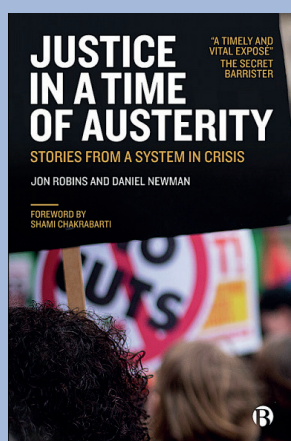

JUSTICE IN A TIME OF AUSTERITY BY JON ROBINS AND DANIEL NEWMAN

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Jon Robins & Daniel Newman (2021)
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On 5 September 2022, criminal law barristers in England and Wales walked out of courthouses around the jurisdiction to embark on an indefinite strike. In doing so, they called for a 25% increase in the value of legal aid fees that they would be able to claim for their work in both ongoing and future cases (Grey 2022). At the time, industrial action of this scale and severity had never been witnessed before in the justice system. In total, the action lasted for over a month, at which point the Criminal Bar Association voted to accept a compromise deal from the Government of a 15% increase in fees for work conducted on future cases only (Siddique 2022). However, the legal profession—and barristers in particular—are not typically those that one might imagine needing to take such extreme measures to improve their working conditions. Many members of the public are now likely to be asking questions such as: what prompted this situation and what does it reveal about our legal system?

In response to these questions, there is no more useful starting point than *Justice in a Time of Austerity*, by Jon Robins and Daniel Newman.

This book reports the findings of one of the largest qualitative explorations of how the justice system in England and Wales is experienced first-hand. It looks beyond criminal law¹ and draws together interviews with over 200 people (conducted over a 12-month period between 2018 and 2019) who were facing a range of legal challenges and trying to navigate the law in order to find solutions. It explores the stories of these individuals in a dynamic and engaging way which is refreshingly accessible for a piece of academic scholarship. In doing so, it provides an account of our legal system through the eyes of those who are relying on it, in a way that the general public would find interesting and compelling. However, these narratives, taken together, paint a bleak picture of the justice system which is likely to be extremely confronting for those who may assume that the law operates as a safety net that can be relied upon by citizens in times of crisis.

Through the experiences of these individuals, the book explores several key crises occurring within the justice system itself. Chapters 1, 2 and 3, for instance, tackle the issues of homelessness, the legacy of the Grenfell fire of June 2017² and frontline accounts of what it is like to go to housing courts to dispute an eviction, or to navigate the complex system of social housing in England and Wales. Of course, as is well documented within existing literature, at the same time that people experience housing insecurity, they are very likely to also be facing clusters of other legal problems, such as precarity in relation to their income and their available resources (Pleasence & Ors 2004). Chapters 3, 4 and 5 address this important intersection by moving to explore the journeys that people may take when trying to navigate the welfare benefits system, with a particular emphasis on the roll-out of universal credit and how this has affected experiences of food poverty. While it is clear that such issues are likely to overlap, what is often less visible is the way that these clustered legal problems tend to orbit particular demographics and groups that are already facing marginalization within our society (Pleasence & Ors 2004). In chapters 6 and 7, Robins and Newman draw specific attention to this by highlighting the ways that these issues commonly coalesce with legal problems related to immigration. In particular, they demonstrate how these difficulties do not occur for certain demographic groups by chance, but rather due to the disproportionate burdens and challenges that are faced by those from non-white or non-British backgrounds, especially those who are seeking asylum in the United Kingdom amidst

¹ It should be noted that Daniel Newman, one of the authors of this text, has previously explored criminal legal aid specifically, see Newman 2018.

