

‘THE DEMISE OF LEGAL AID’? ACCESS TO JUSTICE AND SOCIAL WELFARE LAW AFTER AUSTERITY

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Abstract

Access to justice in England and Wales has been undermined by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. These cuts to legal aid came as part of the Conservative–Liberal Democrat Coalition government’s austerity programme and they represent part of a deeper legacy of antipathy towards state funding of legal services over recent decades. This socio-legal paper draws on interviews across four case studies with those on the frontline of the legal aid sector to draw out the implications of the LASPO cuts, and the wider disdain of successive governments for legal aid, for social welfare law. Vulnerability theory is used to highlight the importance of the legal aid scheme and the threat posed by the cuts. The paper makes an argument that access to justice is a cause that needs to be championed for the good of all in society.

Keywords: access to justice; legal aid; social welfare law; austerity; vulnerability.

[A] INTRODUCTION

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) introduced the deepest set of cuts to legal aid (the LASPO cuts) since the legal scheme was introduced under the Legal Aid and Advice Act 1949. The Coalition Government’s flagship justice legislation was predicated on one idea: to cut £350 million a year from a total £2.1 billion budget. The cuts were partly achieved by removing public funding for large parts of social welfare law such as welfare benefits, debt and housing. The legal aid scheme in these areas has been cut to the bone. All that remains is what could not be removed because of the residual protections afforded by the European Convention on Human Rights. The

proportion of the population eligible for legal aid has collapsed from 80 per cent in 1980 to 29 per cent in 2007, and could possibly be as low as 20 per cent (Fabian Society 2017).

In one example of the decline, the number of people granted legal aid in welfare cases fell from 29,801 in 2011-2012—before the cuts—to 308 in 2016-2017—post-LASPO—99 per cent less (Helm 2018). Legal help (advice and assistance under the legal aid scheme other than representation in a court or tribunal) had collapsed with debt, for example, now standing at half of pre-LASPO levels partly due to the relegation to telephone advice only for several years (Brendon 2018). There were more than 1000 fewer civil legal aid firms operating in 2017/2018 compared to 2011/2012 (Gilbert 2018). More than half of legal aid practitioners consider their remuneration under the scheme to now be unfairly low (Denvir & Ors 2022). Advice deserts are now common as, to take one example, around a third of regions in England and Wales have one or no housing provider (Law Society 2019).

There is growing evidence of a crisis for access to justice caused by these legal aid cuts (Amnesty International 2016; Mind 2018; Law Centres Network 2020). For Sigafos and Organ (2021), what we are seeing is the dismantling of social citizenship. Welsh (2022) has shown the impact on criminal justice, Wilding (2021) the effect on immigration. This article reports on a project that considers access to justice after the legal aid cuts, focusing on social welfare law (Robins & Newman 2021). The overall project comprised over 200 interviews, with those in and around the social welfare system. Interviews typically lasted between one and two hours. These interviews were spread across 12 regions of England and Wales to offer insights into the local advice sector and its ability to meet demand for legal advice, with a broad geographical, cultural and demographic spread. They were conducted across 12 months during 2018-2019, focusing on one location each month. This paper concentrates on a sub-sample of interviews with those working in the advice sector providing social welfare advice. It offers four case studies from the larger project to draw out the reality of access to justice after austerity. The accounts were captured through semi-structured interviews, which were analysed using thematic analysis (Braun & Clarke 2006). The stories are contextualized through a lens of vulnerability to draw out the importance of access to justice and the consequence of its dismantling through legal aid cuts. These case studies give voice to experts on the frontline to highlight the challenges being faced in social welfare law today and help make an argument for the importance of access to justice.

The article begins by outlining the theoretical approach of the paper, including the provision of background on the socio-political context of the research. Thereafter the four case studies are presented. The first case study looks at the roll-out of Universal Credit in England and Wales. An example of north Wales is drawn out, wherein advisers from two Citizens Advice Bureaux present the difficulties for benefits claimants. Next, the importance of legal advice for those facing poverty is discussed. Drawing on a law centre in the northwest of England, the value of advice for deprived communities is highlighted. Thereafter, the impact of a law centre closing is outlined. Figures working in and around a law centre in south Wales explain the problems for individuals and communities that can result from closure. In the following case study, the limitations of *pro bono* as an alternative to legal aid are considered. A *pro bono* advice clinic in the English Midlands offers a backdrop against which the contribution of *pro bono* (unpaid legal work) is shown to not be a substitute for funded legal advice. Finally, the paper moves on to consider conclusions. These engage with the theoretical basis of the paper and suggest ideas to move forward for access to justice.

[B] THE RESEARCH

This project draws together investigative journalism and academic critique. Gans (2018) identifies a mutual distrust between the two disciplines. Journalists are dismissed as being descriptive, anecdotal and oversimplifying issues, while the academic is criticized for opaque writing with an over-reliance on jargon and a lack of focus on current events. While such analyses are stereotypes and equally problematic in their analysis, by bringing socio-legal scholarship and investigative journalism together, our project looks to overcome any such problems and attempt a study that could combine strong, deep critique with clear storytelling that gives voice to those with experiences to share on social welfare. This follows Gans' (2018) call for social scientists to help journalists see patterns in their stories, and use social science research methods, including around sampling procedures, to ensure there is no over-reliance on anecdotes.

Gans (2018) highlights the benefits of bringing these two worlds together on a topic such as that considered in this study; the impact of neoliberal austerity on access to justice, and the specific exploration of problems around social welfare. For Gans (2018: 10):

A closer working relationship with journalists might even help sociology draw even with the other social sciences that already study current events and other topics that journalists cover regularly, notably, economics, political science, and psychology. Journalists

would benefit as well, since their coverage would be enhanced if they knew more about the work of economic and political sociologists. If the country's current economic, political, and social problems—for example, those wrought by its many inequalities, globalization, and climate change—continue, the two disciplines may discover that mutual understanding and cooperative relationships might help them to better understand the society they both study.

