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Acts of Assistance: Navigating the Interstices of the British State with the Help of Non-Profit Legal Advisers

Alice Forbess and Deborah James

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Abstract

This paper explores everyday interactions with the British welfare state at a moment when it is attempting to shift and transform its funding regimes. Based on a study situated in the offices of two London legal services providers, it draws attention to the role of a set of actors poised between local state officers and citizens: the advisers who carry out the work of translation, helping people to actualize their rights and, at the same time, forcing disparate state agencies to “speak to one another.” Advice and governmental services providers are increasingly part of the same system, helping to correct each other’s faults. At the same time, legal advisers’ work runs counter to the state’s aims when formal legal process is used to challenge unfair legislation. The picture is neither one of a separation between state and civil society, nor is it one in which a monolithic state is ineluctably eroding the independence of the third sector. Instead, ever more complex, blurred and idiosyncratic tangles of state, business and third sector are emerging in the field of public services.

Keywords: advice, relational theory, ethnography of policy, social welfare, evidence, voluntary sector

The role played by the many officers who staff bureaucracies has recently come into ethnographic focus in the work of anthropologists. In the modern French welfare state, for example, these people are said to play a “key role” in defining policy (Dubois 2009: 222). They make decisions on individual cases, often using “their discretion in the orientation of their practices and the definition of their attitude” and basing their decisions on highly idiosyncratic moral judgments about whether welfare beneficiaries are deserving or not. According to Dubois, it is the sum of these decisions, practices and attitudes—rather than the designs of those higher up in the system—that comprise “concrete public policy” (Dubois 2009: 222). While the actions of such actors should not be seen as “inherently evil,” since bureaucracies contain “progressive elements” (Heyman 2004: 491), a critical policy ethnography should be attentive to the importance of their actions (Dubois 2009, see also Dubois this volume).

The present article contributes to the same arena of ethnography. But instead of exploring the practices of “street level bureaucrats” (Lipsky 1980), it considers the work of a different group of actors: the givers of advice, often framed in legal terms but not necessarily so, who staff the many law centers, citizens advice bureaux, and advice charities that proliferate in a modern welfare state – in this case the United Kingdom. The state at the local level provides its services in an uncoordinated manner. Different departments exist to provide diverse resources, and increasing levels of professionalization are required to navigate between these, but those at the lower levels of each separate bureaucracy are often increasingly inexpert. Advisers have become increasingly essential to help people negotiate the tricky terrains of existence, and to translate between, mediate or challenge the often inappropriate decisions made by the kinds of bureaucrats Dubois describes (Eule 2012; Good 2007; Moorhead and Robinson 2006: 27-28; 35). In England and Wales,¹ such assistance is particularly necessary in the closely interrelated areas of indebtedness, housing, employment, social security, and immigration and asylum: matters which often converge to form “problem

clusters” (Moorhead and Robinson 2006; Pleasence et al. 2004).

Although the state is often referred to in the singular, reflecting how citizens experience it as monolithic and indivisible (Abrams 1988), writings on the everyday state also show the divergent and inconsistent ways in which citizens engage with it locally (Fuller and Harriss 2001). In the English welfare state, social security is administered via a particularly labyrinthine multiplicity of different agencies. People are required to negotiate with an array of institutions, each with its own rules and procedures, in order to actualize their rights. Furthermore, problems arising in one area often have unanticipated effects on others. At the local level, advice-givers attempt, as brokers, to find ways of traversing these gaps and of forcing bureaucrats to communicate with each other, and sometimes confront inadequate decisions by taking more confrontational steps that may end in litigation. The government’s recent attempt to reform these fragmented arrangements and cut the legal aid funding on which they depend, through the introduction of a more seamless social security system known as the Universal Credit, will likely create new disjunctures and faultlines, augmenting the need for advice while simultaneously cutting the funds necessary to pay for its provision. Contributing to the ethnographic exploration of the relational state as it emerges from the interactions of officials and citizens, our article explores the role played by these intermediary/advisers in facilitating state-citizen interactions. They expertly shape such interactions by translating complex life circumstances into persuasive cases framed in terms of appropriate legal definitions. It is by highlighting these actors’ engagements with officials from various state agencies, on the one hand, and citizen/clients, on the other, that we shed light on the question of “how state formations are continuously recreated and transformed through embedded relations” (Thelen, Vettters, von Benda-Beckmann, this volume).

