LEGAL NEED IN ENGLAND AND WALES IN THE SIXTIES AND SEVENTIES: A RETROSPECT

By
IAN DUNCANSON*

In this Comment Mr Duncanson describes the social context in which the "unmet legal need" of the poor generated controversy in the English legal profession. The author explains the response and motivation of the legal profession on the one hand, and the more successful response of the Legal Action Group on the other. The reasons for the success of the latter are examined and its limitations exposed.

The purpose of this paper is to examine the social context in which the "unmet need" of poor people to have their legal problems resolved became the site of professional controversy for English solicitors. There are some points of general interest. One of those is that for explanations of social events we need to look closely at the society in question rather than at the global diffusion of ideas. Thus the question why "equality before the law" should suddenly, in Britain in the 1960s (and Australia in the early 1970s), indicate the need for greater access to the machinery of solicitors, barristers and courts, cannot be answered by reference to events in the United States or Canada.

The suggestion that the "legal needs" movement was an import begs the question why it was imported, and why it prospered, at one time rather than another. Exponents of American cultural hegemony frequently *assume* the diffusion of American ideas[1] and make the empiricist error of grouping phenomena according to their surface characteristics without examining the causes and conditions of existence which underlie them. Sensationalists and ideologues, ignoring Humean warnings (no doubt unwittingly), translate the apparent conjunctions of events into causes and effects. Once robbery in London is dubbed with the American term "mugging", it is assumed that the penchant for robbery has spread from New York. Racial violence in the United States "spreads" to Britain[2] and most recently, of course, violence in Northern Ireland has "spread" to mainland Britain.

Instead of making diffusionist assumptions, we shall examine the specifics of the English "legal needs" movement, whence it came, where it went, and why. Some of the characteristics and responses of the legal profession in England may have parallels in Australia, but of course there will also be profound dissimilarities in a number of ways.

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*Department of Legal Studies, La Trobe University. I am grateful to my friend and colleague Greg Lyons for his comments on an earlier draft.

1. *The Context of Changes in the Profession*

While it may well be true that lawyers do not perform their tasks with the aim of litigating since there are usually more satisfactory and profitable ways of settling disputes, particularly where there is a profession divided into full-time advocates and office lawyers, they do structure their professional ideals about an adversarial model.[3] A carefully orchestrated thesis and antithesis absorb excess energy and appear to be transcended by a synthesis symbolically celebrating the status quo. Clients are taken for a ride in a Disneyland spaceship that transports them to the heavens without ever leaving the ground,[4] which is what clients probably wish. Even people who are prosecuted mistrust the fair trial less than the administrative matrix out of which it emerges:[5] the police, the magistrates' clerks, plea-bargaining,[6] and the mysterious process by which legal aid may be refused or granted.

Lawyers are for the most part successful in fitting their clients into their models as pursuer and defender, plaintiff and defendant, purchaser and vendor, appellant and respondent. Clients may wish to collude, but as a rule this is permitted only with the aid of a lawyer. The compulsorily contested divorce disappeared only when its cost to the legal aid fund translated the normal private grievance about lawyers' fees into a public and political scandal.[7]

Without pretending that there is a lawyers' consciousness, or even a unified perception of professional self-interest within the Law Society[8] or the Inns, it is clear that there has been uneasiness about the loss of business which has occurred during the present century. Businessmen prefer to arbitrate than to utilise the courts,[9] and although this does not result in a great loss of business at the Bar, it does diminish the prestige and, what we might term, the ideological effect of the official apparatus of the law. First, quite plainly, another system is preferred; secondly, material is escaping from the mechanism of the institutional dialectic. A commercial law develops of which no official cognizance can be taken. Thus the law ceases to have the appearance of being all-embracing.

More tangibly perhaps, solicitors lost their role as financial advisers with the burgeoning of the accountancy profession and they did not benefit, as did barristers, by the happy intersection of a rise in the number of prosecutions, the wider availability of legal aid, and a total capacity to restrict entry into the profession as the need arose. Criminals and taxpayers seemed to smile upon the Bar and bless its exclusivity.[10]

The senior part of the solicitor's profession was well provided for, in metropolitan areas, with commercial and trust work. The middle sections were keeping ahead of inflation in the suburbs because conveyancing fees are charged as a proportion of the value of the transaction and house prices maintained a lead over prices in general. However, there was an awareness that the house-buying boom might not sustain for ever that part of the 1940s baby-boom that had by the 1960s matured into young solicitors.[11] The profession did not merely grow in proportion to population as a whole. It grew more, and the social and educational profile of the new entrants changed, if not dramatically, then sufficiently to be noticeable.[12] More little solicitors per thousand live births were born in and after World War Two than before, and some even in working class homes. Whatever the defects of the Education Act 1944 (Eng.) (known as the Butler Act) and subsequent education

reforms, they did eventually provide free and often good schooling from five years through eighteen to large numbers of children who would, under the pre-war regime, have gone without.[13]

