

Chapter Title: Introduction: accessing social justice in disadvantaged communities

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Introduction: accessing social justice in disadvantaged communities

This book explores the dilemmas being faced by professionals and volunteers who are aiming to provide access to justice for all and to promote social justice agendas in increasingly challenging contexts. Public service **modernisation**¹ has been accompanied by increasing marketisation and massive public expenditure cuts, with escalating effects in terms of the growth of social inequalities. As the following chapters illustrate, Law Centres have provided a lens through which to examine the implications of these wider policies, as increasing marketisation has been impacting upon staff and volunteers working to promote social justice in disadvantaged communities.

Given their underpinning ethos and missions, Law Centres offer particular insights into the tensions inherent in increasing marketisation, against a background of public service modernisation agendas more generally. Although they have been valuable as a means of exploring these issues, Law Centres have been relatively under-researched in the past, and so they have provided a relatively fresh context within which to investigate experiences of these wider issues and potential tensions.

Social justice has been a central public policy theme, from the discussions that led up to the development of post-war welfare state reforms in Britain through to more recent debates on social welfare and social justice in contemporary Britain. 'Everybody is in favour of social justice', it has been argued, even if 'what they mean by social justice, the priority they accord to it, relative to other objectives, and the public policies they believe follow from it, vary widely' (Burchardt and Craig, 2008, p 1). 'Although few say they agree with injustice', as Dorling points out, 'nevertheless we live in an unjust world' (Dorling, 2010, p 1).

The welfare state has itself been the subject of continuing debate since that time, and particularly so in recent years as successive governments have developed strategies to promote public service reforms, significantly changing the respective roles to be played by the state, civil society and the private market. Increasing the use of market mechanisms has been presented as a central plank of public service modernisation. This has not only been advocated as a means of ensuring value for money in times of public expenditure constraint (although that clearly has been a central concern); the increased use of market mechanisms has, in addition, been presented as a mechanism for promoting user choice, putting the consumer rather than the producers of welfare in the driving seat.

According to a range of critics, this strategy would, it was argued, address concerns with the rigidities and unresponsiveness of state bureaucracies and the manifestations of professional self-interest and paternalistic control that were distorting public welfare provision. Privatisation was, according to former Prime Minister Margaret Thatcher, at 'the centre of reclaiming territory for freedom',

a means by which 'the state's power is reduced and the power of the people enhanced' (Thatcher, 1993, p 676). For New Labour, the increasing use of market mechanisms (although without necessarily involving privatisation per se) was similarly central to public service reform. As then Prime Minister Tony Blair explained, this was because competitive pressures and incentives drive up quality, efficiency and responsiveness in the public sector (Blair, 2001), with 'diversity of supply' and choice in place of the 'old practices' (Blair, 2002, in Seldon, 2004, p 634). The resulting more commercial modes of operation and reorientation towards the service user as consumer have resulted in what has been described as 'a transcendent restructuring of the public sector that has cultural, ideological and institutional dimensions' (Doonan, 2009, p 140).

The policy outcomes that have ensued from increasing marketisation have had significant implications in terms of social justice in general and access to justice more specifically, posing increasing challenges and dilemmas for those involved in providing legal services in disadvantaged communities. These tensions have been central to wider debates about social welfare and the future of the welfare state, overall. Access to justice has been valued as a right in itself, as well as representing a means of accessing other rights such as welfare rights. This had been a central plank in post-war debates on the significance of establishing a framework for providing **legal aid** as part of the development of the welfare state more generally.

In the context of contemporary policy debates, the question of access to justice has gained additional significance. Public service modernisation strategies have emphasised the importance of having informed consumers, aware of and competent in making choices and accessing rights and services. But without effective access to legal information and advocacy, people – especially people from disadvantaged communities, whether geographically defined in terms of disadvantaged neighbourhoods or communities based upon shared identities or concerns – risk being effectively deprived of such options. Access to legal aid has become increasingly relevant, then, facilitating choices and enabling citizens to obtain their welfare rights, challenging bureaucratic and professional decision making where necessary (arguably more necessary than ever, in fact, in a period of rapid legislative change with major impacts in terms of social welfare rights).