The ethnographic examples we present were documented in a context of accelerated change, where the role and means of advice were being rethought and debated by NGO advisers, solicitors, and policy makers. Legal aid is the main source of funding for many advice services in England and Wales, but as of April 2013, with the exception of a handful of services, this legal aid was cut for social welfare law cases: those involving problems such as debt, housing, social security, employment, immigration, and asylum (see Biggs 2011; Moorhead and Robinson 2006). Our fieldwork details how two non-profit legal services organizations grapple with the loss of a significant proportion of their funding, how this is reshaping their interactions with clients and various state agencies, and how they attempt to make the state more relational against the background of policies aimed at producing the opposite effect.

Legal Aid, Legal Advice, and the Fieldwork Setting

Simple advice provisioning might appear to have little to do with legal aid: the former is associated with organizations such as the Citizens Advice Bureau (CAB), while the latter is thought of in relation to trials and courtrooms.² But in an adversarial common-law system like that of England and Wales, where the law is to a significant extent made and administered by judges in ordinary courts and where litigation routinely alters legislation through an accumulation of precedents, access to a legal expert familiar with recent case law is essential to the success of legal action and underpins the giving of the most basic advice in the most lowly of settings.³

The architects of Britain’s welfare state understood, on the eve of its establishment, that funded legal advice would be central to establishing citizen equality before the law. What was less fully grasped was the centrality of such advice in enabling fairness of access to the services that welfare state was itself to provide. The 1942 Beveridge Report, foundational to the establishment of Britain’s welfare system, aspired towards universally available legal aid

to pay for professional assistance, in a situation where increasing amounts, and the increasing complexity, of legislation was deemed to have made this necessary. The 1949 Legal Aid and Advice Act followed not long afterwards (Biggs 2011: 19-22). Subsequently, eligibility criteria were increasingly tightened, gradually excluding all but the poorest claimants, and—under the 1997 Labor government—restricting the areas of the law covered by legal aid. Finally, departing from Beveridge's vision of legal aid as a guarantee of universal access to justice and establishing the setting of austerity in which our study was conducted, the Conservative/Liberal Democrat coalition, as part of its austerity package, passed the 2012 Legal Aid Sentencing and Punishment of Offenders (LASPO) bill, which cuts most civil cases out of the scope of legal aid.

Over the years, legal aid has been administered by a series of bodies rather than by lawyers themselves: most recently (and during our study) by the Legal Services Commission (LSC), a body nominally independent from both the state and from legal professional organizations. Most of the administrative duties of the LSC were subsequently incorporated into the Ministry of Justice. The funding regime, too, has become increasingly circumscribed and bureaucratic. In its early days, legal aid was disbursed through solicitor practices on the basis of hours worked on each case, but in the mid-2000s the LSC introduced a new, fixed fee system of thresholds. This limited the amount of time spent on simpler cases, or at least the pay that could be claimed for this time, and imposed much stricter audits on how money was spent in more complex cases (James and Killick 2012: 438).

If funding is increasingly restricted, legal advice services have become more diverse. They are delivered by a range of organizations, including statutory providers, third sector organizations, and private businesses. Since the Thatcher era, as a result of state agencies routinely subcontracting public services to the most successful bidder (see Moorhead 2001), the demarcations between legal service providers have undergone continual renegotiation, giving rise to a cross-pollination of values and approaches. Government contracts often force organizations governed by distinct and even opposing logics to work together, developing a common ground. For instance, when one advice-giving organization competed against a private company for a government contract and won, it later subcontracted work to this former competitor: the advice-giving organization had become involved in defining how the services were provided, thus influencing the values and ethos of the subcontractor. The separation of such spheres is an aspiration in line with theories of modernity and democracy, but one that flies in the face of the actual tendency of such arenas to overlap (Narotzky and Smith 2006), especially in settings characterized by the outsourcing logics associated with neoliberalism.

The extent to which advice is “legal” escalates, depending on the level to which it is referred and—accordingly—the professional qualifications of the adviser. Corresponding more closely to the familiar image of citizen advice, the first tier involves generalists, many of them volunteers, who attend to a client's problems at the first port of call. More complicated legal problems are then referred to second tier advice-providing organizations that employ solicitors and other experts specializing in key areas of social welfare law. Finally, the third tier of advice involves representation in court. Generally, advice agencies' approaches to social intervention tend to be framed either as “legal services” or—less legal in focus—“social care,” although in practice, lines are blurred and some organizations combine approaches.