While the above was written about the United States, it would be equally applicable to the United Kingdom (UK) wherein austerity could be linked into the kind of economic, social and political problems that are alluded to in the exert. This work thereafter takes on the ideas of Burd (1983), who brings together links between the social scientific and journalistic approaches, voicing the notion of the sociologist as a 'super-reporter'. This research here thus drills down into a pressing contemporary issue in the hope of taking further both the practical and theoretical understanding of access to justice in England and Wales.

A key feature in producing this research was to be accessible; underpinning this project has been the desire to make sure that these stories about the impact of austerity on access to justice can reach as many people as possible. The case studies are illustrative; they are offered in a manner that gives voices to those on the frontline of legal aid to give readers a feel for their experiences. Their deployment as a means of organizing the data here is intended to make the paper readable, to make concrete some of the issues in an emotive, tangible manner. While the analysis of the case studies provided is grounded by theory, this theory has been selected to carry the maximum explanatory power with the minimal technical baggage to help ensure work that is decipherable to non-specialists, with as wide a reach as possible.

To these ends, this paper is influenced by the work Fineman (2013) has conducted on vulnerability theory. The value of vulnerability theory here is as a theory of the middle range. Middle range theory is what Merton (2017 [1968]) advocated; theories of limited numbers of variables and scope. They are of most use for helping to describe, explain and make recommendations on specific situations and areas of society. Essentially, the middle range theory is one that involves a restricted amount of conceptual matter and is, rather, grounded in empirical data. These are the perfect theories for helping to draw out what is going on in front of us, without getting lost in sometimes burdensome—perhaps to some, abstract or specialist—debates about social structures and trends.

The middle range theory exists in contrast to grand theories, which seek to explain all of society—perhaps across time. The most widely

known grand theory may be historical materialism (Engels, 2012 [1892]), which sets out a theory of the laws of motion of history through economic development. By this line, history is the result of material conditions and social institutions are determined by a society's economic organization. The case studies could be read through the lens of such Marxist approaches to show how such a grand theory helps shed further light on the role of austerity by unpicking its structural function and the organizational role it plays in society.

Indeed, along these lines Newman (2016) looked at legal aid cuts in the lens of the notion of Marx and Engels' 'alienation'. A 'dog-eat-dog' class system based on financial worth means we lose touch with our sense of solidarity and community, which leads to changes that devalue the justice system being nodded through. This key common protection, which underpins much of the welfare state and our rights as citizens, has been debased and undermined through marketization. By pitting people and classes against one another, and discouraging us from seeing our collective humanity, we will accept cuts to services that we view to impact others more than ourselves.

Valuable as a grand theory approach such as Marxism might be in providing powerful accounts of austerity on people's relationships with the state and state services, a grand narrative is not applied here. Rather, focus is on the narratives recounted by participants in the research. The voices of those experts from the frontline of the justice system are privileged in this paper. It is the job of the authors to bring their stories to as wide an audience as possible and present the experiences of those in the justice system to help inform broader debates, rather than risk losing their lived reality in theoretical discussions that make take us down different paths. Such reasoning is behind the paper using vulnerability theory because it allows us as scholars to loosely organize and contain what we have uncovered in a way that helps us ensure that the people we have been with are at the forefront of our analysis.

For Fineman (2008: 9), vulnerability is 'a universal, inevitable, enduring aspect of the human condition that must be at the heart of our concept of social and state responsibility'. From this we can understand the welfare state and the legal aid system as part of our collective provision against risk. These are institutions through which the state ensures that it recognizes and tends to our vulnerability, guaranteeing us shared protection and support whatever our individual resources. The state should provide us resilience when we need it as part of the deal that binds citizen to state, and ensures our acquiescence to its dominion over us.

Vulnerability theory is a reaction against an antagonistic and suspicious approach towards the state that dominates contemporary policymaking. It can be used to challenge the individualistic approach of neoliberalism, which seeks to roll back the state and promote a ‘sink or swim’ approach among citizens (Newman & Ors 2021). Neoliberalism is a word that some people find challenging as it disrupts their sense of who they are and what they represent so you will see a hackneyed performative ignorance that tries to deny its long-standing operation as an analytical term. It is true that the label has recently been misused as a catch-all for everything that the left dislikes but, as Metcalf (2017) has noted, neoliberalism has a value as a lens to understand how society has been reshaped as one big market. People, relationships and communities are less about rights and duties than they are about profit and loss calculations.

Neoliberalism has changed the way we see ourselves and each other as we have been encouraged to take on this economic outlook. We are increasingly economic rather than social beings. As such, we are using the term here to represent that shift away from social welfare provision towards free markets, privatization and deregulation that has dominated UK politics since the late 1970s. The value of using vulnerability theory in this book is to shine a light on and bring into focus this ideological context to the austerity politics whose consequences we explore. Hall (2011) explains that neoliberalism came to the UK under Margaret Thatcher’s Conservative Governments from 1979 to 1990 and was continued by John Major’s successor Conservative administration. For Hall (2011), perhaps more controversially, the New Labour Governments that followed from 1997 are also implicated in this shift, governments that he viewed as having transformed social democracy into a variety of free-market neoliberalism.

Despite progressive achievements such as introducing the Human Rights Act 1998 and the minimum wage, the New Labour era also invited the market into key public services such as the National Health Service in England through private finance initiative contracts and promoted the well-being of individuals over the collective improvements through their approach to the matter of work. What we saw under New Labour was an emphasis on social mobility rather than social justice. Social mobility promotes the notion that we live in a meritocracy, that anything can be achieved with hard work and that lack of success is down to personal failings. This is the core neoliberal notion of personal responsibility as the organizing principle of society, that moving barriers to achievement is enough to achieve equality. It is in this context that we saw the demonization of welfare recipients and, crucially for this paper,

the beginning of the attack on the welfare state and legal aid system that would escalate in subsequent years.

