Legal exclusion in a post-'LASPO' era

Lisa Wintersteiger, Law for Life, Foundation for Public Legal Education
lisa.wintersteiger@lawforlife.org.uk

Introduction

Legal aid reforms mark a watershed in the relationship between the state and its citizens. The reduction in civil legal aid has effectively removed from scope the provision of legal help for many of the common issues that welfare recipients need to secure their entitlements and seek redress through the courts. Yet the proliferation of law makes ever-increasing demands on its citizens to understand the complex legal rules that circumscribe everyday life. The following article asks how we might reconsider the provision of legal aid in the future beyond the confines of the welfare state, and what the re-emerging public legal education movement can offer.

Legal aid and welfarism

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 introduced changes that were implemented in April 2013, cutting spending to civil legal aid by £300 million per year in the long term (NAO, 2014). The legislation both reduced the range of issues for which civil legal aid is available and changed the financial eligibility criteria for receiving legal aid. The cuts affect people in many areas of law that impact on the most vulnerable in society: help with debt, welfare benefits, housing and many family problems is no longer available.

They also have a disproportionate effect on the wider voluntary and charitable sector. It has been estimated that the UK voluntary and community sector will lose around £911 million per year in public funding due to the wider cuts in local authority grants on which many not for profit legal advice service providers rely (Morris and Barr, 2013). Vitally, of course, it is precisely the services upon which many of the poorest people in society also rely. In light of these changes it is worth reflecting on the relationship between the unmet need for legal help, its historic relationship with anti-poverty work and the dangers of treating legal aid as a form of welfare. Within this rubric the potential for public legal education to meet needs is significant, but not without risks.

The relationship between welfare and legal entitlements is not straightforward. Law is not a neutral bystander in the process of poverty alleviation or welfare distribution. Law and legal systems have been accused of systematically undermining the interests of the poor by failing to provide legal services that meet their needs and failing to address the capacity of individuals to use legal services effectively (Carlin et al., 1967; PLEAS Task Force, 2007).

Yet resort to legal rights and remedies is essential both to the fair distribution of welfare services and to the protection from unfair treatment by employers, police, landlords and the state itself. These are the minimum protections that the law promises all of its citizens, regardless of means, and it is the point at which law and justice coincide. In the words of Reginald Herber Smith in his book *Justice and the Poor* written in 1919, 'Without equal access to the law the system not only robs the poor of their only protection, but it places in the hands of their oppressors the most powerful and ruthless weapon ever invented' (p.134-135).

At the centre of the uneasy relationship between law and welfare sits legal aid: the provision of publicly funded legal help for those who would otherwise be unable to gain redress through the courts to vindicate their rights. Legal aid has been described as a pillar of the welfare state. The recent suggestion by the Lord Chancellor that it is analogous to a social welfare benefit (PLP v Secretary of State for Justice, 2014) follows the line of argument that legal aid as all other welfare entitlements must be rationed in an era of austerity. But the analogy fails to

address the fact that the costs to individuals of seeking legal redress are directly attributable to the law-making function of the state: 'There is a vital distinction between Beveridge's giants and these costs ... The costs arise because the state demands that individuals resolve their problems by means of its legal machinery' (Wilmot-Smith, 2014: 16).

The war on poverty and the emergence of the neighbourhood law services

Taking a step back in time, the association of law with attempts to fight poverty at its roots can be traced to the 1940s wartime legacy in the UK, and the 196Os developments in the US leading to the Office of Economic Opportunity legal services programme. Encapsulated in Lyndon B Johnson's declaration of war on poverty, law is a weapon to be used in order to win that war: 'Our aim is not only to relieve the symptoms of poverty, but to cure it and, above all, to prevent it. No single piece of legislation, however, is going to suffice.' The 1960s development of legal services manifested in the growth of neighbourhood law centres in a host of jurisdictions. The driving force was recognition of the pivotal role of legal services in meeting everyday legal needs and tackling the causes of deprivation. Without them, the newly enshrined rights to welfare would fail those who needed them the most.

A combination of advice, information, education and social policy work changed the face of legal services throughout the 60s and 70s. Yet precisely during this period of growth in provision for and spending on legal services, the overwhelming need and pressure on services was brought into sharp focus. This raised questions about the sustainability of publicly funded services with competing demands on the wider public purse and the allocation of funds at a local level. Burdens on caseloads served to detract attention from legal education and legal campaigns by communities themselves.