In the two London not-for-profit legal services providers in which our fieldwork was conducted—Southwark Law Center (SLC) and the Advice Center at Community Links (CL)—this escalation upwards is in evidence, in different ways. Aiming to fulfill the need for specialist legal advice alongside other more general forms of intervention, CL is an East London charity. Its advice center, employing four solicitors, offers mostly first and second tier

assistance. An administrator assesses potential clients. If their problem is deemed “legal” in nature and their income entitles them to legal aid, they are referred to one of these solicitors; if ineligible, they may be sent to another advice providing agency, be referred to the volunteer advice arm of CL, or receive the same assistance as legal aid clients but with funding from another income stream.⁴ SLC, our other fieldsite, is a community-owned and -operated charity dedicated to providing specialist legal services in the areas of immigration, employment, social security, and housing.⁵ In contrast to CL it works by referral only. Clients come by appointment to see a specialist in the relevant area of the law, while non-clients are normally referred to a local first tier advice organization. It is subject to the Law Society's more stringent regulatory regime, which requires a high proportion of a Law Center's staff to be fully qualified solicitors. Advisor/client interactions are also subject to a more formal rigor. For these solicitors and their paralegal assistants, the act of giving advice may never be informal because actions taken during the advice encounter have a constitutive and binding effect, shaping the future of a case. Speaking to a person about his or her problems can be taken to constitute a retainer, thereby rendering a solicitor responsible for the case. Accordingly, SLC advisers do not give casual advice to non-clients, but instead contribute to the provision of more informal advice by cultivating close relations with local first tier agencies and training their staff. Thus, SLC is an organization of experts that operates as part of a network, receiving referrals for more complicated legal matters from front line advice providers, and educating advisers employed by the latter, as well as local government decision makers, regarding the correct application of the law.

When the Coalition Government significantly slashed legal aid funding from April 2013, both organizations secured short-term alternative funding to keep their legal advice services open, but no substantial and sustainable long term funding stream has yet been secured. Where some SLC cases were complex—with adviser-client interactions lasting months or years, and with the resulting relationship often outlasting cases—the interactions in CL cases were more limited. The complexity of the former was due to its position as a referral only organization, whilst the latter took any qualifying cases that came through the door, most of them routine.

Our fieldwork methods in the two organizations included participant observation and semi-structured interviewing, documenting caseworkers' consultations with clients, tracing the progress of cases, analyzing case documents, observing tribunal hearings, and interviewing staff involved in administration and billing. A total of forty-six cases were encountered, of which seven were followed and documented more closely. Four of the caseworkers we shadowed were fully qualified solicitors, including Emma (SLC).⁶ Two were paralegals, one of whom, Robert (SLC) was a trainee solicitor while the other, Luka (CL), was not training as a solicitor but had three years of legal training and two years of experience volunteering at a Citizens Advice Bureau. Their clients included people afflicted by the “problem clusters” mentioned above, which may be brought on by illness, mental or physical, the breakdown of relationships, youthful inexperience, poor language skills, or interactions with the system that result in prosecution or pursuit of arrears that clients cannot, or in some cases ought not be required to, repay. Others were unable, because of officials' ignorance of the legislation or unwillingness to give them a fair hearing, to access benefits to which they were entitled.

The state agencies with which such clients routinely interact include local institutions like local administrative departments responsible for housing, social services, and council tax collection, and national ones such as the Home Office (including its division the UK Border Agency); the Department of Work and Pensions (including its Jobcentre Plus and other agencies); and the Inland Revenue (HMRC). The social security system combined a range of funds: Council Tax Benefit, Child Tax Credits, Housing Benefit, Income Support, Disability

Living Allowance and Jobseeker's Allowance and so forth. These were administered by various agencies, in a poorly coordinated manner. In many cases, the temporary suspension of one benefit triggered the retrospective revocation of others. This resulted in “overpayment demands,” asking the claimant to return money they had already been paid, often thousands of pounds, or face benefits fraud charges. This commonly resulted in rent arrears that could easily bring financial ruin and homelessness. Cases typically involved appeals against official decisions to repudiate a person's eligibility for a fund, or challenges to the suspension of a means-tested benefit. In other words, the problems resulting from the failure of a key aspect of the welfare system on which the client has become reliant, are as serious as, or more serious than, the elements of the initial “problem cluster” itself. Much of the advisers' work aimed at halting this cascade of problems by addressing them within the limited appeal time frames

Legal Advice and the Local State: Between Litigation and Negotiation

Advisers' relational strategies in dealing with state officials spanned a continuum ranging from litigation on the one hand to negotiation and collaboration on the other; from a normative approach that called upon state officials to follow the rules, to more discretionary, and personal, entreaties. While litigation often entails an adversarial stance towards local state officials, negotiation is built on collaboration, the aim of which is to build a culture of mutual trust between local authorities and service providers. The two approaches are not mutually exclusive: different types of legal problems fostered different degrees of adversarialness and/or negotiation. On occasion, one was used to buttress the other. The threat of litigation, for example, was often used as leverage in negotiations. At other times, legal services providers and local authorities joined together in programs aimed at preventing housing evictions, setting aside adversarialness in the name of mutual cooperation. Conversely, in some immigration and housing cases, adversarialness could be exacerbated to the point where solicitors sought a judicial review, in which both sides were obliged to disclose all their evidence before a judge.