² See generally Whitehouse & Ors 2019 and Bright 2021.

an increasingly 'hostile' political environment (Global Justice Now: 2018). Finally, the book also acknowledges that there is one point in life at which all of these issues are likely to suddenly come into sharp focus: the breakdown of a family or long-term relationship. Family law problems are widely recognized as 'trigger' events, in that they facilitate a range of legal issues that need to be resolved as people adjust to their new existence as individuals, with re-arranged lives, finances, living situations and legal status (Pleasence 2006). In chapter 8, the authors explore the capability of the legal system to effectively support individuals at this point, in light of the near wholesale removal of private family law from the scope of legal aid that occurred under the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012. Throughout these chapters, the book uses the words and experiences of members of the public in order to illustrate the ways that the justice system in England and Wales is falling short in relation to all of these issues, and the disproportionate way in which certain people are at risk of falling through the cracks entirely when they find themselves at the intersection of these problems.

It is rare for scholarship to be able to provide rich, qualitative insights such as those described above, on a scale of this magnitude. However, in doing so, Robins and Newman are able to tap into an interesting and important debate: what it means, in practice, to be able to access justice within this legal system. The concept of 'access to justice' is frequently employed within academic work, usually as a universally accepted goal that silently underpins our justice system and motivates those working within it. In this book, Robins and Newman provide tangibility to the otherwise abstract concept of access to justice by asking members of the public precisely what this concept means to them. Emphasizing bottom-up experiences and perspectives of the justice system, the authors are able to elaborate upon the notion of access to justice in a way that goes far beyond the abstract. During their interviews, members of the public revealed details about where they sought help in relation to their legal problems, what was at stake for them, and what expectations and perceptions they had of the professionals and the system that they interacted with.

Importantly, these interviews revealed that many people were faced with situations where they were unable to interact meaningfully with professionals and struggled to navigate the system altogether. In reality, very few people are eligible for legal aid, and even those that are eligible face significant difficulties finding a lawyer within the post-LASPO landscape

of advice and support.³ As such, Robins and Newman caution against simplistic understandings of access to justice as something that can be equated with legal aid. In practice, legal aid is not available to the general public and is not a major conduit through which the justice system can ensure the accessibility of justice.

This revelation prompts the authors—and the reader—to consider what is left of access to justice within this present context. On this, Newman and Robins argue that the concept has in fact been substantially diminished:

Over the last eight years, ‘access to justice’, a conceptually elusive idea at the best of times, has been so debased as to be rendered meaningless. What we have documented in this book ... are the human consequences of a society in which the state has abandoned its commitment to ensuring proper ‘access to justice’ (2021: 172).

The abandonment of access to justice has, however, not been universal. Throughout this book, the authors demonstrate that the justice system is being held up by an inspiringly resilient advice sector. Despite the absence of legal aid, and the lack of political endorsement, there are a range of professionals and organizations—legal aid lawyers, welfare advisors, and volunteers working at advice services—who endure this context so that they can continue to provide support and assistance to those that need legal help. During interviews with such professionals, Robins and Newman depict the resourcefulness and commitment of those who have managed to continue serving their communities in the face of the advice sector’s own hostile environment.

Since the publication of this book, I have had the privilege of working alongside Newman as well as other colleagues—Catrina Denvir and Jacqueline Kinghan—to produce the first ever legal aid census in England and Wales (Denvir & Ors 2022). This census sought to reveal a large-scale overview of the state of the advice sector in England and Wales, with particular emphasis on the challenges facing those working in the sector as well as the longer-term sustainability of organizations undertaking this work. Our findings revealed a similarly dire insight into the working environments that comprise the advice sector. With diminishing funding streams and political commitments to the existence of advice services, the legal advisors and lawyers who responded to our census reported genuine concern about the accessibility and efficacy of the justice system, as well as the future accessibility of justice for those that find themselves in situations where they need legal help. In undertaking this project,

³ As the authors note, the Bach Commission in 2017 acknowledged that the proportion of the population eligible for legal aid has collapsed from 80% in 1980 to 29% in 2007 and could possibly be as low as 20%. See Bach Commission 2017.

I became aware of just how crucially important it is for scholarship to reject abstract understandings of access to justice and to instead produce tangible evidence of the extent to which this concept has been abandoned within the present context. It is only through producing such evidence and concrete insights that scholarship may be used as a tool for advocacy and impact, in a way that may help to make a difference to the current crisis facing our justice system in England and Wales.

