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A Double Helix: The Intertwined History of the Marginalisation of Welfare Clients and Their Activist Lawyers and Advisers in the Transformation of the Welfare State in England and Wales

Pete Sanderson and Hilary Sommerlad

Introduction

National variations preclude a straightforward definition of the complex arrangements and institutions that made up the post-World War II Western welfare state: the typology of three 'worlds of welfare', liberal, conservative and social democratic (Esping Anderson, 1990) has been questioned in terms of the dimensions of welfare included (Huber and Stephens, 2000; Room, 2000) and their development over an extended period (Danforth, 2014). Nevertheless, a commonality lies in the foundation of these states in a Keynesian compromise between the forces of capital and labour, characterised by an intimate relationship between post-war reconstruction based on mass production and consumption and the state provision of welfare. In Marshall's (1964, 102–3) configuration of civil, political and social citizenship, entitlement to universal social rights represented a form of common experience that could compensate for the extremes of economic inequality generated by a market economy. While this, in theory, entailed the universal recognition of citizens (Fraser, 2000) as legal subjects, epitomised by the 'right to have rights' (Arendt, 1994), from the initiation of the UK welfare state, social rights were seen as inappropriate for resolution in courts of law: thus the

P. Sanderson (✉)
University of Huddersfield, West Yorkshire, England
e-mail: p.j.sanderson@hud.ac.uk

H. Sommerlad
University of Leeds, West Yorkshire, England

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1911 National Insurance Act instituted 'courts of referees' and 'umpires' were appointed to settle disputed claims for unemployment benefit.[1] This demarcation of law and a legal profession was not immediately challenged by the post-war expansion. Instead, administrative justice and tribunals were used to resolve issues raised by discretionary decision-making, or by the unlawful treatment of employees (Street, 1975). Nor was access to legal justice significantly increased by the legal aid scheme: limited to family disputes,[2] it did nothing to democratise a legal profession which, shaped to offer bespoke services to a propertied minority, had neither an interest nor expertise in the problems of the poor or welfare (Smith, 1997).

The partitioning of citizenship represented by this constitution of social rights as a separate justiciable sphere together with the general limits on access to civil law, was challenged by the work of civil society and citizen's rights groups and activists from the 1960s and 1970s in substantiating universal legal subjectivity.[3] As key actors in the period's 'new social movements' (NSMs) (Cohen, 1985), these welfare professionals sought to develop a field which,[4] structured by a social justice logic, widened the scope of legal action and disrupted the traditional professional-lay boundary. Their activities took place within an institutional framework which was both national and local, involved NGOs and local government-sponsored agencies; covered a range of issues (housing, employment rights, refugee and immigration rights and community care for example); and used Judicial Review (JR) and test cases to challenge the legal framework for the delivery of welfare.

This project's grounding in the concept of universal rights and collectivism made it a prime target of neo-liberal political economy. Designed to meet the needs of global capital (Sassen, 1999) following the fiscal crisis of the late 1970s, this rested on 'hollowing out' and disempowering nation-states' legal institutions (Arthurs and Kreklewich, 1996; Brown, 2006); deconstructing universal social citizenship and legal subjectivity; and reconstituting citizenship as 'aspirational' and exclusive of the most marginalised (Raco, 2009). The tendency to moral regulation of the poor (Chunn and Gavigan, 2004; Ewald, 1990) and subjection of welfare to its own regulatory paradigm,

[1] National Insurance Act, 1911, s.90.

[2] Legal Aid and Advice Act (LAA) 1949.

[3] The choice of term is problematic. McEvoy (2019) proposes three ideal types as heuristic devices for understanding the professional identities of the cause lawyers in his study. We refer to our respondents by the relatively neutral term activists, which covers their transgressive approach to the client relationship and role of law. When referring to broad spectrum of advisers in the UK, we deploy 'welfare professionals', which also conforms to the anthology's terminology.