Several SLC advisers pointed out in various ways that their work is about actively defining, through their cases, how the law should function in a fair society, thus potentially making legal history. In theory, this involved continually engaging with the latest case law, with the ultimate aim of challenging legislation through the courts and of going beyond the application of the law in order to probe tensions within and openly drive challenges to unfair legislation. Each case that comes through the doors of SLC and CL may go all the way to the Supreme Court. Even if such instances are relatively rare, the fact that they exist, say SLC employees, reflects a broader commitment by the increasingly embattled legal professionals to ensure that these formal legal channels remain open to all. Another way in which solicitors actualize an ideal of justice is by ensuring that cases are taken to their logical conclusion. In deciding what course of action is best for a client, they claim to be guided by their duty to the client, to the court, and to the LSC and professional standards. Their judgment, however, may be disputed by the clerks at the LSC who compute what funds are payable. In some cases, LSC argued, the work done after a certain point (when a temporary solution had been offered by the opposing side) should not have been carried out under a public funding certificate, but under a separate funding regime called “legal help”; ultimately, in such cases, LSC refused to pay for the work undertaken by the Center.⁷

Adversarialness is a source of ambivalence for advisers like Emma, an SLC solicitor specializing in housing law, who sees it as tactically useful and even ethically necessary, but at the same time aspires towards a more reconciliatory approach. In homelessness cases, the council sometimes rides roughshod over the vulnerabilities of potential evictees. Council

employees, by routinely ignoring the “nice letter” written by SLC solicitors, “push us into being aggressive and adversarial.” She wishes that they would embrace a “culture change.” The pressure continually to cut down expenditures has greatly exacerbated levels of adversarialness—in this case between SLC and the local authority—since the 1990s, when Emma worked for another organization addressing homelessness. While there, she was encouraged to believe the story of every woman claiming abuse so as to avoid any possibility of returning a victim to her abuser, but now there is a tendency to avoid helping the vulnerable clients she represents. This, as SLC personnel acknowledge, is due to diminishing housing stock; although local authorities have a legal duty to accommodate such clients they lack the resources with which to provide accommodation, and this forces them to focus on gatekeeping, turning legitimate housing applicants away whenever possible. As SLC's housing law expert explained to us, the Housing Authority “will often prevaricate and obfuscate by providing accommodation to a destitute or homeless family for a short period, of say seven days or even less in some cases, but refuse to comply with [their] duty to provide longer term accommodation until the very last moment.” Aware that the most fruitful approach would combine adversarial elements with aspects of the negotiation which seemed more desirable, Emma and others wished there was a way to move past this “negativity.” In cases concerning citizenship status, the solicitor adviser has the power—for example with would-be immigrants—to resolve and obliterate an “illegal” past, but this often involves delicate negotiations with different state agencies. Vulnerable people often exist “below the radar” of the authorities, afraid to approach them and claim the assistance to which they may be entitled. As one CL solicitor observed, “Unless you make contact, [the authorities] can't help you.” In the case of one woman with housing problems and an uncertain immigration status, she “was afraid to make contact and ask for emergency housing assistance and immigration advice because she was mentally ill and feared she would be sectioned. Hence, she remained on the streets and no one knew she needed help.” In such cases, the adviser guides the client through the process of approaching the authorities, whilst also trying to deflect any negative repercussions.

Advisers often orchestrated complex interactions intended to secure for the client a range of forms of assistance. This involved contacting various state agencies, drawing them into a complex web of relations. To facilitate these interactions, advisers created diachronic representations of the client's history of contacts with the state, describing these in ways that would be legible to state officials and enable them to act on the information. By carrying out all these tasks, the adviser in effect “conjured up” the state for her client in a variety of relational guises.

Some of these incarnations were more benevolent than others. One set of officials, for instance those in the Home Office, might be the hostile party delaying and obstructing a resolution of the case, whilst other officials, such as those in the local Social Services, might step in to offer psychiatric care, emergency shelter, and so on. Given the shifting, even contradictory, positions of the state in these various guises, advisers' skills at coordinating claimant interactions with the state were essential. The day-to-day management of a case might involve delicate interactions with officials in various state agencies, sometimes pressing for a decision, at other times biding one's time to increase the likelihood of a positive outcome. In order to do this, the paralegal in one case drew on her grasp of the contingencies under which counterparts in the state departments operated. For instance, she knew the name of the Home Office officer charged with making a decision, and asked for updates over the telephone. Possessing knowledge of the targets that structured the work of state officials, the adviser could accurately anticipate the actions of these officials and strategically plan around them.