Within these debates on access to justice and the provision of legal aid, over past decades Law Centres have occupied a particular place. This is because, from the 1970s, Law Centres developed their approaches to the provision of legal services on the basis of particular concepts of justice and access to justice, involving the need for advocacy and campaigning for the rights of people from disadvantaged communities. Drawing upon models developed in the US and elsewhere, Law Centres were established with remits that went way beyond the provision of legal services to individuals who were unable to afford such services through the private market. From the 1960s, in addition to meeting the legal needs of individual clients, the US War on Poverty had provided for legal services that could take up test cases and pursue class actions, challenging the causes of injustice and inequality (Johnson, 1999), campaigning for changing 'governmental systems

when they adversely affected the poor' (Kilwein, 1999, p 46). There should be community involvement, it was argued, with active support for citizen groups that were seeking to empower that community, if these strategies for social change were to be effective in promoting greater justice for the poor.

This model extended the concept of justice way beyond the notion of equality of treatment, recognising the limits to such an approach, given the fundamental inequalities that were inherent in so many Western democratic societies. These were not level playing fields. According to Bauman:

One of the most notorious sore spots of democratic regimes is the contradiction between the formal universality of democratic rights (accorded to all citizens equally) and the less than universal ability of their holders to exercise such rights effectively; in other words, the gap separating the legal condition of a citizen *'de jure'* from the practical capacity of a citizen *de facto* – a gap expected to be bridged by individuals deploying their own skills and resources, which, however, they may – and in a huge number of cases do – lack. (Bauman, 2011, p 13)

As feminists and others concerned with social justice have similarly argued, equal treatment for all does not necessarily lead to equitable outcomes for all if structural inequalities such as those arising from gender, race, ethnicity and social class divisions remain unchallenged (Phillips, 2002; Young, 2008).

Race and ethnicity have been particularly significant factors here. Minorities have been subject to direct discrimination and they have been at risk of experiencing institutional racism. Particular communities have been disproportionately at risk of experiencing poverty, unemployment, homelessness and educational disadvantage, for example, just as they have been disproportionately at risk of experiencing poor physical and mental health outcomes (Craig et al, 2012). In addition, barriers of language and culture have impacted upon minority communities' opportunities for challenging discrimination and accessing rights, barriers that have been especially problematic for so many asylum seekers and refugees.

In line with the implications of this approach, the Law Centres' umbrella body, the Law Centres Network, explained that it was not only that 'Law Centres defend the legal rights of people who cannot afford a lawyer'; in addition, 'they are specialists working in their local communities to uphold justice and advance equality'. 'They are independent and directly accountable to the communities they serve through committees of local people', as is stated in the Network's annual report for 2010–11 (see www.law.centres.org.uk), emphasising the importance of community involvement and accountability together with the importance of undertaking **public legal education** and preventative work, pursuing test cases to challenge discrimination and to advance the cause of social justice more generally.

The research that has informed this book explored the experiences and dilemmas that these challenges of modernisation agendas were posing for professionals and

volunteers. Were these policy agendas facilitating the development of new forms of professionalism, based on new forms of accountability to service users and communities, as the advocates of public service modernisation were suggesting? Was increasing marketisation an effective strategy for improving quality and choice as well as enhancing cost-effectiveness in Law Centres' provision of legal aid? Were service users being put in the driving seat, empowered to make choices and challenge bureaucratic structures and professional self-interests as informed consumers, as some academics and policy professionals have suggested (Le Grand, 2003)? Or conversely, were these policy agendas being experienced as promoting new forms of **de-professionalisation** and demoralisation (Banks, 2004), potentially undermining the occupational values and identities of those involved in public service provision, such as those involved in the work of Law Centres?

Were there alternative strategies that could be developed for public service reform, even within the constraints of the current policy framework, in this age of austerity? If, as Sandel, among others, has argued, there should be some things that money can't buy (Sandel, 2012), how might this shape public debates on what should be the limits of marketisation, with what potential outcomes for the public service ethos and for policies to promote equality and social justice (however defined) more widely? While focusing on professionals and volunteers in Law Centres concerned with the provision of access to justice, the research explored issues with resonance for wider debates on the future of public service professionals, the public service ethos and the wider welfare state. The appendices provide further details, explaining the research methodology and highlighting some of the research findings that provide evidence in support of arguments put forward in the main text.