The importance of this is acknowledged and emphasized by Robins and Newman in the final chapter of *Justice in a Time of Austerity*, where they call for a new understanding of access to justice in a post-austerity environment. For the authors, the phrase ‘access to justice’ encapsulates three goals which the justice system should be striving to achieve. First, a fully funded system of publicly accessible legal advice and support. Second, a system in which people have the ability to access that advice through a national network of providers. Third, a system in which people have an ability to enforce rights through the courts if necessary. Each of these goals directly tackles components of the justice system that have been diminished as a consequence of austerity measures and which have contributed to the long-term debasing of the concept of access to justice.

By setting out these three principles, Robins and Newman ensure that their scholarly contribution is not only a detailed, retrospective insight into the ways that access to justice has been impaired, but is also a forward-looking, ambitious agenda for the future of access to justice. In places, this book is a sobering read. Through first-hand experiences, the authors reveal the extent to which poverty and social inequality are entrenched through a failing justice system, and the ways that access to justice is so frequently and catastrophically denied to people who should be supported by the safety net of our justice system. Yet, in illustrating the scale and depth of the demise of access to justice, the authors are able to shed light on the possible routes out of this crisis. As noted above, the abandonment of access to justice is far from universal, and great strength and resilience still remains within the advice sector, if only we can take steps to protect it. The first step, as demonstrated by Robins and Newman, is to reject the conceptual intangibility of access to justice and start building demonstrable commitments to its preservation. For those interested in pursuing and promoting justice and equality within our legal system, this book provides not only a useful evidence base and academic resource, but also a much-needed call to action.

About the author

Jessica Mant is a Lecturer in Law at Monash University, Australia. Her research specialisms span access to justice, legal aid, technology, lay participation in court processes, family law, and socio-legal theory and empirical methods. Her recent monograph *Litigants in Person and the Family Justice System* (Hart 2022) is the first book to explicitly examine the relationship that litigants in person have with the family justice system. Her research has also appeared in journals including the *Child and Family Law Quarterly*, *Journal of Social Welfare and Family Law and Social and Legal Studies*. She currently sits on the editorial board of the *Journal of Law and Society* and often collaborates on research projects with practitioner-led organizations, charities and regulators such as the Access to Justice Foundation, the Legal Aid Practitioners Group and the Victoria Law Foundation.

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References

- Bach Commission (2017) *The Right to Justice: The Final Report of the Bach Commission* London: Fabian Society.
- Bright, Susan (2021) 'Tower Block Refurbishment, Flats, and Understandings of Ownership' 48(4) *Journal of Law and Society* 524-548.
- Denvir, Catrina & Ors (2022) 'We Are Legal Aid: Findings from the 2021 Legal Aid Census' Legal Aid Practitioners Group.
- Global Justice Now (2018) 'The Hostile Environment for Immigrants' London: Global Justice Now.
- Grey, Jack (2022) 'Barrister Strike: Criminal Law Is Not Dying, It's Dead' *BBC News* 6 September 2022.
- Newman, Daniel (2018) *Legal Aid Lawyers and the Quest for Justice* Oxford: Hart Publishing.
- Pleasence, Pascoe (2006) *Causes of Action: Civil Law and Social Justice* 2nd edn London: The Stationery Office.
- Pleasence, Pascoe & Ors (2004) 'Multiple Justiciable Problems: Common Clusters and their Social and Demographic Indicators' (2) *Journal of Empirical Legal Studies* 301-329.

Robins, Jon & Daniel Newman (2021) *Justice in a Time of Austerity*
Bristol: Bristol University Press.

Siddique, Haroon '[Criminal Barristers in England and Wales Vote to End Strike Action](#)' *The Guardian* 11 October 2022.

Whitehouse, Lisa & Ors (2019) 'Improving Procedural Fairness in Housing Possession Cases' 38 *Civil Justice Quarterly* 351-375.

Legislation, Regulation and Rules

Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012