Indeed, one of the most visible forms of this neoliberalism in the UK has been the austerity programme under the Conservative–Liberal Democrat Coalition Government from 2010 and, thereafter, by the Conservative majority Government. By this line, the austerity that has been implemented following the post-2008 financial crisis has allowed for a punitive attitude towards the poor alongside the redistribution of income and wealth away from the poor and towards the rich, the deterioration of public services, and the sale—from the public to the private sector—of assets. Austerity and neoliberalism take a particularly dismal view of the poor—and especially, the non-working poor—who rely upon and use public services, seeing them as a burden on the state.

Harvey (2006) has talked about how neoliberalism provides a form of wealth redistribution that can be labelled capital ‘accumulation by dispossession’. This concept involves removing economic rights, power and resources, and forms the foundation of the neoliberal process of reducing and/or removing key state services, as is being witnessed with elements of the welfare state and civil legal aid. By this line, wealth and power is funnelled upward, away from those who rely on the public sector. The more vulnerable who rely on public services, such as the welfare state, are not considered to be of value so as little resource as is required to ensure compliance with the existing order is expended on them.

In her work on access to justice, Mant (2017) has shown how the very concept of access to justice has been transformed by neoliberalism. What she picks out is that the ‘economization’ of social policy such as welfare and legal aid has led to an ‘economic re-making of the ideas of justice, fairness and equality, which have traditionally underpinned these policies’ (Mant 2017: 246). There has been a paradigm shift away from what we used to know as access to justice, and the phrase has increasingly less substantive value in changed circumstances in which individual autonomy is privileged to such a great degree over state intervention. Newman and Welsh (2019) have shown neoliberalism has undermined legal practice through the marketization and degradation of state-funded legal aid. Practitioners are unable to provide the service they want or their clients need; access to justice is undermined by a political ideology that sees legal aid support as a drain on the state.

Vulnerability theory argues that discourse moves away from the notions of ‘the liberal legal subject’, that idea that anyone can achieve anything if they are given the freedom to do so, and, instead, encourages

us to replace it with 'the vulnerable subject', recognizing that we all need help sometimes. This paper uses vulnerability theory because this substitution offers a powerful counter to the economization of neoliberal ideology. So doing offers the foundation for an argument that pushes back against the supposed abandonment of the poor by the state under austerity programmes.

State institutions should be built on the idea of human vulnerability because, as Fineman (2008: 9) notes, we are all embodied beings, prone to 'the ever-present possibility of harm and injury from mildly unfortunate to catastrophically devastating events'. Gordon-Bouvier (2021: 228) has provided one of the most informative treatments of Fineman's body of work. She helps us to understand how the individual that we saw in neoliberal visions of the state is 'a mere snapshot of a human, taken at the height of physical strength'. That a person should need help is implicitly assumed as something that people grow out of once they leave infancy. This approach allows us to understand how the neoliberal subject is, in effect, disembodied. The chance of injury, illness, decline and, as a result, dependency do not feature within the neoliberal narrative. In contrast, vulnerability theory acknowledges the way that anybody can go through stages where they are more or less able, and will resultantly require varying levels of care. Following vulnerability theory is to agitate for a state that will provide resilience to the vulnerable subject and has great value in access to justice studies that attempt to understand the impact of austerity as Newman and Dehaghani (2022) have shown in relation to criminal legal aid wherein both the individuals and the institutions that serve them are vulnerable.

This paper involves a light-touch approach to theory with the aim simply to ground the research in an understanding that visions of individualism and economic self-sufficiency are destroying our collective support mechanisms and damaging people's lives. Vulnerability theory works well in this regard, as a middle-range theory that allows us to ground our examination in this philosophy without needing to necessarily engage in further theoretical debates at this juncture. Crucially, as Gordon-Bouvier (2021) shows, the theory is able to be deployed with broad brushstrokes. With that in mind, the paper can focus on what has been seen in the research and, thereafter, what could happen next. The case studies are given space to operate as snapshots in the reality of the situation rather than simply data to be corralled by the authors. Framing the protections that once were and, to our minds, again should be, offered by the civil justice system in the language of vulnerability underlines that we are looking at the dismantling of a public service, which has the effect of

putting the well-being of citizens across England and Wales in jeopardy. Vulnerability is thus a theme that will be returned to in the conclusion but, between now and then, the paper will focus on the case studies in and of themselves to help communicate the stories of those encountered in the research as clearly as possible.

[C] THE UNIVERSAL CREDIT ROLL-OUT

The first case study looks at problems with welfare benefits in the northeast of Wales to highlight the importance of access to legal advice. Citizens Advice offers free advice across a range of areas. At Flintshire Citizens Advice, Julie Griffiths told us about their experiences, while Winnie Lawson talked us through what was going on at Denbighshire Citizens Advice. Universal Credit is a benefit payment for people in or out of work that replaced previous benefits such as Housing Benefit, Child Tax Credit, Income Support, Working Tax Credit and Jobseeker's Allowance. It has a reputation as an especially punitive approach to welfare benefits, and is characterized by its five-week initial wait prior to payments as well as the need for online management of the claim.

Universal Credit was well established when we visited Flintshire, with the live service starting in 2014 for households who would normally have claimed Job Seekers Allowance. The full service Universal Credit started in early 2017, Flintshire being the first local authority in Wales to take part in the roll-out for new claimants or people with altered circumstances. Julie told us that it was largely working okay, and that 'the majority of people will manage it fine'. Not everyone would get on with it, though, and this is where the issues came. 'But where problems do occur they are really bad, and it's difficult to get them resolved, and get them resolved in a reasonable amount of time. It takes quite a long time to sort things out.'