Moreover, once that generation of children grew up, it benefited from a huge expansion of universities. Further, grants were available on a means-tested basis to a maximum level that provided a living to a person from a poor home, to almost everyone to whom a university offered a place. Until the mid-seventies most local educational authorities paid grants to students studying for professional examinations. First-generation sixth-formers, first-generation undergraduates, and, finally, first-generation solicitors, appeared on a scale quite unprecedented. Significantly, also, expanded universities meant more academics, more graduate students, and more research. An indigenous social science reawakened and became indebted, rather than in fief, to transatlantic neo-Weberians. New resources enabled students to read about social problems in Nottingham[14] and Southwork, rather than in places in North America whose inhabitants' misfortunes one could afford to leave to time and Talcott Parsons to reintegrate. Academics who lacked the objectivity which greater age and more traditional social origins confer, were moved to draw political conclusions. The welfare state had become self-critical.[15] It had made possible its own self-appraisal or, as conservative scholars and others woke up briefly to remark, it had nursed a viper to its bosom.

Despite the best endeavours of the expanded law faculties in red brick universities,[16] some of their students came to hear that poverty had been re-discovered by the sociologists, and they graduated having heard of social workers and legal aid and with the suspicion that law in action was not the same as law in the textbooks. There was more evidence of things wrong in the social system in the sixties, and there were more lawyers than usual who were receptive to that kind of evidence, whether because of their own social origins or because of their social experience at a university with an unusually varied social mix. There was also, in the solicitor's profession, a grumbling anxiety that the traditional reservoir of business was in need of supplementation.

The political context of the early sixties in Britain was one in which Macmillan's famous "Never had it so good" declaration could be taken seriously (and partly, of course, it was true: living standards *had* risen, albeit more slowly than elsewhere). It was a context in which the dissemination of knowledge about social problems was a challenge rather than a contradiction. Government research programmes, local authority impetus, and advice from pressure groups, notably to begin with the Child Poverty Action Group, indicated a large number of areas in which reform was urgently required.

2. *The Context of Legal Change*

In 1949 the Rushcliffe Committee's proposals reached the statute book as the Legal Advice and Assistance Act (Eng.) 1972, but its full implementation was not achieved until the mid-sixties.[17] The regime of subsidy offered to those in need of legal services was administered by the solicitors' professional body, the Law Society. England and Wales were divided into twelve (later thirteen) areas, each with an Area Legal Aid Committee and a full-time secretary, and each subdivided into territories

with local committees. Every solicitor who was on the "panel" — who, in other words, participated in the scheme — might give legal advice on a means-tested basis to a client who sought it. By 1972,[18] under the "Green Form Scheme", the solicitor made the assessment of means himself by reference to a piece of cardboard and a scale of figures issued to him by the Law Society.

He could then give up to twenty five worth of his time to the client, for which he could ask the client to pay his share there and then, on the basis of the means test calculation, claiming the balance from the local Legal Aid Committee each month when he sent in his monthly batch of green forms filled in by the client and himself. With the prior consent of the local committee he could give up to fifty worth of his time. How much time that was varied with the practice and the part of the country. In 1972 it could be as little as an hour or as much as three hours. Taken by itself, the 1972 Act was not a great advance.[19] It added a degree of flexibility in the area of legal advice and service delivery. Solicitors could be more useful, but marginally. A number of cogent criticisms had been voiced in the 1960s, to which the 1972 Act was an extremely weak response. The image of solicitors was poor among working class people, it was said. Lawyers were associated by many working class people with middle class styles of life. For them, offices are unfamiliar territory, occupied by people with authority over them.[20] There is, moreover, a widespread belief, not altogether unjustified by experience, that a solicitor would merely add to any original problem by adding to its unsolved character, his own bill.

Solicitors' offices in British cities are concentrated in inner commercial areas, where their skills are of no use to the people in the adjacent slums,[21] and in suburban shopping centres. One study[22] found a correlation between a high ratio of solicitors per ten thousand population and retail turnover. Solicitors are also thick on the ground in the areas where the better-off go in order to retire:[23] the south coast cities from Brighton to Bournemouth.

The kinds of problems which poorer people were likely to have involved small sums of money,[24] unattractive to solicitors used to weighing costs of recovery or defence against the amounts involved, or the unknown labyrinth of social security law: the New Equity as one academic lawyer described it,[25] with its own courts, its own language and its own judicial heirarchy. An estimated ten million people were dependent in some way upon supplementary benefits alone, but out of thirty-odd thousand solicitors in England and Wales it is doubtful if a dozen in 1972 had any serious familiarity with the relevant statutes and regulations. So, it was concluded, to bring law to the people one had to have a system of solicitors offering expertise in relevant areas of law in approachable surroundings and in the areas of cities in which poor people live.