[4] Bourdieu's conceptualises a field as a structured space organised around the production, circulation and exchange of its valued capitals.

which, as noted above, had long characterised welfarism, was accentuated as rights were increasingly transformed into conditional benefits, access to the courts progressively restricted and law effectively excluded from benefit appeal systems (Adler, 2016). The corollary of this programmatic pauperisation and subjection to a punitive regime (Dukelow and Kennet, 2018) of 'surplus populations' (Sassen, 2014), was the re-making of welfare professionals' habitus (or subjectivities: Newman and Clarke, 1997). In this way, despite the intensification of framework's law's inherent opacity, the legal agency of 'those living in poverty'[5] was gradually eroded.

We review this project's historical timeframe to consider the following questions: what was the context of the development of activist welfare lawyering from the 1960s onwards; what were its distinctive forms of practice; what affordances rendered it possible and how did the State's response from the mid-2000s erode its capacity to use law to address the deficits of welfare and the exclusion of the marginalised from the ambit of legal recognition? We periodise our analysis of activist lawyering as, broadly, consisting of an 'expansionary' phase from the 1960s through to the early 2000s, during which it was possible to employ the range of practices noted above to address the consequences of problematic discretion, and lacunae in welfare law; this is the focus of the following section. Section 111 outlines the ideological underpinnings of the reconfiguration of welfare as a moral evil, laying the basis for the application of neo-liberal policies from the turn of the century onwards to meet challenges to state authority: a regime of financial cutbacks and a range of technologies of surveillance, control and exclusion, legitimated by a discourse which denigrated both activist welfare professionals and their clients, progressively undercut the material and legal basis for activist practice. This process overlaps with the parallel developments in welfare policy noted above: the shift from universal to selective benefits and the increasingly tight control exerted over discretion through the use of targets, protocols and forms (Meers, 2020).

We trace the arc of this transformation by reference to policy shifts in legally aided advice and advocacy. However, the process of change was not uniform; differences in organisations and sites of practice enabled some activist professionals to maintain their forms of practice. This variability is

[5] For Lister (2006), 'living in poverty' is preferable to the stigmatising and objectifying term 'the poor'.

illustrated by data drawn from a series of qualitative studies of civil and criminal legal aid practice[6] in England, conducted from the mid-1990s to 2013, with lawyers in both not-for-profit organisations (NFP) and private for-profit (FP) firms, not-for-profit (NFP) caseworkers and managers, policymakers and clients in a range of fields of welfare. Activist lawyers and caseworkers predominated in our practitioner samples, developed using cluster techniques. The methods involved semi-structured interviews with practitioners and a limited number with clients and some observations of practitioner-client interactions. The research was carried out in four main tranches, from 1995–99; 2001–5; 2007–9; 2011–15.[7] The research was funded from different sources, and, though linked by the themes of welfare advice and representation and professionals' values and practice, had slightly different focuses in each case. The data has therefore been re-analysed for this chapter.

The UK Welfare State's 'Golden Period' and Lawyer Autonomy

New Social Movements and Activist Welfare Professionals

The expanded recognition that formed a major component of the Keynesian post-war settlement drove progressive increases in substantive equality through an expansion in socio-economic rights. However, the discretionary and opaque nature of laws governing these rights and the cost and elitism of professional services undermined universalistic principles of justice. As a result, the law represented an obvious terrain for the grassroots struggles for a post-bourgeois, post-patriarchal and democratic civil society (Cohen, 1985: 664), waged by the NSMs which emerged in the late 1960s. Realising law's normative dimensions by challenging administrative decision-making and facilitating justice for the marginalised therefore represented a key aim for these movements (Fitzpatrick, 1991; Grigg-Spall and Ireland, 1992).[8] A

[6] The majority of our studies investigated both criminal and civil since they were often linked in problem clusters; we therefore draw upon data that includes some which are largely relevant to criminal matters.

[7] For full details of methodologies, see Sommerlad, 1995, 1996, 1999, 2001, 2008, 2015; Sommerlad and Wall, 1999; Sommerlad and Sanderson, 2009, 2013; Sanderson and Sommerlad, 2011.