The initial waiting period for the first payment does not work well for most people who claim. For Julie, 'people can't manage without their payment for five weeks.' While the principle might be that people should have had their last monthly wage so they could use that to get by, Julie said, 'it doesn't work like that' and the reality is that 'these people just tend to have no money whatsoever.' Winnie gave us an example of the impact this has, telling us about a young woman who had come in to see her that morning. She was separated from her partner and had to make a claim for Universal Credit, so Julie did her an application for discretionary assistance starting immediately because she was penniless.

The woman's last money went on a fine.

Because she dropped a cigarette—she put a cigarette in a box and it blew out and she got fined, and she tried to challenge the fine but ended up with a six-hundred-pound bill. That's gone, and now she's got no money 'til the next month's Universal Credit.

The consequences of this accident showed how tight things were for those claiming and how little give there was in the system. 'Those circumstances, now, because people are on so little benefit, and there's so little leeway, the least thing will spark off a crisis in their circumstances.'

The woman initially came into Citizens Advice looking for the food bank.

People are living on, on foodbanks and fuel banks. Luckily, we have a fuel bank here now—so we'd applied for a fuel bank voucher for her, we've given her a food bank voucher, and we've tried for a discretionary assistance application because she's not going to get any money 'til the twenty-sixth of this month.

The woman 'wasn't dealing with it well, because most people aren't equipped to deal with it'. Winnie explained, 'she's so stressed, she's got a chest infection and this is all because of the stress that she's under. People are struggling really badly.'

Both Citizens Advice branches had concerns over the online demands required within the claiming process. Winnie thought that it was acceptable to conduct the process online, as long as there were people to help and, Denbighshire for example, has Citizens Advice volunteers based in Job Centres to help people claim. 'It's relatively easy for us to do a claim; it's not for most people,' she tells us. Julie's concern is that,

when the managed migration [of all benefits] takes place, which is where they'll move all the long-term sickness claimants over, that is going to be so difficult, because many of them will have never had to manage a benefits claim like this before, and they've got existing difficulties in terms of their health.

This is where the bigger problems will come. She told us, 'I'm just really worried about it, to be honest.'

Winnie had worries about people claiming with mental health problems. 'The North Wales mental hospital was in Denbigh, it closed down in about 1984. And lots of the people who were in the hospital settled within our community.' As a result, 'we have quite a high level of mental health issues here.' This was an important consideration for the new benefit because, for Winnie, 'those are people that need the most help and support with Universal Credit.' There were other groups Winnie was worried about also. 'We've got quite a lot of people with literacy and learning difficulties. They need help and they need support to do the applications.' The digital expectations were

simply not practical for many. 'I don't know how many drug addicts that I see that have mobile phones that are capable of email that they keep for longer than a couple of weeks,' Winnie told us. 'It just doesn't happen. So, how are they going to be able to sustain a claim? I just don't know.'

Claimants in Flintshire were relatively well-placed for Julie,

because we're quite fortunate that we've got this Flintshire Connect offices, council offices which are like a one-stop-shop, really. I think we've got five in the county, and they offer digital support to people. So, we're very lucky there, but there are areas—the benefit advice shop covers Gronant and Talacre—and places like that are very isolated. Their nearest library or connect centre is going to be Holywell. That's a bus journey away, and a bus that might only come once or twice a day.

The local authority made sure less people were cut off than in some areas. 'But I'm sure there's other counties within Wales that are going to find it much more difficult than we, than we have', Julie explained. Generally, though, and especially as more people moved onto Universal Credit, she feels, 'there's not enough support in place for people'.

[D] POVERTY AND LEGAL PROBLEMS

Access to justice is not simply about individuals, it also impacts on communities and the second case study investigates the experience of deprived communities in Liverpool. We talked to Alan Kelly at the Vauxhall Law Centre. Law centres had emerged in the 1970s to bring social welfare law to the poor as a public legal service that would complement the private profession by offering legal services to those who could not afford to pay for them in areas of law crucial to social justice. They are deeply rooted in their communities, accountable to those who rely on them and often have an important campaigning element to seek progressive change for those who risk being left behind by the state in a neoliberal capitalist society. While Citizens Advice offer generalist advice, law centres offer specialist legal advice.

Vauxhall Law Centre was established in the 1970s and, Alan tells us, 'the Vauxhall area has always been a disadvantaged community in Liverpool'. It's in an area adjacent to Liverpool Docks, which 'was never a particularly buzzing place' and 'when the law centre was set up in the 1970s, the big issue in them days was the housing'. The housing was of poor quality. The law centre took legal action on behalf of the longer-standing residents who had experienced several generations of this inadequate housing. Alan explains,

we took everyone to court in them days. Because the council was the biggest landlord, and it was a bit of a bizarre situation, actually because they used to fund us, and we used to take them to court.

He told us that the housing problem had dissipated.

So gradually over the years, most of the slum houses in this area have gone. There’s still one or two areas of it that’s not great housing, but by and large, that problem has gone away.

Another problem had emerged to take its place and, for Alan, ‘what’s been left behind now is poverty at a pretty dire level’. According to Office for National Statistics figures, Alan tells us,

it’s in the bottom one per cent in England and Wales so, so it’s a pretty poor area. And all the issues surrounding poverty are issues that we deal with.

For Alan,

in the recent past, the big issues have been people losing their benefits because the Department for Work and Pensions and their agents are saying that people who are obviously in dire straits are fit for work when obviously, most are not.