In 1970 a law centre opened in North Kensington[26] with a salaried solicitor and support staff. It provided a model for others, and within ten years there were more than twenty, mostly in London, but also in cities from Newcastle-upon-Tyne to Cardiff. At first finance came from local authorities or charitable foundations, but some facilities were funded as part of Home Office programmes in deprived areas. Solicitors in the Law Society were worried by the law centre movement because they feared a loss of business. It may be that this was as much of a partial rationalisation

of a fear of the unknown (and of the revealing of such inadequacy in their professional services) as poor clients' fears that solicitors would automatically charge high fees and fail to put right their problems. From early stages it was clear that law centres were so successful at attracting business that they were forced to concentrate exclusively on areas of law unprofitable and unfamiliar to solicitors, for example, small consumer problems, rent and non-repair difficulties with local authority or private landlords, domestic violence and landlord and tenant injunctions (it turned out that the majority of solicitors had no idea of how to apply for an injunction, or took so long to do so as to render its achievement redundant), and social security law. Other matters were referred to ordinary practitioners and so actually generating extra, profitable work for them.[27]

It is likely that opposition was created by the perceptions which the provincial and suburban solicitors began to have of themselves, or feared that others had of them. They had had for decades a comfortable and gentlemanly life, with a certain amount of prestige in their local community, justified by reference to competence and service to the community, precisely the two attributes that were now being questioned.

3. *Professional Initiatives*

Within the boundaries determined by academics, there is no doubt that the critics of the legal profession, from the cool appraisals of Abel-Smith and Stevens to the devastating attacks of Michael Zander, had the best of the argument. There was an overwhelming intellectual case for profound change in legal service delivery. The next step taken by the reformers was the formalisation of their campaign for change by the formation of the Legal Action Group (L.A.G.).[28] Through its publication, the *Legal Action Group Bulletin,* it aimed to accomplish the traditional task of the practitioner's journal, that of reporting on new laws, or new interpretations, and on new techniques, or the need for them, but on new territories for lawyers: of landlord and tenant from the tenant's point of view, social security law, public health and housing law. The *L.A.G. Bulletin* also pointed out where changes in the law generally were needed, and above all criticised the existing provision of legal services. As a pressure group, L.A.G. brought together academic progressives, progressives at the Bar, in the solicitors' profession, in the Lord Chancellor's Office, the Home Office and even from within the executive of the Law Society.

The Legal Action Group had an early negative success with the 1972 Act. The Law Society, initially hostile to the law centre idea, had nevertheless attempted to bring it within the institutional embrace of the profession by itself gaining the power to operate such centres and to pay salaried solicitors to work in them. Such a power was included in the 1972 Act, but never implemented. No centres were ever set up by the Law Society, and no encouragement was given to the Society to do so, although the Lord Chancellor's Office[29] continued to give encouragement to those which were set up by others; and the Home Office, by arrangement with local authorities, actually funded several other centres itself.[30]

At the beginning of the seventies with the example of the North Kensington Centre before them the reactions of provincial solicitors were, initially, to deny that, for example the data on unmet legal need in North Kensington or Cardiff had any

relevance whatever in Nottingham or Newcastle. However, plainly they did not believe this, or came to disbelieve it, for in many cities they soon began to organise themselves in order to meet the unmet need which they formerly argued did not exist in their areas. Many adopted some variant of what was called the "Bolton Scheme", utilising Citizens' Advice Bureaux (C.A.B.). The bureaux, financed by local authorities and with a newly centralised information service, existed in most towns and cities, almost exclusively reliant on volunteer help, with salaried officers in some urban areas. They helped with questions ranging from where to write to in order to obtain an au pair to complex consumer problems. In matters within the province of professional experts they referred clients to professionals. The rules which prevent solicitors from advertising also prevented them from indicating publicly their areas of specialisation, and many bureau officers, either out of ignorance, or out of deference to the profession and a wish to seem even-handed, would not advise clients to which solicitor they should go for the best service. Pressure from L.A.G. persuaded the profession to issue some indication to C.A.B.s of their area of specialisation. However, the lists they produced were virtually useless since it appeared that every firm specialised in everything.[31]

Under the so-called Bolton Scheme, a solicitor would attend C.A.B. premises at a stated time each week. People who appeared to the C.A.B. officers to have a legal problem would be asked to return to the bureau at the time when the solicitor would be there. If he could not solve the problem by an interview, he was allowed by arrangement with the Law Society to take the case on behalf of his firm. The normal legal aid arrangements would then come into operation, depending upon the client's means. These arrangements were open to criticism. First, although many (perhaps most) of the solicitors in the areas that adopted the Bolton Scheme professed scepticism of the unmet legal need argument, they were not prepared to miss the possibility of extra business that might be picked up at the C.A.B. So the scheme operated with a rota on which appeared so many solicitors that each one would have his turn at the bureau perhaps once in three months.

There was therefore no opportunity to specialise in the new areas of law in which, it was urged, the people who did not usually go to lawyers would produce problems. This happened despite the information which it made available. L.A.G. repeatedly reported that solicitors still did not know how to obtain an emergency injunction to reinstate an unlawfully evicted tenant or exclude a violent male from a matrimonial home. If a rare solicitor did know the procedure, he might find that the local court officials were so unaccustomed to such demands that they could not comply. Further, a solicitor who encountered a social security problem once in three months would never acquire sufficient familiarity with the law to transform his research from a time-consuming and therefore unprofitable exercise into a familiar routine.

Another problem with the scheme was the necessity for two interviews on two different occasions. Most C.A.B. offices are in city centres. A woman with small children in an outlying local authority housing estate, with no telephone might have to travel several miles on public transport merely to be told that she would have to come back another day. Frequently she would not come.