The chapters that follow

Chapter One begins by examining the framework of earlier debates on social justice, social citizenship and the welfare state, exploring how these have framed subsequent debates. The contributions of Esping Andersen have particular relevance here. Like Titmuss and others before him, Esping Andersen pointed to the tensions inherent in policies to promote accountability and choice for service users – increasing choices for some, while effectively reducing choices for other individuals and communities less able to meet their needs through the private market for a variety of reasons, including the lack of information as well as the lack of money and other resources. Chapter One concludes by summarising recent debates on marketisation and on public service modernisation agendas more generally, including the potential impacts on public service professionals, the public service ethos, professional power and increasing – or decreasing – accountability to service users.

Chapter Two begins by focusing upon differing definitions of and perspectives on social justice, together with their varying implications for public policy. This sets

the framework for the ensuing historical summary of public policies concerned with the promotion of access to justice and social citizenship for all, starting from earlier debates in the post-Second World War period.

In the event, the post-war welfare state settlement failed to realise the principle of equal access to the law in Britain, in practice leaving gaps that were subsequently taken up by radical lawyers and others. Drawing upon models developed in the US and elsewhere, these lawyers and their allies pressed for the development of the first Law Centres, within the context of wider pressures for rights and equalities in the late 1960s and early 1970s.

The chapter then moves on to examine the development of legal aid policies more recently, from the 1990s to the present time, including the changes to legal aid that have been the subject of legislation enacted in 2012.

Chapter Three moves on to consider debates on ethics and values, with a particular focus on the public service ethos and professional values. This sets the context for the discussion of Law Centres' own distinctive ethos and values. Law Centres were established with strong commitments to the values inherent in providing equal access to the law, regardless of the ability to pay and/or other social advantages and disadvantages, together with commitments to working with disadvantaged communities to promote social justice agendas more widely. In addition, Law Centres were typically committed to collective and collaborative ways of working, with strong community involvement, developing preventative work as well as working with individuals holistically. These goals were potentially challenging to achieve in practice at the best of times, let alone when teams were facing major external pressures for change as a result of increasing marketisation.

Chapter Four focuses more specifically on the challenges and dilemmas that have been facing Law Centre staff and volunteers, first with the introduction of the **Carter reforms** under New Labour (introducing competitive tendering for contracts and **fixed fees** for payment) and then with more recent threats to the provision of legal aid more generally. The chapter concludes by identifying key dilemmas that have been the subject of contemporary debates within and about Law Centres.

Chapter Five moves on to consider public service modernisation, restructuring and **recommodification**. One of the distinctive features of public service modernisation agendas has been the emphasis upon restructuring management and accountability systems, including the increasing use of performance targets rather than reliance upon previous accountability systems, including the collective ways of working and community accountability systems that had been typical features of many Law Centres. Collective ways of working fitted uneasily with the requirements of the Legal Services Commission, and in this context community involvement was becoming increasingly problematic.

There were, in addition, dilemmas surrounding staff pay and conditions of employment and the extent to which relatively favourable conditions could be maintained in the current post-2008 funding context. The chapter includes some discussion of pressures for restructuring the labour process itself, including

concerns about the potential for deskilling among professionals through the increasing use of alternative and cheaper forms of labour.

Chapter Five concludes by focusing upon one of the most controversial dilemmas facing Law Centres in the context of increasing marketisation: the issue of charging clients. In the past, charging clients for services had been widely perceived as being in conflict with Law Centres' ethos and values. More recently, however, opinions have been shifting as Law Centre staff, **management committees/trustees** and volunteers have been faced with the prospect that many of the legal aid services that were previously on offer might be lost altogether, presenting a dilemma to which there have been no comfortable answers.

Issues of conflict and competition versus collaboration, partnership working and planning are addressed in Chapter Six. Law Centres have experienced conflicts with other agencies in the past (when acting as advocates for clients, questioning professional decision making, for example, or challenging public bureaucracies such as local authorities over inadequate or inequitable service provision). More recently, pressures towards conflict and competition have been increasing. One of the distinctive features of public service modernisation agendas, and of marketisation agendas more generally, has been the pressure to compete – competition being assumed by governments to promote increasing efficiency and choice.