‘This is one of them areas,’ for Alan, ‘where anyone who can, gets out’. The result is that,

you’re left with a population that tends to be older than average and tends to consist of a lot of people who are vulnerable, for a large variety of different reasons. It might be evictions, but more often than not it’s sickness and disability and old age and infirmity. So that’s the sort of area that we’re based in and that’s the community that we serve.

Funding has been a constant problem in recent years and, where they used to get most of their funding from legal aid, they are largely reliant on grant capture from charitable organizations.

Now, the reason we don’t get legal aid is because almost all of the stuff that we do is, is welfare benefits. Sick and disabled people. And you just can’t get legal aid for that anymore.

Alan explained how representing people at tribunal was one of the big things they did at the law centre, with around 130 appeals a year. They had an impressive record. Alan recounted to us, ‘last year, for the first time in forty-five years, we won every tribunal we represented at.’ He did qualify this feat. ‘Now, that sounds good but, I used to be a welfare rights advisor myself, and I always used to think that if I was winning all my appeals then I wasn’t doing enough appeals.’ For Alan, ‘you’ve got to challenge what they’re doing all the time’.

If they have a 100 per cent success rate then, for Alan, that shows how flawed the welfare system is and how they need to keep pushing. 'And I'm saying here, well if we're winning them all, then we should be appealing some that we're not going to win, because they've got to be challenged.' They need to be able to do enough appeals that they start losing some because only then will they be sure that the huge mass of people wrongly turned down for benefit are being helped. It was important to use all the capacity they had to appeal. Alan explains, 'you've probably heard people saying about—everyone's getting refused, and those that appeal might win, but those don't appeal who have lost, haven't they?'

The changes to the welfare system have 'had a brutal impact on people, particularly those who are disadvantaged'. Alan suggested,

if you're someone who is unable to work because you've got a disability and you've been getting benefits and all of a sudden most of them benefits stop or if there's a big reduction in them, then what do you do to get your income back up?

He saw this problem around Liverpool, and told us how it was now obvious around the city the struggles people were having:

you can't walk a hundred yards without bumping into people sleeping in doorways. You know? That's visible signs, and you've got less visible signs whereby people are in houses without any gas or any electricity. And water and things like that. So, that's the situation that people find themselves in.

These people relied on the support of organizations such as Vauxhall Law Centre,

because of the nature of the people who are sick and disabled, they're a lot less able to challenge things themselves. They tend to be older, and don't have the same level of education as the average person has.

Without help, 'they're being ground into the ground' and that is why he pushes so hard on the need to challenge a welfare system he sees as having such a 'brutal' effect on people in his community.

[E] THE LOSS OF A LAW CENTRE

In the next case study, a south Wales example is used to show what happens to access to justice when the legal advice is not there due to services closing. We spent time with the Speakeasy in Cardiff, which had been providing advice in the centre for 25 years. Since 2010, the legal not-for-profit sector has been dealt a double body blow. Before LASPO, legal aid would typically account for 40 per cent of a law centre's income and 40 per cent from local authorities. Because of the 2013 cuts, the income

of law centres halved and 11 were forced to close, leaving Wales without a single law centre and only 43 in England offering specialist advice for those who cannot afford to pay a lawyer. More law centres have opened since our fieldwork, but the new additions to the network are largely volunteer organizations supported by little funding. Over the course of this research, the Speakeasy became the newest member of the Law Centre Network. This made it the sole Welsh law centre. Five years before the Speakeasy, Wales and, indeed Cardiff, did have a previous law centre. Cardiff Law Centre was established in 1978, the first and—for the entirety of its existence—the only law centre in Wales. But it closed in 2013.

For Alison Jones, now of Shelter Cymru but previously of Cardiff Law Centre, ‘LASPO was the final nail in the coffin.’ Warren Palmer, now of Speakeasy Law Centre, saw the demise of Cardiff Law Centre as part of a wider trend following LASPO.

The law centre didn’t manage to pull through, and that’s been the pattern around lots in Wales and, dare I say, England as well, where places have closed because legal aid is gone and actually there is nothing else.

For Barbara Kerridge of Riverside Advice, ‘the demise of legal aid’ was important in the loss of the old law centre ‘because they had held quite a large legal aid contract’. She also emphasized that, as well as decisions from the UK Government, there was a Welsh and Cardiff angle to the end of the original law centre. She explained how LASPO was compounded by ‘Welsh government money going somewhere else’ and, then, on top of that ‘the loss of the council money was the end of them’.

The Welsh Government criteria to only fund, what it termed, national advice organizations contributed to loss of local, independent advice organizations. Generalist advice was favoured over specialist advice. One organization that has especially benefitted from this has been Citizens Advice. There have been a number of funds—including initiatives such as Better Advice: Better Lives and Communities First—which went directly to Citizens Advice. Citizens Advice has an important role in access to justice, but there needs to also be specialist advice to complement the generalist support largely provided by volunteers. This is why law centres are crucial to an advice ecosystem.

Before social welfare was taken out of scope by LASPO, Cardiff had a quarter of the legal aid budget for Wales, at £1 million. At the same time as the Welsh Government’s advice funding decision, Cardiff Council decided to make all its advice grants into a single entity tender. They had previously been granted to several independent advice providers. Citizens

Advice was the main bidder and rejected requests to make a collaborative bid from all but one local organization. So legal aid cuts added insult to injury for such a specialist independent provider.

For Mike Norman, of Bristol and Avon Law Centre who was working in Cardiff at that time, this was largely about volume and numbers.

And when the, when the law centre in Cardiff went, I just think that what happened was that a long-standing specialist organization with significant community links and a huge amount of local respect to a certain area just got sacrificed on an altar, really, to be able to say, 'We're able to provide this new service that's going to help this number of people.'