Whilst law centres remained unacceptable, some practising solicitors were prepared to experiment with legal advice centres. By the mid-seventies many cities

had several of these centres. Frequently they were organised by academic lawyers who themselves participated by giving advice and writing letters on behalf of clients. Sessions were once or twice a week, usually in the evenings. Advice was free, and solicitors had waivers from the Law Society's prohibition on "touting" for clients, to enable a case not amenable to advice and letter-writing to be taken back to his office by an advising solicitor, where it could be dealt with under the normal legal aid procedures. Finance for advice centres was provided by local authorities for the most part. The authorities also provided premises, such as social services offices, empty shops, and so forth.

As with all voluntary organisations, a great deal depended on the enthusiasm of the organiser. The system worked well enough in traditional areas of law but, where a large number of lawyers participated relatively infrequently, little expertise and continuity were gained in new areas.

4. *The Law Centres*

The law centre movement proper was strongly supported by L.A.G., not as a replacement for private practice in the first instance but as a significant alternative. Where the movement succeeded it did so against the opposition of most of the legal profession.

> Law centres are different in a variety of ways from private firms of solicitors. On the most obvious level, they look different. Instead of the formality and staid dignity of the typical solicitor's office [they]...go out of their way to present an informal, casual atmosphere. They are normally at street level in main shopping centres. Instead of the usual discreet nameplate, they have a large sign in the window, "LAW CENTRE". Their shop fronts and interiors are plastered with posters and notices about legal rights, campaigns for racial equality, meetings of the local tenants' association, and information as to what to do about bad housing, wife-battering, or harassment from landlords ...The furniture is usually somewhat dilapidated. Lawyers, secretaries, receptionists, all tend to wear jeans...Their services are free and they are permitted to advertise.[32]

In order to advertise, law centres needed the consent of the Law Society, and this has, naturally, provided the ground over which many of the battles between the radicals and conservatives have been fought. The Society has lately made large concessions, at least from its inconsistent but generally unhelpful and occasionally obstructive attitude of the early and mid-seventies.

There was no particular pattern to the funding arrangements of law centres. Local authorities and private charitable foundations, notably Nuffield, provided finance. Law centres were also funded through the Urban Programme, a central government initiative to combat inner city deprivation. They were visually distinctive but, as Zander points out, they were different from standard practices in a number of other important ways. Their informality, location and hours of opening made them more accessible, as their areas of expertise and wide-ranging but informal contacts with other agencies makes them more useful. Simply as agencies of advice, referral, and representation, they have had a positive impact on their communities which would be difficult to exaggerate. In the long term, however, the law centres resemble nothing so much as a bridge to nowhere. They represent a great technical

improvement in legal service delivery, but for that very reason they reveal their own inadequacy. Structural social problems are simply not solved by technical improvements.

The Royal Commission on Legal Services, which reported in October 1979, recommended that law centres be used as "a [supplement]...in certain areas" to private practice.[33] The Commission approved of certain law centre activities, but clearly disapproved of others. Centres should not, in the Commission's view, compete with private practice for profitable business, as indeed they were not, but nor should they become too partisan in the areas in which they operated. In other words, they should not be a financial success, but nor should they be a political success. If they were not to be commercial they should be properly charitable.[34]

In the decade before the Commission's report, the law centres had begun by offering legal services free, reimbursing themselves, where possible from the legal aid fund. They did not see themselves as competing with traditional services and gaining income from probate and conveyancing, but their mode of operation was broadly similar to that of a normal private practitioner: an individual would present a problem, the legal aspects of which (if any) would be investigated and dealt with. The limit of the centres' search for business would be advertising — controversial enough in the view of the profession.

However, the centres in varying degrees, began to see their casework role as less important than a general community role. The community workers whom they employed were people who had been influenced by the radical turn of social science in the sixties and seventies. Management committees often began to see the law centre as a resource capable of being used in local struggles against landlords and employers, a view which would have been respectable had they been corporate or middle class clients with strategic ends. But these were people in receipt of grants, not tax deductions, and so their tactics were seen as political. Law centres' staff were used to raise local consciousness about consumer exploitation, bad housing, poor local authority services and even (horror of horrors) employment. Citizenship, which is an inchoate notion in Britain in any event, is generally taken to involve a knowledge of one's duties — the situation to which the maxim *ignorantia juris non excusat* is applied — rather than a familiarity with or insistence upon, one's rights. The police, in particular, favour restraint in the area of rights. Some centres have "become a focus in the neighbourhood for campaigns on behalf of the community", the Commission reported,[35] acknowledging that they

> seek to attack the roots of problems by organising groups to bring pressure to bear on landlords, local authorities and central government either to improve working, housing or living conditions or to urge changes in priorities of public expenditure so as to meet urgent needs or to promote changes of a similar character...[w]hatever opinion is held as to the value of work of this kind, we firmly believe that if it is to be carried on, it should be funded from a suitable source such as Urban Aid...[36]