[8] The movement encompassed legal academics and activists who contested lawyers' domination of rights struggles, and established multiple, special interest NfP agencies (e.g. Shelter; Child Poverty Action Group (CPAG); Stone Wall; Women's Centres), whose caseworkers included those who had once been clients (Curtis and Sanderson, 2004).

politically informed desire to create a new professional identity lay at the core of their reflexivity: 'it was a political decision. I'm a member of the SWP [Social Workers' Party]… it's a way of achieving something tangible through the mechanism of law for the disadvantaged' (Lawyer 2001).

Forms of Practice in Welfare Law

The political nature of these professionals' practice is most visible in the use of their autonomy to challenge state institutions through test cases and JR. Their ability to do this stemmed from both the expanding legal aid scheme and the open texture of much of the law that governed state institutions' statutory duties, which facilitated non-compliance. For instance, in 2001 a housing lawyer described how he had judicially reviewed a local administration that had evaded their statutory duty to make grants available to renovate unfit public housing by giving out Grant Enquiry forms and then consigning applicants to a waiting list. The resulting finding of maladministration led to the system's reform across the country. Another example of the systematic use of JR was given by a childcare specialist who would challenge local authorities' manipulation of definitions of 'cared for' children to minimise payments. Noting that this practice made the firm unpopular with local authorities, he said'we're not doing anything that the law hasn't provided for … we're just here to get people what the government has said they're entitled to'. Nevertheless, this persistent, tactical use of JR to realise clients' rights, often on behalf of unpopular causes (Bondy and Sunkin, 2008) and in an explicit challenge to the traditional law and politics dichotomy, underlines the liminal status of these welfare professionals.

This status is exemplified by action repertoires based in a transgressive approach to both legal interpretation and ways of working. For instance, the Law Centres (LCs) which NSMs established from the early 1970s onwards[9] were based in local communities, with governance structures which actively involved them, and an approach to clients which gave them agency (Trubek and Kransberg, 1998: 204): 'The LC represents a judgement free

[9] In 1970, the first UK Law Centre was set up in North Kensington to dispense free advice on criminal, housing and other matters; by the end of the decade, 26 others had been set up. In response to the threat this posed to the legitimacy of traditional lawyering, the Law Society denounced activist lawyers as 'stirring up political and quasi-political confrontation far removed from ensuring equal access to the protection of the law' (in Hynes and Robins, 2009: 25), and in 1973 its defensive mobilisation led to the development of the Green Form Scheme. The broader range of civil claims this brought within the scope of legal aid, and the increase in eligibility by 1979 to 79% of the population, made social justice issues increasingly important to mainstream general practice, and 1973–85 has been described as the 'golden period of legal aid' (id.: 26), resulting in a 'socialisation' of law.

and welcoming environment, where we actively sympathise with the client's situation and look for a partnership in establishing a solution' (1996). Law's claimed detachment and narrow, single-issue focus was also rejected; by contrast these welfare professionals' epistemic practice (Knorr-Cetina, 1981) involved 'seeing a person's problem in its context. For instance, a client threatened with eviction under social nuisance legislation shouldn't be defended on narrow legal grounds—it can't just be characterised as a contract or rent dispute … the wider causes and consequences—like children—have to be addressed' (LC adviser 1996).[10] The need to contextualise problems also stemmed from recognition that clients' vulnerability made it 'impossible to go through issues a), b) and c) without looking at the wider ramifications which aren't always strictly speaking legal', and that understanding their cultural dispositions, and communicating empathy, generated trust and elicited 'the full story of their needs'. Traditional legal training's general neglect of such skills led some firms to employ NFP workers because, as a solicitor who had been a CAB[11] worker explained, 'the sector trains you in interviewing, looking at the whole problem rather than just the presenting issue, and in showing empathy, which means clients feel they can talk to you so you get the information you need' (2005).