Advice can be said to “make the state work,” setting to right errors of public

administration and policing the way local agencies fulfill their obligations to citizens. Tempering earlier statements about the adversarial character of relations, one informant pointed out to us that the council had agreed to fund a significant proportion of SLC's budget after the legal aid cuts. This, in his view, amounted to the local authority making sure that its own low-level employees acted as they ought. The extent to which such a role became apparent depended both on the local authority's attitude to advice, informed by ideological and political commitments, and on other funding contingencies. For example, between 2004 and 2007, SLC collaborated extensively with the council and with a local advice center in order to *reduce* the number of tenants being evicted from council properties. SLC trained both council employees to identify and help tenants at risk of eviction, and volunteer advisers from the local community to give advice to these tenants. The council was also asked to revise its policies, leading to a large drop in evictions. After three years, however, the LSC stopped funding this project, arguing that SLC should instead concentrate on "acts of assistance" (narrowly framed legal matters).

While collaborations between legal advice-givers and the state frequently succeeded in resolving serious problems, they also blurred boundaries, hence diluting the adversarial tactics necessary for truly robust legal advice. "If you get pally with the other side" it could lead to conflicts of interest and "muddy the waters ... it becomes harder to completely look out for your client's interest," said Emma, invoking a hypothetical case where a solicitor might advise a tenant under the council's auspices one week, and next week—switching sides—might meet him as a court duty adviser and take his case against the council. The blurring of boundaries can damage the legal expert adviser's neutrality, on which his/her power to mediate is founded.

Like SLC, CL tries to cultivate collaborative interactions with its local authority. Levels of collaboration vary according to the unique characteristics of the case and the state agency under whose jurisdiction it falls. For instance, likewise helping to prevent evictions, CL advises council tenants with the full support of the relevant council office. In the area of welfare benefits claims, however, the council seems more inclined to limit access to advice, on the grounds that it keeps people dependent on state welfare and that reducing or eliminating it would result in more people getting off benefits and into work. Yet such rejections could later result in closer synergies, as happened when the council developed its own advice structures to serve these goals. In cases of indebtedness, collaboration held sway: CL advisers' relationship with council staff enabled them to negotiate lenient repayment plans on behalf of clients.

In their interactions with officials, advisers from both organizations often tried to help by providing advice to both officials and the clients they are supposed to serve. Thus, CL collaborated with local counterparts within the council's employment office to develop a mutually beneficial program suggested by a group of advice staff that understood the needs and pitfalls faced by government employees. The resulting translation and form-filling service operated by volunteers led to a 70% reduction in claims rejections arising from mistakes and omissions on forms. The two organizations then worked together to push for the nationwide adoption of this plan, but difficulties in obtaining approval from head office led to the termination of the service (Barbour 2007: 52). Here, micromanagement from the top was a problem shared by both CL advisers and local government employees, generating some solidarity between them. Disjunctures may thus occur between front line and central tiers of state agencies, enabling advisers to establish a rapport with their official counterparts in the local state, blurring the boundaries between them, and generating solidarity against those higher up the chain.

At CL, such solidarity could provide a basis for negotiation on behalf of clients. Luka, the paralegal mentioned earlier, told us that he approaches government officials by first

making it clear that he assumes they are keen to follow the law, thereby implicitly holding them to this assumption. Then he simply proves that they have failed to do so. This technique defuses any personal adversarial element that might otherwise hamper negotiations. “You must always begin negotiations from the other guy's point of view” Luka explains. In a case where a tenant is threatened with eviction, he tells the council official, “If you accept a small monthly repayment of the rent arrears, at least you'll get something. Otherwise you will never see any of the money.”

The manager of CL's advice center, herself a solicitor, told us they actively cultivated this negotiation-based approach. When asked why few of CL's cases incur the higher levels of legal aid funding that accompany referral upwards, she explained that advisers avoid long, litigious situations, instead prioritizing quick settlements, which are thought to be more advantageous to the client.⁸ To this end, mutual trust and win-win solutions are promoted in interactions with local officials. CL thus recruited the local state to partake (at least to some extent) in its vision of an integrated and functional community. When negotiating directly on behalf of the vulnerable, caseworkers were particularly effective if they succeeded in combining rule-oriented and more “relational” logics, professional authority and long term access to friendly contacts at government agencies. The organization's symbolic capital ensured that cases would be judged on their individual merits rather than, as all too often happened, on the plaintiffs' ability to speak for themselves.