The Commission, like most members of the legal profession, considered that "work of this type is not appropriate for a legal service".[37] Their reasons were that community involvement of the kind to which they objected reduced the independence of the service, since it was really involvement in the affairs of one *part*

of the community: broadly the assumption is that legal services should keep clear of controversy, especially of the kind that may be seen as political. However, the staff of the Newcastle-upon-Tyne Community Development Project, a wide-ranging "action programme" in the west end of the city which included the provision of a law centre, found difficulty in drawing the distinctions which the legal service side of their operation seemed to entail. Their "examination of the workings of the law begins by looking at the absence of any protection against the movement of capital for the people affected"[38]. They noted the withdrawal of capital by Standard Telephone and Cable from its Woolwich factory. "Vickers in Newcastle, Swan Hunter and Spillers in North Tyneside, Tate and Lyle in Liverpool and Canning Town, British Leyland in Birmingham are all withdrawing capital...in order to reinvest more profitably elsewhere, abandoning local workers to lower paid work or to the dole queue. The process is not confined to large well-known firms. In each area the whole economic structure has crumbled."[39]

The report refers to the law regulating companies, investment incentives and New Towns, none of which is useful to employees "in offsetting the impact of long term decline". "Against a background of uncontrolled capital movement and industrial decline, the rights won for individual workers seem insignificant." Individual cases against Housing Departments or local offices of the Department of Health and Social Security might be won, indeed chances of success were spectacularly increased with the help of representation from the centre, but often simply at the expense of other unrepresented claimants.

> A council housing department juggling with a limited supply of houses, or being faced with a volume of well argued cases for priority, reacts by making the procedures more difficult...The environmental health department of another authority responds to increased demands for decent repair standards by challenging the motivation of the information centre giving help to individual tenants. Even in the case of social security, where, in theory, there are always resources to meet legitimate claims, centres have met with active resistance.
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> ...approaches based on casework, however ingenious their application, boil down to making arguments from a subordinate position.
>
> ...the resources of information centres are dwarfed by those of the bureaucracies with which they take issue. Effective performance is diminished by letting those resources become wholly taken up with a queue of pressing problems.[40]

Clients are, in other words, caught between a crumbling economy and a shortage of public funds, and there is little that a lawyer can do.

5. *Conclusion*

At the outset it was suggested that structural changes in secondary and tertiary education produced, in the circumstances of the apparent economic prosperity of the sixties, a radicalisation of attitude within university-based social science. The numbers of people involved should not be exaggerated, nor their impact, though their influence may have been more than their numbers suggest. They did have an impact specifically upon some of the people experiencing what lawyers are pleased to call legal education, and those people translated the social insights and criticism

into a form compatible with the view of the world propounded by law school. This was the genesis of the "unmet legal need". The social problems of the vast numbers who never visited solicitors were perceived to be amenable to traditional legal skills, given only the resources. Quite clearly that conclusion was: improve the delivery system.

There are a number of puzzles. One is, why did the radicals succeed to the extent that they did against the opposition of the profession? A second puzzle is, given their initial success, why did they not reform more than they did? It cannot be pretended that legal services are now distributed in a satisfactory way: there are still fewer than thirty law centres, roughly one for every two million people in the United Kingdom. More to the point, dozens of cities or decayed urban areas do not have a law centre. The alternatives offered by the profession through Citizens' Advice Bureaux and legal advice centres are, for the reasons suggested above, cosmetic and amateurish.

The Royal Commission was the high watermark of the radicals' influence. Lawyer's services came under unprecedented, severe and comprehensive attack in the seventies partly because the Legal Action Group provided an extremely efficient mechanism for gathering and amplifying well-informed criticism. Also the property boom made solicitors' affluence embarrassingly visible. Finally, there may have been an ideological contradiction. As party politics moved to the right in the late seventies social injustice began once more to be justified by reference to the powerlessness of government to interfere with competition and the free market. It is not always immediately apparent how lawyers' conveyancing and other monopolies fit into this scheme.

Once the membership of the commission was made known, an anodyne report was confidently (and correctly) predicted. The most cynical views of Royal Commissions, accountants (of whom the Chairman, Benson, was one) and of the capacity of lawyers to feather their nests at public expense, remain uncontradicted after the report. A more Panglossian document could scarcely be imagined. The chief worry of the majority was the direction of the radicals whose "campaigning" law centres did not fit the Commissioner's model of how lawyers should deliver legal services. What is relevant here, however, is why the discontent about legal services, and the energy to improve them, have dissipated: Perhaps the soporific theory of Royal Commission is correct.

First, how was it that the radicals achieved some initial successes? The general social context has been sketched, as has been explained the liberalisation of a part of the profession. It seems likely that the solicitors' profession was demoralised by the level of public criticism, but that explains very little. There was never the public pressure equivalent to the hostile, intellectual milieux alleged by Forman[41] to be responsible for the Quantum theory in Weimar Germany. Solicitors were not to be detected deserting traditional professional paradigms in hundreds and thousands.