Nevertheless, specialist legal knowledge was recognised as essential in order to 'put together the technical content of the field, organising it into some kind of principle of advocacy to move that person's case forward' (Housing charity adviser 2004). The tensions between these two sides of activist work, between the stress on legal expertise and challenge to the system's assumptions and traditional practices, repeatedly surfaced. For instance, a housing lawyer's campaigning and combative approach was rooted in his simultaneous refusal to defer to the profession's pervasive status hierarchies (Kennedy, 1982) and his sense of the power that professional status gave him, 'I am an officer of the court … I have as much right as the Judge to be there. It is my space'. He went on to contrast his determination to use his power with the effects of the voluntary sector practitioner's lower status on their capacity to challenge: '… the voluntary sector person feels they have no such right … they are over-gracious, they don't challenge or confront the judge … they under-settle'.

[10] The need to recognise the consequences of clustered and intertwined problems was confirmed by LSC commissioned research: Pleasance et al. (2004).

[11] The Citizens' Advice Bureau, one of the UK's oldest voluntary sector agencies.

Contradictions

The contradiction between exploiting the power that professional status conferred and challenging its exercise by others was exemplified by the need to handle 'legal issues in the institutionally sanctioned professional discourse' (Jensen et al., 2015: 876; Nonet and Selznick, 1978). Traditional legal methodology entailed diagnosing a problem through colligation, 'the first step in which the professional knowledge system begins to structure the observed problems', and classification, 'referring the colligated picture to the dictionary of professionally legitimate problems' (Abbott, 1988: 41). While NFP caseworkers had a degree of independence from law's epistemic practices, to be a lawyer was to internalise colligatory and classificatory practices and hence professional discourses, distancing her from the moral everyday world. The gap this could create between clients' and lawyers' views of a dispute underlines the problems inherent in practitioners' role as 'go-betweens, the translators, initiated into the rules of the game' (Ewick and Silbey, 1998: 152–153), and the 'inescapable' friction between formal and substantive justice (Hunt, 1986: 24).

These dissonances were exacerbated by the incremental translation of social relationships into legally enforceable standards (Felstiner et al., 1980–1981). The resulting tension between activist lawyers' aim to empower and the disempowerment generated by juridification (Habermas, 1987; Hertogh, 2018), reflected in the distance from clients' vernacular sense of justice, was intensified by the increasingly complex legal framework created by the conditionality of rights, and the limitations this placed on their ability to progress clients' cases: lawyers and advisers could come to be seen as just another face of the state apparatus (Sarat, 1990). As street-level bureaucrats, welfare professionals 'became the public policies they carried out' (Lipsky, 2010 [1980] xiii), holding 'the keys to a dimension of citizenship' (ibid. p. 4). The tensions generated by their liminal status weakened their capacity to fulfil this role for social justice purposes, and these tensions were progressively exacerbated by policies which began to accentuate their gatekeeping role and reduce their autonomy, and deepen fiscal restraint, ratcheting up the pressures of soaring caseloads.

Subjection to state control (via the Legal Services Commission[12] (LSC)) was formally instituted by the imposition, from the early 1990s, of New Public Management (NPM) through the franchising, and then contracting,

[12] The Access to Justice Act 1999 replaced the Legal Aid Board by the Legal Services Commission to administer legal aid funds. It oversaw the Community Legal Service which was responsible for contracting with both private firms and NFP NGOs for legal advice and assistance.

of legal aid provision.[13] NPM made the state 'the institution not only responsible to the public for the service but also … the employer of the service provided' (Gleeson and Knights, 2006: 80) and hence the ultimate arbiter of the client relationship. Its re-shaping of the epistemic practices available to practitioners, such as holistic, client-centred approach, became increasingly apparent from the early 2000s (for instance, franchises and contracts were given for specific areas of law). The subjection of legal aid lawyers to NPM therefore represents a watershed in the process of re-making the field, and practitioners' habitus. However, the foundations of this transformation date back to the 1970s fiscal crisis.