This was illustrated in the case of Mr. Patel, a native Punjabi speaker. Mr. Patel's marriage had recently ended, and to add to his anxieties, Internal Revenue (HMRC) was demanding repayment for a Child Tax Credit he had been erroneously granted. The “overpayment request” from HMRC stated that the amount was owed because he had failed to inform the agency of his changed domestic circumstances, but Mr. Patel and his wife would have been entitled to the same amount of money had they simply passed on this information as they ought to have done. In effect there was no overpayment; they were being fined for failing to notify HMRC of their separation. Since Mr. Patel lives on Job Seeker's Allowance (one of a complex array of possible forms of welfare), repaying £360 was well beyond his means. Benefits claims put the burden of proof on the claimant, and claims adjudications carried the force of law unless successfully appealed. As Luka put it, “You're always guilty unless you prove otherwise. It's upside down, not like in court ... In effect they are saying ‘Prove us wrong.’” In the case of HMRC demands, there is no appeal tribunal – to contest these, one must negotiate directly with HMRC – but poor language skills and a lack of basic system literacy rendered such negotiation impossible for most claimants. Furthermore, when the adviser spoke to HMRC, requesting “notional offsetting”—a legally established payment option whereby the overpayment is subtracted from the Tax Credits to which the client is eligible, effectively canceling the debt—the HMRC officer turned out never to have heard of the provision, although after some consultation the option was acknowledged. When even a professional adviser had difficulty actualizing his client's right to offset charges, Mr. Patel would have stood little chance on his own. HMRC has its own rules that are distinct from those of other state agencies, but this was obvious neither to someone like Mr. Patel, who could barely distinguish between the various state offices with which he came into contact, nor even to an officer of this arm of the state. It was the adviser, with his considerable knowledge and experience of similar cases, who was best able to discern how to resolve the situation in the interests of the client, and who carried sufficient weight when addressing his counterparts in the local state.

Legal Advice and Clients: friendly objectification and the creation of evidence

In the relations between advisers and clients, friendly encouragement was predominant.

However, while mediation and negotiation are central to the practice, providing advice is also a gatekeeping practice and, to this end, it can involve unyieldingly strict interactions with clients, since lawyers and paralegals are being called on to monitor access to state resources and to the formal justice system itself. Lawyers and paralegals do so, in part, by creating robust evidence. Evidence is a key object of contestation in transactions between various state organs, advisers, and individuals seeking to actualize their rights. In building a legal case, caseworkers gradually strip away extraneous detail in order to arrive at a persuasive line of argument (Good 2007: 15), performing a work of translation between the man on the street and the culture of a legal system whose logic and rules of evidence are far from obvious. If this work is not carried out expertly before filing a legal case, the right evidence may be unwittingly left out from the witness statement, leading to its exclusion and thus the collapse of the case.

Robert, a trainee solicitor at SLC, explained that the evidential arrangements in the legal system do not simply aim to ensure that each citizen has his or her day in court, but also to prevent unnecessary litigation. The advice giving explored in our ethnography was largely aimed at helping people stay *out of court*. People without legal advice are more likely to go to court, but it is often more advantageous to negotiate a settlement before proceeding to a hearing, avoiding the possibility of being made to pay the other side's costs. Clients, Robert points out, are not always aware of this and tend to get passionate about their cases, building great expectations around the tantalizing promise of justice. The adviser's job, in such cases, is to provide perspective:

...to refocus them on what the tribunal will actually do, because their ideas are often based on complete misconceptions. [The judge] will want to know very specific things. ... A lot of people are using the word discrimination but they do not mean discrimination in the legal sense, only in the sense of being treated differently. They have a different understanding of the word and concept to that of the judge and the tribunal. People are also ill equipped to put their evidence in the witness statement. They do not know *what constitutes valid evidence* and *what they need to prove*. [emphasis added]

If the right evidence is not included in the witness statement, it may never be admitted. Yet many clients do not respond well to written communication or lack the linguistic or analytical skills to grasp what is required. They may provide the wrong evidence or miss deadlines. "Then the judge [says]: 'Your problem!' And that is right in a sense. He is not an adviser; he is there to decide on the legal issues. Case law establishes that he is under no obligation to dig things out."