Advice agencies' activities to address systemic problems flourished during the 1970's, they included seminars, films, DIY kits, news columns, television and radio shows. The premise was that the wider education work was integral to individuals' empowerment and to the effort of supporting and generating community groups ability to assert their interest. According to the law centres working group on education in 1978: 'we use posters, leaflets and bulletins which relate to the working of the law in connection with local matters known to be of interest that can have immediate impact' (Garth, 1980: 202).

The rise of legal aid and decline of holistic services

But this broader focus of neighbourhood law centre services soon declined; in the US concerns about the radicalised nature of activities served to bring political pressure to bear on the activities of community legal centres. In the UK the more narrowly focused services sought to meet the demand for individual casework for clients (Garth, 1980).

The re-emergence of PLE debates around the world today reflects a changing policy landscape both in the UK and elsewhere. There are three broad rationales driving the growing prominence of PLE. Firstly, policymakers have become more alert to the ubiquitous nature of legal needs, with large-scale studies undertaken in various jurisdictions in the 1990s (Pleasance, 2013). Secondly, awareness of need has in many contexts led to alarm about growing costs, exacerbated in the wake of the financial crisis. Thirdly, in the development context, the failings of 'top down' rule of law initiatives have encouraged civil society development in community focused legal awareness raising and participatory models (Golub, 2007).

These three rationales are closely interrelated. Underlying them is the proliferation of law and the juridification of entirely new spheres of social life (Galanter, 2006) that has resulted in an ever-widening gap between the public's knowledge of the law and the legal frameworks that bind them as legal subjects. Legal need is no longer simply a problem of poverty: it is a problem of a decline in the substance of the rule of law.

In the UK, to take one specific example in a case concerning customs and excise rules, the judge observed: 'To a worryingly large extent, statutory law is not practically accessible today, even to the courts whose constitutional duty it is to interpret and enforce it' (Toulson, 2008 in Chambers, 2008). In the context of the recent raft of welfare reforms this means the expectation on the least legally able groups to know about and navigate the most complex rules relating to welfare entitlements is overwhelming. Not only is the burden of knowledge placed on individuals, but also the failure to be cognisant is increasingly met with punitive sanction regimes that can leave individuals entirely without a safety net. The impression is not one of the rolling back of the state, but rather the growth of legal interventions under the auspices of security and management, against a backdrop of legal exclusion.

The role of public legal education

The conundrum of how to meet legal needs and tackle legal exclusion is now more pressing than ever in the wake of legal aid cuts. The rise in litigants in person threatens to swamp courts with cases in which neither party is represented (an increase of 30% in family cases). Needless to say, court procedures and technical legal language is ill-suited for untrained lawyers seeking to resolve their disputes. Improvements in well-written self-help material and information can doubtless offer benefits. Yet the danger that the present policy focus presents is twofold. On the one hand, PLE may become a panacea for the absence of urgently needed advice and representation in primary areas of law that affect people's ability to secure their rights and the basic services on which they rely. On the other, it risks falling into the narrative that if only people were more capable (legally speaking) they could resolve their own legal problems outside of the courts and pull themselves up by their own boot straps.

Regardless of where on the ideological spectrum one stands with regard to the reduction on welfare spending as a whole, the law-making privilege and function of any government carries with it the responsibility that it gives meaningful effect to the laws that it makes. From the perspective of one law centre the problem is not simply that successive governments have failed to provide enough resources for legal services, 'Rather it is the near total failure to plan for or provide the means to enforce much of the legislation which is, at the moment, merely declaratory of rights and obligations' (Garth 1980: 167).

PLE is not an either/or to legal aid, nor is it an optional extra of social welfare provision. Without basic knowledge of a legal system the scale and extent of legal needs simply cannot be met. Moreover, the mandate for wider legal reform becomes questionable when the public is largely ignorant of its justice system. For the most vulnerable this means access to justice is illusory, for the more able but 'squeezed middle' it involves an increasing frustration and alienation from a costly and complex legal system.

Conclusion

The scandal of poverty and the agitation for civil rights was the driving force for reforms in the legal sector during the 60s and 70s. Today, the language of austerity has largely eroded the mechanisms by which hard won rights and protections are given substance. The task of meeting legal needs, however, has always been a challenge. Public legal education is a part of the continuum of legal help, not simply as concern for the social welfare needs of the most vulnerable but also as a locus for the meaningful engagement of citizens with the state.

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