Dismantlement of the Welfare State and Access to Justice, and Colonisation of Welfare Field

The Ideological Attack on the Welfare State

In the neo-liberal narrative, the welfare state, as 'the arch enemy of freedom' (Hall, 2013), was a major cause of the crisis. The solution was a non-interventionist state, which, characterised by the primacy of private property[14] and hegemony of possessive individualism, would be grounded in market rather than social citizenship. This economisation of the social (Brown, 2006; Shamir, 2008) entailed the commodification public services; NPM would, through 'regulated devolution' (Braithwaite, 2000; Rhodes, 1997), infuse these with an 'entrepreneurial spirit' (Osborne and Gaebler, 1992), thereby reinventing government as governance, and responsibilising both service providers and users. This last objective was conceptualised as a moral project to eradicate the passivity induced by welfare (Mead, 1986). The progressive retrenchment and construction of welfare rights as inherently less deserving of legal attention[15] was signalled at the end of the 1980s by reducing eligibility for civil legal aid and ending parity between legal

[13] In the UK, NPM's core value has been cost control (Hood, 1991), effected through the managerial requirements and audit of suppliers imposed by franchising (introduced by the Tories in 1993) and contracting, the system of system of competitive tendering for contracts, instituted in 2000 by New Labour, which focuses on cost compliance. These built on the capping of the legal aid budget and fixed fees.

[14] The construction of taxation as inherently immoral has been a consistent theme; thus in 2010 David Cameron, the then Prime Minister, spoke of a 'moral duty' to cut taxes: www.dailymail.co.uk/wires/pa/article-2813464/PM-feels-moral-dutycut- taxes.html.

[15] Arguably compounded by the Woolf Civil Procedure Rules 1998 which shifted 'low value litigation' out of the courts to ADR, making the resolution of disputes increasingly discretionary.

aid and private fees, challenging the activist professional's ethos (and financial viability). Over the course of the following decades, a raft of measures effectively privatised civil law[16], which, reconstituted as a commodity, only concerned matters for which people were prepared to pay. The corollary was the representation of legal aid as 'the overprovision of justice' and legal aid professionals as exemplars of professional greed, to be controlled by a 'Value for Money' discourse which instantiated the taxpayer as the primary client of welfare services. Disciplining the welfare professional and achieving moral regulation of the poor (including by their representatives) were thus central components of the neo-liberal state-citizen relation which denied universal legal subjectivity and was characterised by a 'behaviorist philosophy relying on deterrence, surveillance, stigma, and graduated sanctions to modify conduct' (Foucault, 1977; Wacquant, 2010: 199). In the case of legal aid, a merits and means test meant legal problems could be defined as too trivial to be worthy of redress, or individuals as insufficiently needy for support.

Disciplining the Welfare Professional

Although the New Labour administration (1997–2010) retained Conservative policies of fixed fees and franchising and contracting, initially social justice elements were emphasised by re-focusing legal aid on welfare and related areas of civil law, expanding the range of eligible areas and organisations which could apply for legal aid contracts. By the early 2000s, however, NPM technologies of surveillance and control, together with further financial cutbacks and the resulting increased pressure on time, were transforming the parameters of practice in both the FP and NFP sectors. Delegation of work was becoming common practice, and in 2001 solicitors were reporting that this extended to complex work, as in this example of contesting the refusal of housing to the homeless: 'they have 21 days to prepare for review by a senior officer in the Homeless Unit, so the caseworkers must meet that deadline and make enquiries of doctors/social workers, etc. and then make detailed representations on the basis of that evidence … serious and very complicated work, now being done by unqualified workers'. Time constraints were also reported as impeding adequate supervision of less qualified practitioners, as

[16] The Access to Justice Act 1999 privatised several areas of civil law, making them subject to 'Conditional Fee Arrangements', and imposed a hard cap on the legal aid budget. This formed part of a wider move (e.g. closure of courts) which led Genn in 2012 to surmise that 'state responsibility for providing effective and peaceful forums for resolving civil disputes is being shrugged off through a discourse that locates civil justice as a private matter rather than as a public and socially important good'. https://www.ucl.ac.uk/laws/sites/laws/files/36th-f-a-mann-lecture-19.11.12-professor-hazel-genn.pdf.