Robert illustrated this with a case he had encountered during a one-off advice session. People, he said, understandably tend to get passionate about their cases: "when you are wronged you get angry, withdrawn, depressed... People lose all sense of worth because of a loss of purpose." When this happens,

part of the adviser's job is to help people deal with that... [by acknowledging] that you understand they have been wronged but [also explaining]... how their obsession is different to the issue of fairness. [The] claimant needs to be told to give up worrying and obsessing about the case, abandoning himself to a spiral of difficulty, relationship breakdown, financial loss, all of it encompassed by this massive thing in their mind – the legal case. I try to stop this happening. I think legal advice can help people to reclaim a bit of their self-esteem and understand how to move on.

In discussing how lay persons' beliefs about the law relate to legal process, anthropologists Conley and O'Barr observed that some people tend to take a rule-oriented approach to their problems, evaluating them in terms of neutral principles and emphasizing these principles in their accounts. Others tend to display a relational orientation, "characterized by a 'fuzzier' definition of issues whereby rights and responsibilities are predicated on 'a broad notion of

social interdependence rather than on the application of rules” (Good 2007: 21, citing Conley and O’Barr 1990; see also Genn 1999: 256-257). Relationally oriented perspectives are not irrational or unstructured, but they conform to a different logic to that of the legal system, rendering them ineffectual in this context. Advisers, then, are needed to perform a work of logical translation, conveying human expectations into legal context. This throws light on the relational approach to the state proposed by the editors of this special issue (introduction to this volume). Relationality is not limited to personal, face-to-face interactions between citizens and representatives of the state; it is also central to the legalistic approach to the state adopted by legal advisers, who expect—or instruct—officials to know and observe the rules. In the eyes of the law, normatively guided actions are opposed to the exercise of personal discretion, which could be seen as more relational in the sense that officials are called upon to make decisions based on more personal considerations. However, the law incorporates and recognizes the exercise of discretion alongside the application of rules. According to Lord Bingham, the legal profession views them as complementary: the exercise of discretion in cases where the rules would lead to injustice is necessary, but too much discretionary power would lead to tyranny (Bingham 2010: 48-54). In light of these considerations, one can argue that all state environments involve pragmatic configurations – different relational modalities – that may combine personal/ discretionary and impersonal/rule-centered strategies. The ethnographer’s task then is to understand exactly what the configuration is in a specific case and why. In our case, the advisers are experts who can strategically play upon the boundary between personal discretion and normative rigor, drawing on a thorough understanding of the latter (including what potential pitfalls are entailed in a rigid application of the rules, and which circumstances permit and validate the use of discretion). Needless to say, an unaided client would be far less equal to the task, not knowing how to effectively draw upon the relational opportunities (both normative and discretionary) offered and created by interactions with the state (Genn 1999: 256-257).

The act of creating evidence is also an act of objectification (Engelke 2008), carried out both by low-level government officials and caseworkers themselves in the course of their interviews. To an extent, advisers have little choice but to participate in gatekeeping activities in reference to welfare benefits. For instance, when in the course of an interview Luka suspected that a client was misrepresenting his circumstances, he felt he ought not to take the case. Instead, he said, “It is my job to tell you that you are applying for the wrong benefit.” When the client persisted, Luka helped him fill out his appeal form, explained the process, and ended the interview. He intended to close the file because the case was likely to fail. And failure also jeopardized funding.

Advisers aimed to mitigate the disempowering effect of interactions with the state by educating clients about their rights. In one CL case, an adviser helped a client to resist eviction. It was, ironically, the client’s attempt to *stop* depending on welfare benefits that had initiated the chain of events that led to his eviction from his council flat. David was a twenty-two-year-old naturalized Ugandan. He arrived in the UK at the age of thirteen and was raised in foster care, having no family network of his own. At seventeen, he was granted a council flat and enrolled in college, in addition to volunteering and taking paid work on NHS health campaigns. During these stints of temporary employment, David informed the Job Seeker’s Allowance agency, but he was unaware that he was also obliged to liaise with the Housing Benefits office. Unbeknownst to David, this resulted in temporary suspension of his rent subsidy and the accrual of rent arrears. Funding cuts meant that David no longer had access to the social worker that had formerly advised him, and he tried unsuccessfully to resolve the problem on his own. Overwhelmed by the pressure, he then dropped out of college and for eight months ignored the further accruing rent arrears. He came to CL having missed his eviction court date and about to be ejected from the flat. Luka negotiated a repayment

schedule to clear his rent arrears, and explained that the prospects of retaining the flat were slim and that David would have to challenge the warrant in court. Because of David's youthful inexperience, Luka saw his role as an educational one, aiming to prevent the possible recurrence of such problems. David should have sought advice immediately rather than ignoring the problem or trying to resolve it on his own; the only remaining strategy was to prove to the judge that David was “constant,” by having him make small payments towards his debt and asking for another chance. “The judge will give you a chance, but you have to [prove that you know your responsibilities]. You must stay in the present to solve this. Forget about the past, forget about the future.”