In fact, the gains by the radicals were largely illusory. Extreme radicals and extreme conservatives were at rhetorical loggerheads. All of the radicals' legal service proposals were in the interests of the solicitors' profession, with minor alterations. More generous legal aid, more law centres in deprived areas to "trawl"

clients partly on behalf of conventional law firms, speedier remedies for some cases, instruction in novel areas of law — all these were valuable benefits. They were gains that the mainstream profession was able to make without itself appearing radical. The origin of the gains, in radical pressure, even permitted an interpretation of the profession's rather ginger acceptance of them that did not raise the question about solicitors' competence in not recognizing immediately what was in their own best interests, or in not having sought such changes before. More astute members of the profession, particularly in London, *did* realise that what the radicals were advocating was unthreatening, and backed them. The Legal Action Group contained many such people. To a degree, that explains why the radicals' successes went no further. A more aggressive approach to legal services, which is what many were achieving through the use and advocacy of collective action, went beyond mere technical improvement in legal service delivery.

In the provinces, particularly, were they to have become combative in the area of poor people's problems, solicitors would have risked offending those whom they most associated with outside their offices, in the Rotary Club, the Freemasons, on the local council, in the Golf Club and elsewhere solicitors proceeding about their ordinary business have learned to tread carefully and enjoy a certain sympathy. Most of their work does not involve conflict, but where it does they seldom encounter hostility from their peers outside the profession, either because the conflict is located outside the group of their peers, or because they are only doing their job. To attack the profitability of local industrialists, local landlords, or local wealthy retailers operating dubious credit schemes and high prices, would have been to risk professional and social goodwill in a large way. Only London, with its enormous population of civil servants, professionals, multinational head office staffs, and above all a large pool of people beginning their careers, can offer alternative peer groups. That London, with only one seventh of the population of England and Wales, has two thirds of the law centres in operation is not a reflection of the needs of its population, but of the favourable environment it offered and still offers, to the radicals.

Finally, perhaps crucially, the seventies, when solicitors might otherwise have been listening more carefully to the unmet need arguments, was the era in which funds, freed by various Conservative Government schemes to encourage investment in industry, fuelled a huge boom in property prices, far exceeding even the astronomic rates of inflation. The profession as a whole derives almost three quarters of its income from real property,[42] and was therefore not moved to give its theoretical anxiety about loss of business material expression.

So the successes which the radicals did achieve were of a fairly modest kind, in improving, and bringing up to date, solicitors' legal service provision. That has been accomplished with a minimum of disruption to the profession. The radicals' longer term aim of restructuring the profession in accordance with their objective of making the law vastly more accessible to the people could never have been successful through the utilisation of an organisation like the Legal Action Group. For L.A.G. gains much of its force from the support of establishment reformers.

Some of the latter might support, covertly, the abolition of the conveyancing monopoly, and look indulgently upon calls for the fusion of the solicitors'

profession with the Bar. But the dangers inherent in the proliferation of law centres with a radical populist bent must be very clear to them. Law centres which establish too close links, or too broad research boundaries are certain to be continually frustrated by the refusals of courts or the limits of the law. Courts are, as Griffith pointed out,[43] bound to support the status quo. The job of the lawyer is to tailor conflict to the institutional dialectic, the synthesis of which must be a solution which celebrates the political supremacy of the law.

Experience in at least some law has suggested that the basis of the complaints raised is a contradiction of the celebration which lawyers seek to accomplish. Some of the complaints cannot form the basis of a recognised legal plea. Any attempt to provide a judicial remedy would reveal the hollowness of the claim to legal supremacy. Legal thought simply does not permit that drift of argument, de-industrialisation and urban blight are not culpable in the same way as damage to a telephone booth.

In this context, law appears as a result of politics, as delegated politics, severely limited in what it can be used to do. The extension of legal services, then, highlights the "Limits of the Law". Only radical political change could offer a meaningful remedy, which is why the law centres were characterised as a bridge to nowhere. They provide an excellent vantage point from which to observe the currents buffeting and overwhelming the poor, but they do not permit a landfall on the far side.

Even to the extent that problems are successfully cast into a legal form and submitted to litigation, a measure of the law's failure is provided. There is of course systematic judicial bias, but more importantly there is the overwhelming power of departmental and corporate bureaucracy to delay, to harass and threaten, to seek legislative change, and above all, to define rationality. Disruption threatened by radical lawyers acting for poor clients can be minimised by raising the cost of each case to the point where numbers of cases must be reduced, and by defining community action as political and "not appropriate for a legal service"[44].

What does this tell us about the law? It applies to us all equally, of course, in Anatole France's sense, but it is not generally available to us all. Some of us are caught up in it, just as we are caught up in representative democracy. Like Rosencrantz and Guildenstern in Tom Stoppard's play, some of us are addressed by the principal character and seem to be a part of the action, but seem at the same time to have no leverage on the outcome.

It is easy to suppose, from the radicals' point of view, that the undoubted incompetence of some lawyers and the disinterest of others with respect to the problems of poor people, the bias on the bench and the philistine social elitism of the major law schools, all contribute substantially to the law's limited utility to poor people. In fact, law as a form of practical politics cannot be much more widely available than it is. Overload it with cases and it will either collapse or devalue the currency of its decisions.[45] Address it in terms of the problems that many people really suffer from and it cannot, in the nature of things, hear. It may attend to some symptoms, but it cannot cure the disease.