this housing paralegal explained '(my supervisor) had no time to supervise me … I got an incredible case load—about 200 and I'd inch them along not having that overview of what was going on … and found I was "missing" legal issues … I felt scared' (2005). Others described how time pressure affected client relationships and hence the quality of service: 'there is virtually no time for a human dimension, or for real diagnosis. I have a lot of cases which are very complex …'; a pressure made worse by surveillance: 'a lot of my energy and time are devoted to a) watching my back and b) justifying myself and all the work I do' (employment lawyer 2005). Other responses indicated the efficacy of discourses which linked welfare to 'dependency culture': 'one of the problems with ex CAB workers is that there are boundary issues … she can't give people bad news—she can't say no. Sometimes she writes people's letters for them. She's a Mother Teresa. Now my agenda is about empowerment so I give people advice, show them how to do things, but they write their own letters'. Yet this language of empowerment masks the fact that financial cutbacks were clearly the main reason for expanding client involvement in case handling, as the following account by a family lawyer of his approach to supervising paralegals and trainees makes clear: 'I do a routine which is, "look Legal Aid clients can't have what private clients have"—they can't have the cup of tea, the nice box of tissues—you've got to train your staff in the motto of the legal aid family lawyer (which) nowadays must be "shut up snivelling, give me your instructions—you've only got another 15 minutes"' (2005).

However, the key mechanism in this colonisation of the welfare field was the cost compliance audit imposed by franchising and contracting: initially represented as advisory and supportive, its disciplinary function rapidly eclipsed all others, as less tangible value-based goals (Power, 1997) were displaced by the drive exerted on audited organisations to strive for externally imposed goals, an effect compounded by metrics designed around inputs (time ratios for specific tasks), rather than outputs (quality of advice or justice outcomes). The underpinning assumption that 'legal need' is met by service consumption rather than 'just' outcomes accelerated the standardisation and routinisation already implanted by fixed fees, progressively eroding the autonomy which underpinned activist professionals' ethos. This loss of autonomy was exemplified by the process, through the external audit, of substituting the judgement of junior, non-legally qualified civil servants for that of the lawyer, for instance, regarding the length of time needed to interview clients: in 2001 a family lawyer recounted how this had resulted in substantial reduction of her costs for an emergency injunction. She said: 'what was I supposed to do? Say time's up? She'd been threatened by him with a gun in front of the kids, and was absolutely traumatised and most of the time was

spent calming her down. That had to be done before I could even get clear instructions'. The resulting transformation of the individual professional into a subject who would self-regulate subject (Foucault, 1977) to conform with LSC rules and codes was matched by the impact on organisations; the highly regulated devolution of legal aid contracts absorbed resources in the form of staff (often senior) dedicated to managing these, which, together with the sharp reduction in fees, further incentivised the delegation to least cost labour.

Routine delegation and inadequate supervision were also fostered by the requirement to have business plans, which became increasingly demanding over time. Other devices designed to infuse activist lawyering with a business logic included the obligation to issue cost control letters to clients (thereby also responsibilising the client) and to assess eligibility for legal aid through the means and the merits test. Clearly, these practices were incompatible with a social justice logic and establishing an equitable relationship with clients, and many observed the detrimental impact on trust as a result of having to begin interviews with questions about financial means. This forcible reconstruction of role was compounded by the application of the 'strict test', which required the professional to take into account the wider public interest (Lord Chancellor's Department, 1998), making her directly responsible for cutting individual access to justice, and complicit in the 'stigma of the means test' (Titmuss, 1968).[17]

In the discursive justification for restricting costs, a central role was played by the LSC's 'model client' which was shaped by the assumption 'that all clients are articulate, together and literate people'; in practice, as one practitioner pointed out, 'clients are usually in a mess because of a complex combination of personality, social isolation, poor education, poor social skills, illiteracy, etc.' (Housing lawyer 2003). This (2001–5) study revealed how the ongoing restrictions in welfare benefits were exacerbating these problems, leading to increasingly crowded waiting rooms and clients appearing to be 'more and more disturbed, and distrustful and resentful' of advisors. One talked of the 'aggressive people who were coming to the Law Centre', and the impact this had on her way of dealing with clients: 'I've needed to become more authoritative … to change my body language, tone of voice in order to convey authority and confidence'. This perceived need to maintain status differences, impeding the possibility of developing a partnership with clients, was described by others as affecting the ability to build a decent case: 'you've got to be careful that you're not too cold, too clinical … it's a balance—you must have empathy to build trust'. Several attributed clients' growing lack of