Here, Luka was further pursuing ‘objectification’ through his insistence on the need, as a long-term strategy, for David to adhere to the rules. In the short-term, he was also pointing to the importance of presenting facts as evidence acceptable in court. As shown by studies of other Law Centers, the adviser was, in effect, persuading the client to follow the rules by guiding him in appropriate attitudes to evidence. This friendly/educative role, occasionally verging on the paternalistic, was combined with a stern “recognition that due process must be followed” (James and Killick 2012: 450), and if necessary compliance with it enforced.

Conclusion

The welfare state in England was envisioned as executing social interventions through concerted programs implemented by state institutions. Its designers envisioned an equally centralized and universalistic approach to legal aid. Perhaps they did so with prescience, given the extent to which the separate bureaucracies proliferating at the local level— as demonstrated here—have become fragmented, leaving the very people intended as the beneficiaries in sore need of advice. Mediators, lawyers, and paralegals draw on both personalized and formal repertoires to make the state relational in different ways, as well as enabling it to function as they feel it ought. Our fieldwork reveals how, despite fragmentation and the outsourcing of state processes, there is a basis for certain paths of communication through mediator advisers, in turn producing forms of integration.

The position of advisers who mediate between the state and citizens is, in some ways, not unlike that of brokers and mediators more generally (James 2011). In the well-known discussion of the village headman in British Central Africa, his dilemma arises from his being subject to irreconcilable demands based on conflicting value systems: the expectations of his kin and followers (in our case the advisees) and the political, legalistic and impersonal logic of the state (Gluckman et al 1949). The headman is unable to please the latter without upsetting the former and vice versa. However, his knowledge of the extent of his local support, and of its heterogeneous nature, allows him some room for maneuver (Kuper 1970). Advisers' success in helping their clients depends, in similar vein, on their knowledge of and skill in exploiting the gaps between different state (and supra-state) agencies, sometimes using a relational and at other times a legalistic logic (or, most often, combining the two). Their room for maneuver is enhanced by claims of independence both from their clients and from the state – they can be trusted to mediate fairly because they are distinct from both parties involved in the mediation.

The assumption of their independence stems from the widely accepted premise of the opposition between state and civil society (see Hann and Dunn 1996): a premise which serves here as a helpful fiction. In the area of legal aid (but not only here) charities have long depended for their survival on funds paid by the state when it commissions them to provide public services. This money has increasingly come with strings attached, with commissioners imposing ever more stringent restrictions, which have shaped advice activities in crucial ways. It would be inaccurate to claim that legal charities are merely carrying out the

directives of state agencies, but their financial dependence on state commissioners has meant that their room for maneuver is frequently far smaller than the ideology of the separation between state and civil society would imply. But this ideology is the cornerstone on which their power leverage vis-à-vis state bureaucracies is founded.

Charities are attempting to shore up their independence by developing alternative forms of social finance that rely on the market and investors as well as the state, while that independence is simultaneously being eroded as they become drawn into state bureaucratic projects which seek to reorganize the world in specific ways. The project of addressing and redressing social inequalities through legal advice and legal interventions, a project formerly supported by the state, is in danger of obliteration for lack of funding. But through constructive struggle, charities enlist some segments of state bureaucracy against other segments. The picture is neither one characterized by a separation between state and civil society, nor is it one in which a monolithic state is ineluctably and progressively eroding the independence of the third sector. Instead, what we are seeing is ever more complex, blurred and idiosyncratic tangles of state, business and third sector in the field of public services.

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Notes

¹ The administrative division is relevant to our cases. Other parts of the UK have their own legal systems, parliaments, and advice arrangements.

² CAB, volunteer-operated but with some state funding, helps people resolve problems by providing advice and influencing policymakers. (<http://www.citizensadvice.org.uk/>, accessed 14th August 2012.)

³ The English legal landscape, combining European statutes, Parliamentary statutes, and common or case law (Bingham 2010: 37-47) is unusually complex and inaccessible to ordinary citizens.

⁴ CL innovates by testing and refining procedures and training community members. They envisage shifting from crisis management to prevention, and aim to adopt ever more holistic approaches.

⁵ SLC, part of a wider UK federation, resembles the US Law Center movement of the 1970s: it seeks to make the law freely available to ordinary people, and stresses the provision of high quality legal services and the promotion of legal education by various means.

⁶ All names are pseudonyms.

⁷ Although LSC denial of funding for work carried out was reversed on appeal, SLC was nonetheless forced to expend resources on appealing erroneous decisions.

⁸ See endnote 5.

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