The radical impetus to change legal service provision has been dissipated partly by the organisational strength and resistance to change within the solicitor's profession.

Narrowly lawyerish support to change has been eroded by the apparent hopelessness of any serious move to change things. Wider support has ceased to strengthen the lawyers' case, since both lawyers and non-lawyers have now come to the conclusion that there are political priorities to be sorted out first, and they cannot be disguised as legal issues.

FOOTNOTES

1. Some exponents go onto higher things: Z. Brzeninski, "America in the Technotronic Age" (1968) 30 *Encounter* 16. For mimetic impulses in America by contrast, see G. Steiner, "A Second — Rate Culture" in *Melbourne Age Monthly Review* (June, 1981) 7-11.
2. S. Hall, C. Critcher, T. Jefferson, J. Clarke and B. Robertson, *Policing the Crisis* (1978).
3. For example, a solicitor should not act for both parties in a conveyance. As a result of this rule an administrative process is transformed into something quasi-litigious.
4. For a brief exposition and criticism of the symbolic and integrative functions of law in positivist sociology and anthropology see E. M. Schur, *Law and Society, A Sociological View* (1968) chs 2 and 3. It may be more correct to apply the positivist thesis to the middle class only, rather than the whole of society.
5. Although once again the evidence relates to middle class civil libertarians: P. Hain (ed.), *Policing the Police* (1980) II; H. Harman and J. Griffith, *Justice Deserted: The Subversion of the Jury* (1979). The magistrates' courts, which enjoy little admiration or prestige, are, in fact, largely non-adversarial institutions: see P. Carlen, *Magistrates' Justice* (1976). *Cf,* E. K. Braybrook, "Some conclusions" in La Trobe Legal Studies Department, La Trobe University (eds), *Guilty Your Worship* (1980). The satisfactoriness of tribunals seems to increase with greater conformity to adversary norms: J. A. Farmer, *Tribunals and Government* (1974) ch. 4; M. Adler and S. A. Bradley (eds), *Justice, Discretions, Poverty* (1975); T. Prosser, "Poverty, Ideology and Legality: Supplementary Benefits Appeals Tribunal and their Predecessors" (1977) 4 *Brit. J. Law & Soc.* 39.
6. J. Bladwin and M. McConville, *Negotiated Justice* (1977).
7. Matrimonial Causes Act 1973 (Eng.). In 1969/70, out of 146,500 civil legal aid certificates granted, 104,000 were for matrimonial proceedings: see R. White, "Lawyers and Enforcement of Rights" in R. White, P. Morris and P. Lewis (eds), *Social Needs and Legal Action* (1973).
8. The impossible role of The Law Society in trying to project a primary concern for solicitors to its members and altruism to the public is discussed in P. Fennel, "Solicitors, Their Markets and their 'Ignorant Public'; The Crisis of the Professional Ideal" in Z. Bankowski and G. Mungham (eds), *Essays in Law and Society* (1980).
9. H. Beale and T. Dugdale, "Contracts Between Businessmen: Planning and the use of Contractual Remedies" (1975) 2 *Brit. J. Law & Soc.* 45, 59:

   > [t]here is not much scope for using contractual remedies. Lawyers and legal remedies tend to be avoided as being inflexible; lawyers are thought not to understand the needs of commerce and those firms who had consulted solicitors were not all satisfied.

   See also P. Devlin, "The Relation Between Commercial Law and Commercial Practice" (1951) 14 *Mod. L. Rev.* 249.
10. R. Hazell, *The Bar on Trial* (1978) ch. 1.
11. Z. Bankowski and G. Mungham, "A Political Economy of the Legal Profession" (1978) 42 *New Universities Quarterly* 448; D. Podmore, "Bucher and Strauss Revisited — The Case of the Solicitors' Profession" (1980) 7 *Brit. J. Law & Soc.* 1.
12. Z. Bankowski and G. Mungham, *ibid.*
13. N. Middleton and S. Weitzmann, *A Place for Everyone* (1976) 383. Acknowledging Butler's failure they write that nevertheless

    > [t]he 1944 Act has radically changed the face of Britain by opening up opportunity for the lower middle class and skilled manual workers' children ...The first crop of young people whose lives had been fully influenced by the Act became adults in the 1960s and erupted with new ideas... from the Beatles... to Mary Quant.

    A revolution, if not precisely a second Industrial Revolution.
14. K. S. Coates and R. Silburn, *Poverty: The Forgotten Englishman* (1970); W. G. Runciman, *Relative Deprivation and Social Justice* (1966).