[17] As Titmuss noted, means tests are designed to discourage benefit take-up.

trust to the discourse of contempt for lawyers which had underpinned NPM: 'the public image does nothing to enhance your image to the public; and that image comes back at you through clients, as it's clear that they feel you're all affluent and exploitative and it's not what I went into the law for'.

Progressively, the corrosive impact of these factors on practitioners' capacity to realise their value rationality extended to the NFP sector, as the LSC contract started to push it towards the business model of solicitors firms (HoCSCCA, 2004: 14), subjecting it to strict cost compliance auditing, and achieving a convergence of practice across the welfare field around scope of activity, case management practice, time-limited interventions and the closure of cases. This vindication of Stein's warning (2001: 30) that contracting with the LSC would result in a focus on high output cases, and the abandonment of diagnostic work, preventive advice, community education and policy advocacy, was exemplified by audits' reliance on the 'ideal client', leading to refusals to fund the NFP practice of helping people complete forms: 'they said you've filled in a Disability Living Allowance form for this customer, it's a simple form it doesn't require help'. Yet, as this caseworker proceeded to point out in relation to the 29-page form: 'most people—and certainly the sort of people who come to us—need help with forms … It's not something you should need to justify as being an exception, it's the norm'.

Even without the extension of the full stringency of NPM audits to the NFP sector, the shift in legal aid's focus from civil law disputes to welfare issues can be seen to represent another move towards the incremental partitioning of citizenship which underpin the neo-liberal project, since it represented a further erosion of the welfare recipient's legal agency (Adler, 2016). This process of exclusion culminated in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) which, through increasingly tight means testing and the removal of most civil matters from scope, cut legal aid funding by 40%. Its impact on access to justice was exacerbated by drastic restrictions on JR[18] and an intensification of the drive to shift the culture of NFP agencies towards 'empowering' (responsibilising) clients[19]. The responses by NFP managers in our 2011–15 research suggested this tactic was becoming effective; for instance: 'we must show that the legal aid system is about getting out of the trench and trying to help people help themselves—for instance 66% of CAB now do financial education'; another said 'the way

[18] Tightened further by the Judicial Review and Courts Act 2022. This restriction on JR, together with the then government's other blatant transgressions of their own norms, led former Court of Appeal Judge Stephen Sedley to describe 'legalism/the rule of law as now at times merely an inconvenience' (2014).

[19] An interesting example of how the neo-liberal reform project instrumentalised concepts deployed by activist lawyers to democratise legal citizenship.

forward is to promote capability and resilience—self-help'. Internalisation of the drive to entrepreneur the sector was also apparent: 'it's necessary to make the business case for funding welfare advice and legal aid'.[20] Front-line workers were more circumspect: 'how can you monetise what the government doesn't want to hear—the value of holding it to account?' Another conveyed anxiety about the shift in moral calculus for service delivery: 'to evict people is to fail and once you're out of social housing, that's it … But … now, since what we're engaged in now is effectively a business, we can't fail economically—so we must evict sooner than we would have before' (social housing advice worker 2012).

This progressive colonisation of the legal aid sector's ethos was compounded by the substitution of remote and digital service delivery for face-to-face support. In 2013, telephone-only services in social welfare legal aid services were instituted, followed by digital platforms designed to be accessed online or in centres with supermarket style arrays of terminals and 'helpers'. The particularly adverse impact on vulnerable clients of these forms of remote service delivery—again predicated on the LSC ideal type client—has been illustrated in the case of the switch to telephone-only services (Burton, 2018), and the use of the digitisation of services for the homeless (Harris, 2020). However, the problems that remote services pose for vulnerable clients are not restricted to the technologies; evidently the lack of human interaction eradicates what our data has identified as key to delivering access to justice, by establishing trust, obtaining instructions and conveying information. This form of service delivery leaches the humanity out of welfare professionalism, as 'clients' are reduced to 'clicks', and construct social rights as a residual, rather than an autonomous system (Procacci, 2001).