It was a perfect storm of funding decisions at UK, national and local level that mitigated against this local, independent advice organization, despite it being well established and, from several accounts of those who worked in and around the local advice sector, efficient and well-run—it had even owned its own building bought with Big Lottery moneys.

It is in this context that the law centre closed. As Barbara explained, 'They survived a year after the loss of all that, but they actually weren't doing anything much in that year. They were just winding down.' When Alison left, it was still open 'but the funding had gone and there was very little casework going on there. In fact, there was hardly any casework there, if any.' The welfare benefits work had gone,

so the welfare benefit department was just slowly wound up then. But you still had the people coming in who traditionally had come in for the advice, and they were coming to see the generalist advisor at that stage.

And there was still big demand—too much demand.

And of course, he could see, I don't know, ten, twelve people in the morning? Ten, twelve, people in the afternoon? And he couldn't physically deal with the advice that people needed.

A bigger problem was that 'there was no-one to refer them to', Citizens Advice 'would help with form-filling' but 'you couldn't get appointments'.

The death of the old law centre had 'a huge impact'. It left people without support, 'people who traditionally came to have the help kept their benefits and payment, didn't have any problems, suddenly, they weren't able to access that sort of advice.' Katie White, from Shelter Cymru, told us the effect that the closure had on the city. 'I think law centres as well, they're part of the community in a way that things like Shelter Cymru aren't and private firms aren't.' Being part of the community was an important

accessibility issue, it played a major role in wider perceptions of whom the advice was for.

You get a really diverse collection of people visit. It’s very much in the community and people come to it for all different kinds of reasons. And it’s more than just legal advice that you get there. So, I think it’s just generally such a huge thing to lose.

A particular problem was that the law centre had served parts of the community that would now be left without local help and might be reluctant to travel further to seek advice from organizations and individuals they do not know. Alison talked about their ‘very strong relationship with the Somali population and everything in Butetown who ‘often used the law centre’. She explained that the Sudanese also used the law centre in large numbers. ‘They were, because they’ve got used to using it over the years. So, they suddenly had no access for advice.’ It was not just advice, it could be as simple yet vital a service as reading English for those who struggled with the language. Alison explains, ‘they couldn’t physically read the letter’. Law centre staff ‘would happily read the letter for him, and they would go’. The law centre had left a big loss for many vulnerable people when they needed help.

[F] THE LIMITATIONS OF *PRO BONO*

Finally, this case study focuses on the English Midlands to highlight that *pro bono*—volunteer legal support—cannot ‘fill the justice gap’ in the absence of legal services as is sometimes suggested by commentators and the occasional government minister. Linden Thomas, co-ordinator of Birmingham Law School’s *pro bono* programme and formerly chair of the local Law Society’s *pro bono* committee, told us more about the problems the advice sector was facing in the city. Her experience of *pro bono* provision—offering free support for legal issues to those who did not qualify for legal aid and could not afford to pay their own lawyer—offered a great insight into local legal need. For Linden, ‘the services provided by *pro bono* clinics—whether that’s involving universities, or law firms, or anyone else—cannot fill the gap.’ She explained, ‘There’s such legal need out there that we are overwhelmed with queries.’

Linden also sat on the board of trustees for the local Citizens Advice so ‘I’ve got an idea from that about what the state of advice is around the city.’ And what she knew about the advice sector was that it was struggling. ‘It’s a massive problem that we’re the second city and there’s nowhere to refer people to or signpost people to.’ She spoke specifically of the situation Citizens Advice may face. ‘Take the Citizens Advice, for example,

you can get funding for some first tier, initial advice signposting, telling people where they need to go to get more help for their problems. There's no extra level, now, of support' except for 'the odd *pro bono* clinic and services'. There are obvious limitations here due to stretched resources 'because it's volunteering and good will'.

At the time we were speaking with people in the city, there were looming problems. 'In Birmingham, the council at the moment is proposing to cut all funding for any kind of first-port-of-call advice service, just like a generalist turn up service because you've got a problem.' Such provision is funded by the city council, it is not a statutory service. The financial difficulties being faced by the council mean that it is looking to cut budgets. As Linden explains,

if they cut that then there's pretty much nowhere for people in the city to go. It's already all by telephone, not open door, from the Citizens Advice in Birmingham because of cuts. So, it's increasingly desperate.

This is not a circumstance where *pro bono* could or should take up the slack. '*Pro bono* can't begin to do that, and the lawyers that want to, and the universities that have the good will and want to do *pro bono*, don't necessarily have the expertise in all of the areas.'

Across the austerity period, the advice sector had been facing similar situations since the first threat of funding cuts in 2011 that risked closing all of the Citizen Advice provision in the city. Linden picks up on how this feels for those providing advice, 'Yeah, we had to battle every few years.' She looks back on the previous attempt to cut funding.

They did it about three years ago. They said, 'We will be withdrawing all funding,' and then the advice agencies that were then in the city, of which Citizens Advice was probably the biggest, did a really good job of saying, 'Look, this is the impact if you do this.' And so they then provided another three years' worth of funding at a very reduced rate.

And that funding is about to expire as we visit the city.

'And once again it's, the latest strategy is that it's off the table, because they just don't have the money.' The council will prioritize its statutory services. What is left for Citizens Advice is that they may struggle to continue to offer the kind of generalist advice that they are probably best known for, and well placed to deliver. For Linden,

Citizens Advice still provides an awful lot of advice, but it's funded for specific things like funding on debt advice from central government funding, or very specific Universal Credit support. It's not that kind of general, 'I've got a query. I can just go to my Citizens Advice and get some help or pointed in the right direction.' That's just gone or going.