15. D. Bull, *Family Poverty* (1971); J. Westergaard and H. Resler, *Class in a Capitalist Society* (1975); J. C. Kincaid, *Poverty and Equality in Britain — A Study of Social Security and Taxation* (1973); F. Field, M. Meacher and C. Pond, *To Him Who Hath — A Study of Poverty and Taxation* (1977); P. Townsend, *Poverty in the United Kingdom* (1979).
16. London law professors are particularly indignant and cannot avoid introducing right-wing asides into their texts. Baker equates taxation and confiscation with apparent seriousness: J. H. Baker, *An Introduction to English Legal History* (2nd ed., 1979) 181 (see the review in (1980) 15 *J. Soc. Pub. T.L.*) Allot laments the disadvantage that landlords, employers and other oppressed now suffer at the hands of their legally well-informed proletarian oppressors: A. Allot, *The Limits of Law* (1980) 76-77.
17. The period from World War II to 1965 is reviewed in B. Abel-Smith and R. Stevens, *Lawyers and the Courts* (1967) ch. 12. For a summary of events and debates thereafter, see M. Zander, *Legal Services for the Community* (1978).
18. Legal Advice and Assistance Act 1972 (Eng.). I have concentrated on the area of legal advice because the provisions relating to legal aid are complicated and add nothing to the overall argument. Generally speaking, legal aid for criminal cases must be provided where it is "in the interests of justice": Criminal Justice Act 1967 (Eng.) and this is interpreted to cover virtually all trials on indictment and a growing, though low and variable, proportion of summary trials. The accused's contribution is often not collected. Civil legal aid is stringently means-tested and the applicant's case scrutinized for practical and legal merit by the local legal aid committee. A legally good small claim will fail the practical criterion.
19. The services covered by the green form scheme were those concerned with English law and normally offered by a solicitor. The Act was criticized on the ground that Scots and Commonwealth immigrants might reasonably be expected to have legal problems arising in their jurisdiction of origin for which assistance would not be provided.
20. Many of the arguments can be found in P. Morris, R. White and P. Lewis, *Social Needs and Legal Action* (1973); and in B. Abel-Smith, M. Zander and R. Brooke, *Legal Problems and the Citizen* (1973).
21. B. Abel-Smith, M. Zander and R. Brooke, *ibid.*
22. K. Foster, *"The Location of Solicitors"* (1973) 36 *Mod. L. Rev.* 153.
23. Bringing potential probate work with them, of course.
24. Examples include injury problems, consumer problems, problems with landlords, and employment problems. Omitted is consideration of the criminal law "unmet need" because it inevitably involves a wide range of issues from police harassment, through bail, to the need for reform of the magistrates' courts' apparatus for granting legal aid.
25. Inaugural lecture given by H. Calvert at the University of Newcastle-upon-Tyne in 1973.
26. A. Byles and P. Morris, *Unmet Need: The Case of the Neighbourhood Law Centre* (1977).
27. M. Zander, note 17 *supra,* 87.
28. Founded in 1971.
29. The Legal Aid Advisory Committee of the Lord Chancellor's Office moved from "reservations" about law centres to support for the Law Society's initiative contained in Part II of the Legal Advice and Assistance Act 1972 (Eng.) and then to support for the existing network of centres and an appeal for more: see M. Zander, note 17 *supra,* 73-74, 86.
30. Home Office funds were channelled through the Community Development Project, twelve local projects established for five years as "a neighbourhood-based experiment aimed at finding new ways of meeting the needs of people living in areas of high deprivation": C.D.P., *Gilding the Ghetto* (undated) 4.
31. In Newcastle-under-Lyme, the Law Society's Referral List shows that of six firms, two admitted not specialising in immigration and nationality cases, and one of these did not specialise in welfare benefits and tribunal assistance. The other four firms did everything and even the two most modest still offered an impressively comprehensive service.
32. M. Zander, note 17 *supra,* 78.
33. Royal Commission on Legal Services, *Report* (1979) Cmnd. 7648, ch. 8, para. 15.
34. The proposals made by the Commission involve discontinuing the practices of some centres of operating under a management committee of residents from the area of the law centre.
35. Note 33 *supra,* ch. 8, para. 19.
36. *Id.,* ch. 8, paras 19-20. By implication law centres were not something which Urban Aid should be providing.
37. *Id.,* ch. 8, para. 20.
38. C.D.P., *Limits of the Law* (1977) 6.
39. *Ibid.*

40. *Id.*, 48-49. The C.D.P. early on found itself in a contradictory position. Its
> brief rested on three important assumptions...that it was the deprived themselves who were the cause of urban deprivation...that the problem would be best solved by overcoming...aparthy and promoting self-help...that locally-based research...would serve to bring about changes in local and central government policy

C.D.P., *Gilding the Ghetto* (undated) 4. Research produced suggested changes along lines quite unacceptable to local or central government and there was pressure to close down the C.D.P.s.

41. See P. Forman, "Weimar Culture, Causality and Quantum Theory 1918-27: Adaption by German Physicists and Mathematicians to a Hostile Intellectual Environment" in C. Chant and J. Fauvel (eds), *Darwin to Einstein* (1980).
42. 71.3% of the income of the profession in 1968 was derived from real property: 55.6% from conveyancing; 13.6% from administration of estates and probate; and 2.1% from leases: M. Zander, note 17 *supra,* 38.
43. J. A. G. Griffith, *Politics of the Judiciary* (1977).
44. C.D.P. workers were seen as political agitators in some areas: C.D.P., *Gilding the Ghetto* (undated) 6.
45. I. W. Duncanson, "Balloonists, Bills of Rights and Dinosaurs" (1978) *Public Law* 391.