Conclusion

This chapter has linked the expansion of, and subsequent assault on, democratic citizenship to the emergence, flourishing and decline of activist lawyers and legal advisers. It has traced their development of an area of professional practice that not only challenged both individual injustices arising from discretionary administrative decisions and the collective injustice caused

[20] The resulting pressure for more restructuring, adoption of commercial practices and shedding of whatever remains of the sector's traditional roles (such as campaigning) have been intensified by the opening up of many services to outsourcing. A NFP conference in 2011 was deluged with pamphlets with titles like 'Social Enterprise Works' and 'Advice UK Pamphlet of Social Enterprise', which advised how to transform an agency into an enterprise and develop a business plan in order to be able to 'demonstrate there is a good market for your product...'.

by systemic maladministration and bias, but did this by enlarging legal subjectivity, thereby furthering the process of democratising citizenship. Professionalism's processual nature situates our analysis in the wider ecology (Bucher and Straus, 1961): the genesis of activist professionalism is located in the post-war welfare state that fostered civil rights and the NSMs of the late 1960s (Curtis and Sanderson, 2004). NFP civil society organisations, local government-funded advice centres and radical FP firms, supported by legal aid, hosted these professionals, and afforded them the time and space to develop an often-politicised form of epistemic and cultural practice, grounded, to varying degrees, in conceptions of holistic and empowering approaches and expansive and transgressive lawyering. These professionals' cultural capital was related to the capacity to legitimate the wider profession implicit in their drive to 'align law with justice' (Sachs, 2011).

The neo-liberal reconfiguration of the welfare state as a set of residual, and, where possible, commodified services, following the fiscal crisis of the state in the 1970s, also generated a set of policies designed to reduce costs and to ensure that discretion was used to deny, rather than enable, rights and entitlements. As our data indicates, the resulting erosion of activist practice did not proceed synchronously with the assault on welfare: the election of a Labour government in 1997 even saw a brief flowering of welfare law practice as contracts to meet 'legal need' were granted to a wide range of, often radical, NFP agencies as well as private radical FP firms. However, the impact on both individual professionals and organisations of the progressive implementation of material and discursive practices designed to transform their subjectivities and ways of working, has, over time, eviscerated the sector.

The process of impoverishing and effectively disenfranchising those 'living in poverty', is largely predicated on the de-professionalisation of activist lawyers. Along with the cuts to the funding which afforded the possibility of their form of practice, contracting organisations have been obliged to surrender their autonomous control over their working model, their case management, their priorities and the structuring of their relationships with clients; the technologies of surveillance through audit and case tracking have enabled the funding body to assert a control over them which became increasingly distant and de-humanised, legitimated by discourses of undeserving clients and rentier professionals (and see Cooke, 2022). These mechanisms have accentuated the tensions implicit in the liminality of the welfare professional project, as cutbacks forced practitioners to reduce or jettison client-centred practices, and as they were made complicit in surveillance and normative control of clients. LASPO, with its wholesale withdrawal of funding support for swathes of practice, represented a pivotal moment in this

process, though it was not the end of the ideological assaults on those activist lawyers, particularly in areas like immigration and asylum, who had managed to continue practising despite what is an increasingly hostile climate.

Our data also depicts the corresponding erosion of welfare clients' legal agency, despite the intensification of their subjection to law, along with regulation by rule and norm, and their de-humanisation, accelerated by technologies which have largely removed face-to-face encounters. A barrister's verdict on the policies of the last few decades as a 'systematic, ideological attack to remove people's rights and curtail access to justice by making it as difficult as possible to be represented', places the eradication of the 'right to have rights' and of law's radical potential, at the heart of the dismantlement of the welfare state.

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