[G] CONCLUSIONS

The introduction explained how this paper would be loosely framed within Fineman’s (2013) theory of vulnerability. The four case studies subsequently offered have drawn together instances of how access to justice is unravelling across England and Wales, which has the effect of undermining our collective provision against risk. A major benefit of applying vulnerability theory is for the way it encourages us to recognize and accept the universality of vulnerability; vulnerability is not a matter of personal failure, an inability to attain autonomy, it is an entirely ordinary, and much to be expected, part of the life course. Illness can mean one person falls behind with the bills, disability results in another person being unable to work. Such reflects the essential ordinariness of vulnerability—it is something we all experience and every reader should be able to relate to. And it is just such vulnerability that can lead to people needing help with social welfare issues.

The neoliberal state that has brought about austerity is rooted in the idea that personhood is innately autonomous; freedom to do things is key. As such, the state can be stripped back, protections watered down, to the level that they ensure there are supposedly no barriers holding us back from working hard, knuckling down, developing our skills, building on our natural ability and going out to achieve great things in the world. This is apparently a meritocracy that rewards those who try. Vulnerability has been stigmatized; those people that are visibly depending on state support have been ‘othered’. Thus we can see the way that people who receive welfare benefits have been reduced to an underclass. The norm is to be independent, with a sad few ‘genuinely’ vulnerable people accepted as some sort of unfortunate deviation to be patronized with pity, and a majority of others ‘undeservingly’ exploiting the system by supposedly passing off their laziness as an ailment. Such appears an all too common bigoted view of the welfare system to judge from media reporting.

Considering the degradation of the welfare state and legal aid for social welfare law in the context of vulnerability theory would encourage us to reject the individualistic account provided in the previous paragraph—a worldview that looks for the worst in every personal story of struggle and links them together into a bigger picture. Such moves represent a shift away from focus on individuals towards a wider, structural account of how the state can act to cause and worsen inequality. What vulnerability theory calls for is a holistic approach to understanding the way that the state has withdrawn to provide a bare minimum service. The current expectation is that all individuals have responsibility for resolving their

own problems but instead, if we were looking through a vulnerability lens, we are reminded that many of the problematic situations we find ourselves in are simply out of our personal control. It is in these circumstances that we would look for the state to step in and bolster us.

Following Fineman's (2013) analysis, societal institutions have developed around vulnerability: they interlock and overlap, creating possibilities of opportunities—as well as gaps. A key concept that needs be considered here is the idea of resilience. For Fineman (2010: 269), 'the counterpoint to vulnerability is not invulnerability, for that is impossible to achieve, but rather the resilience that comes from having some means with which to address and confront misfortune'. Crucial in working with vulnerability theory, then, is giving attention to the role that institutions can play in providing us with resilience in relation to our human vulnerability. Resilience may be a problematic term as its lay usage seems to place responsibility again onto the individual—the antithesis of vulnerability theory—but the conceptual usage here is rather intended to highlight the value of that support which should be expected from the state.

The state should grow to recognize our universal vulnerability and the need to provide the scaffolding that can hold us up, and such was a principle of the post-war welfare state that developed in the UK. The 1942 Beveridge Report on which it was based offered a system of social insurance, covering every citizen. This system that supposed to offer a state that would be there for citizens with its services provided from the cradle to the grave (with the legal aid that later emerged under the Legal Aid and Advice Act 1949 supposed to ensure citizens' access to such services). The offer is most obvious in terms of the National Health Service, with universal coverage that meant anyone who fell ill had the help when they needed it, without judgment or stigma. Vulnerability is not something to be embarrassed about, a sign of weakness or lack of moral fortitude; it is a reality that we must be prepared to confront.

The rise of neoliberalism has undermined this principle, as accelerated under austerity politics, which has led to growing inequality and flagging levels of resilience among many. Cuts to legal aid mean that vital resources, which would once have been offered by the state to allow us to uphold our rights as citizens, have been withdrawn, diminished or restricted. This handicaps the resilience of many. Neoliberal ideology contains within it a particular notion of resilience, some manner of inner fortitude—a natural toughness to overcome adversity. Tending to our shared vulnerability shows how inane and damaging such a reading of resilience is. Resilience is more effectively understood as a series of advantages that we all possess

in various measures; the rich tend to have more of this, economic capital begets all other manners of social and cultural capital, and gives people many more resources to fall back on. The less money someone has, the less they have to fall back on when they need it.

Having explored a little of the way that cuts can hinder people achieving access to justice, the manner in which the sheer luck of finding the good will of charity can be all that stands between hope and despair, it seems imperative that we need to bolster the institutions of the state to promote the resilience of all. The welfare state is supposed to protect us when we need it, but what value is a safety net with such big holes in it that many just fall through? Legal aid should operate to enable us to push for what we are entitled to, but when there is so little advice that people are left to face the might of the state on their own, the principle of justice becomes a cruel joke and the scales are decisively weighted against most.

Following the vulnerability theory approach here means an insistence that institutions have a responsibility to be attuned to our vulnerability as human beings. It is the state that needs to underwrite our resilience. In a capitalist system, we cannot expect that all have the same resources and, if the state is to be worth anything, it should be premised on reflecting that we have different levels of resilience and will all need to be supported at some time. There should be no shame in dependency on the state; society should be based on solidarity and helping one another when we need it. Because we all need help at some point. One way the justice system could be reformed to help maximize our resilience is through enshrining access to justice within the law.

This paper—and the larger project it forms part of—suggests a society in which the state largely is increasingly abandoning its commitment to ensuing proper access to justice. While access to justice might be a fine concept and make for aspirational sound bites, the reality of access to justice is that it has been debased to such a level that it has little everyday value. To counter this requires a wholesale reappraisal of how the state deals with access to justice, such as can be found in the headline recommendation of the 2017 Bach Commission into access to justice after the legal aid cuts, namely the need to establish a new Right to Justice Act for England and Wales (Fabian Society 2017). This Act would set in place a new right for people to get legal assistance without accruing costs that they cannot afford. The new right would be underpinned by a set of guiding principles that recognized the importance of early legal help and the valuable role played by public legal education.

