and litigation assistants,[13] to provide free or affordable help to those who would otherwise have none (see, eg Legal Services Consumer Panel 2014; Maclean and Eekelaar 2019; Smith and Cape 2017; Webley 2015: 317–19). But the notion that something is better than nothing is questionable, and the risks of predatory exploitation of desperate and vulnerable people are high (see, eg Hunter 2017a). Many initiatives have been developed to assist litigants in person to navigate the court system,[14] including an entirely new online court for small civil claims (see also JUSTICE 2015; Yates 2016).

Finally, some attention has been paid to the social reproduction of the legal aid sector. As seen in the previous case studies, recruiting new legal aid lawyers has been difficult due to high student debt, low salaries and the inability of many legal aid firms to offer training contracts (Byrom 2017: 226; Moorhead 2004: 180; Robins 2014). The Legal Services Commission introduced a scheme in the early 2000s to pay the training costs for graduates to work in welfare law. This was abolished by the Ministry of Justice in 2010 but has been revived by a coalition of charitable foundations to fund a handful of training places annually with leading community law organisations (Byrom 2017: 233; Emmerson 2003; Paterson 2012: 97). Nicolson (2015) has argued that law schools should be explicitly concerned to train lawyers for access to justice and suggests that volunteer work in law school clinics may have this virtuous effect while also fulfilling the neoliberal goal of enhancing students' employability and transferrable skills.

[13] These are known as 'McKenzie Friends' from the case in which the concept originated. As originally conceived, a McKenzie Friend was a lay assistant permitted to sit in court with a self-represented litigant, provide moral support, help organise paperwork and offer quiet advice. This has developed into a fee-charging service by people with some experience of litigation (often their own), incorporating these functions but adding help with preparing documents out of court and sometimes addressing the court on behalf of the litigant, without being subject to regulation or insurance requirements.

[14] See eg www.lipnetwork.org.uk/.

V. CONCLUSION

The US, the Scandinavian countries and England and Wales entered the 1980s with very different state welfare systems, levels of public funding for legal aid and organisation of legal aid services. The retrenchment of legal aid in each case has been achieved by a variety of policy mechanisms: direct funding cuts, efficiency measures, regulatory changes, discursive denigration of legal aid lawyers and clients, the 'targeting' of public funding, restrictions on the scope of legal aid, making individuals responsible for solving their own legal problems, replacement of state-funded with marketised services (LEI), or simply leaving it to the market to provide. Yet common themes emerge across the case studies: the loss of legal professional monopolies on the provision and definition of access to justice; concerns about legal aid lawyers' relationships with their clients and the quality of their services; obstacles to the social reproduction of legal aid lawyers; and the fragmentation and marketisation of access to justice. In each case, the legal profession's responses have been shaped by wider professional changes, including the widening gap between globalised corporate law firms and local firms serving private clients and the effects of neoliberal ideology on the profession's conception of its role vis-à-vis the state and the market, transmitted through law schools, lawyer organisations and law firm business models.

The trends in the three case studies are exemplified in a recent OECD publication, which envisages a continuum of services contributing to access to justice, including legal aid, paralegals, law foundations and NGOs, pro bono lawyers, law and bar associations, community legal clinics and university student legal clinics. The major topics of discussion in relation to the role of lawyers in this assemblage concern the targeting of legal assistance to those in greatest need, unbundled services and the development of new financing models for legal services (OECD 2016: 10, 15–16, 18). In other words, lawyers are presented as problematically costly and hence as relatively marginal or residual players in the provision of access to justice. ~~As~~ the three case studies show, however, that while the cost-conscious and dispersed provision of access to justice may be the way of the future, lawyers have played a role in resisting such moves and may also play an important role in the reconfiguration of legal aid systems. As such, access to justice remains a key site for the legal profession's engagement with the state. At a national level, state and professional configurations of neoliberalism significantly affect the nature of that engagement and its results.

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