A number of Law Centres had already had some experience of competing with other agencies, such as Citizens Advice Bureaux, and other advice agencies, although there were also Law Centres that focused upon the importance of collaborative ways of working, aiming to provide holistic services to communities and working with other organisations and agencies where there were shared interests in policy and campaigning work. The funding system for legal aid that was introduced following the Carter reforms exacerbated existing tendencies towards competition as agencies bid against each other for contracts.

As Law Centres struggled to develop survival strategies, a number of them began to explore ways of collaborating rather than competing with other, like-minded agencies, aiming to provide coordinated services that were more user friendly as well as more cost-effective. In some cases these explorations were initiated, or at least supported, by funders such as local authorities who were keen to identify ways of making savings while meeting increasing needs for advice and advocacy services as a result of welfare reforms and public expenditure cuts.

Another distinguishing aspect of marketised labour processes relates to the issue of time and pressures on the use of time in order to maximise productivity. As E.P. Thompson has reflected, notions of time changed with the development of industrial capitalism, bringing new forms of work discipline and the management of time (Thompson, 1967). Such changes have continued in varying forms in more recent times. Chapter Seven explores these issues as they relate to Law Centres in the context of public service modernisation. The funding system that was associated with the Carter reforms mirrored private sector systems in that the time allotted to each client needed to be carefully monitored and controlled, in order to keep within the parameters approved for payment. This posed major

dilemmas in many Law Centres aiming, as they typically did, to meet the needs of clients holistically, taking the time to listen to clients in disadvantaged communities who might be presenting a number of related problems, including problems with expressing themselves in English as a second language and/or as a result of having experienced mental health or other disempowering issues in their lives.

However, Law Centres' missions to work holistically and in preventative ways, with communities as well as with individuals, could be seen in terms of time valued and time well spent – making effective savings for the longer term through preventative policy work – rather than in terms of time wasted. A number of staff contrasted what they saw as the real value of time spent working in such ways with clients and communities with the time that was, in their view, being wasted as a result of cumbersome bureaucratic requirements, together with the time wasted as a result of poor decision making in public bodies, leading to the need for subsequent appeals. Time pressures have emerged, then, as a major set of challenges and dilemmas.

Chapter Eight draws together evidence on the impact of these challenges and dilemmas in terms of staff motivation and commitment. One of the criticisms that has been levelled at **New Public Management** systems is that they presuppose negative views of human motivation, assuming that employees in general, and professionals more specifically, need the discipline of targets imposed from above so as to ensure that they do not operate in self-interested ways. Conversely, critics of the New Public Management have argued that target-type cultures actually risk alienating public service workers, undermining the very motivations and commitments that brought them into the public service professions in the first place.

The chapter provides examples of disaffection and demoralisation among Law Centre staff. There were indications too that some of those coming into Law Centres more recently were less clearly committed to Law Centres' espoused ethos and values – volunteers, for example, who came to Law Centres as students or recently qualified law graduates in order to gain experience and so enhance their employability in difficult times. What did not emerge, however, was evidence of any widespread tendency for the next generation of staff and volunteers to embrace more marketised values. There is evidence, on the contrary, that some of the next generation have actually developed a strengthened commitment to public service-type values as a direct result of their experiences in Law Centres. And there is plenty of evidence to testify to the continuing commitment of those staff and volunteers, including volunteer members of management committees/trustees, who are giving of their time as a 'labour of love', facing dilemmas that would be considerably less taxing for them personally, were they not investing so much emotional labour in the process.

Chapter Nine reflects back on the starting points, the implications for access to justice for disadvantaged communities and the potentially wider implications for strategies for social justice, social citizenship and social welfare. The case for the

continuing public resourcing of Law Centres is argued, together with the case for public support for advice and advocacy services more generally.

Meanwhile, Law Centres face continuing dilemmas in the face of increasing marketisation; dilemmas that have resonances across the provision of welfare services. What should be the limits to the role of the market? How far can alternative strategies to safeguard and further improve public services be developed in ways that strengthen rather than undermine the basic values and principles of public service provision? And, most importantly, how far can such survival strategies strengthen the position of those who need, as well as those who provide, public services, empowering communities to work more effectively with progressive organisations and groups in the wider pursuit of social justice agendas?

Note

¹ Where terms that are explained in the Glossary appear in the text for the first time they appear in bold type.