The operation of the right would be monitored by a new Justice Commission. The Justice Commission would take a proactive role

in enforcing and defining the right to justice in practice. The Justice Commission would be an independent body operating at arm's length from the UK Government and thus overcoming many of the problems with the existing Legal Aid Agency, which sits within the Ministry of Justice and can be subject to party political pressures. The new right would be enforced in the courts, with the Justice Commission challenging perceived infringements of the right through the courts. The independent body would act as a check on whether and to what extent the state was upholding this new right.

The right to justice would promote a new way of looking at access to justice, tying it into our basic rights as citizens and locating legal aid where we think it should be; as part of the welfare state. It offers the potential to realize the idea of access to justice that we have found to be so routinely denied to people across England and Wales. The absence of access to justice here discussed could begin to be righted by firmly setting out what it means in principle and practice, and placing this at the heart of the relationship between citizen and state. Crucially, from our perspective, it needs to explicitly recognize the vulnerability of all. Social welfare law—and other areas beyond—could benefit from establishing such a right in order to rejuvenate access to justice.

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References

- Amnesty International (2016) *Cuts that Hurt: The Impact of Legal Aid Cuts in England on Access to Justice* London: Amnesty International UK.
- Beveridge, Sir William (1942) *Social Insurance and Allied Services* London: HMSO.
- Braun, V & V Clarke (2006) ‘Using Thematic Analysis in Psychology’ 3 *Qualitative Research in Psychology* 77-101.
- Brendon, P (2018) *The Civil Legal Advice Telephone Gateway* London: Public Law Project.
- Burd, G (1983) ‘Journalistic Observation as a Qualitative Research Method for Sociology’ Annual Meeting of the Southwestern Sociological Association, Houston, 16-19 March 1983.
- Denvir, C, J Kinghan, J Mant, D Newman & S Aristotle (2022) *We Are Legal Aid: Findings from the 2021 Legal Aid Census* London: Legal Aid Practitioners Group.
- Engels, F (2012 [1892]) *Socialism: Utopian and Scientific* Memphis: General Books LLC.
- Fabian Society (2017) *The Right to Justice: The Final Report of the Bach Commission* London: Fabian Society.
- Fineman, M (2008) ‘The Vulnerable Subject: Anchoring Equality in the Human Condition’ 20(1) *Yale Journal of Law and Feminism* 1-24.
- Fineman, M (2010) ‘The Vulnerable Subject and the Responsive State’ 60 *Emory Law Journal* 1-41.
- Fineman, M (2013) ‘Equality, Autonomy, and the Vulnerable Subject in Law and Politics’ in M Fineman & A Grear (eds), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* Abingdon: Routledge.
- Gans, H (2018) ‘Sociology and Journalism: A Comparative Analysis’ 47(1) *Contemporary Sociology* 3-10.
- Gilbert, D (2018) ‘[Legal Aid Advice Network “Decimated” by Funding Cuts](#)’ *BBC News*, 10 December 2018.
- Gordon-Bouvier, E (2021) ‘The Vulnerable Subject: Anchoring Equality in the Human Condition (Martha Fineman)’ in F Gordon & D Newman (eds), *Leading Works in Law and Social Justice* Abingdon: Routledge.

- Hall, S (2011) 'The Neoliberal Revolution' 48 *Soundings* 9-27.
- Harvey, D (2006) *A Brief History of Neoliberalism* Oxford: Oxford University Press.
- Helm, T (2018) 'Disabled People Lose Legal Aid in 99% of Benefits Disputes' *The Guardian*, 14 April 2018.
- Law Centres Network (2020) *Law for All: The 50th Anniversary Campaign for Law Centres* London: Law Centres Network.
- Law Society (2019) 'Legal Aid Deserts'.
- Mant, J (2017) 'Neoliberalism, Family Law and the Cost of Access to Justice' 39(2) *Journal of Social Welfare and Family Law* 246–258.
- Merton, R (2017 [1968]) *Social Theory and Social Structure* New Delhi: Rawat.
- Metcalf, S (2017) 'Neoliberalism: The Idea that Swallowed the World' *The Guardian*, 18 August 2017.
- Mind (2018) *An Unjust System? How Changes to the Justice System Have Affected People with Mental Health Problems* London: Mind.
- Newman, D (2016) 'Are Lawyers Alienated Workers?' 22(3) *European Journal of Current Legal Issues*.
- Newman, D & L Welsh (2019) 'The Practices of Modern Criminal Defence Lawyers: Alienation and its Implications for Access to Justice' 48(1-2) *Common Law World Review* 64-89.
- Newman, D & R Dehaghani (2022) *Experiences of Criminal Justice* Bristol: Bristol University Press.
- Newman, D, J Mant & F Gordon (2021) 'Vulnerability, Legal Need and Technology in England and Wales' 21(3) *International Journal of Discrimination and the Law* 230-253.
- Robins, J & D Newman (2021) *Justice in a Time of Austerity* Bristol: Bristol University Press.
- Sigafoos, J & J Organ (2021) "What about the Poor People's Rights?" The Dismantling of Social Citizenship through Access to Justice and Welfare Reform Policy' 48(3) *Journal of Law and Society* 362-385.
- Welsh, L (2022) *Access to Justice in Magistrates' Courts: A Study of Defendant Marginalisation* Oxford: Bloomsbury Publishing.

Wilding, J (2021) *The Legal Aid Market: Challenges for Publicly Funded Immigration and Asylum Legal Representation* Bristol: Bristol University Press.

Legislation

Legal Aid, Sentencing and Punishment of Offenders Act 2012

Legal Aid and Advice Act 1949

Human Rights Act 1998