

Class and Advice-Seeking:
Comparative Insights

Rebecca L. Sandefur
Assistant Professor of Sociology and (by courtesy) Law
Stanford University

Jeanne Charn
Director, Bellow-Sacks Access to Civil Legal Services Project
Lecturer on Law
Harvard Law School

March 3, 2009

This paper was prepared for the biennial International Legal Aid Group meetings, Wellington, New Zealand, April 3, 2009. Parts of the empirical analysis were made possible by Pascoe Pleasence and the Legal Services Research Centre, who generously shared data, and by a Stanford University Office of Technology and Licensing Research Incentive Grant. This paper reports on work in progress. Please contact the authors before citing, quoting or circulating.

Abstract

Our purpose in this paper is to identify aspects of justice institutions that might be manipulated to reduce socioeconomic inequality in access to justice. We do this through a two-country comparative case study of socioeconomic differences in public experience with civil justice troubles involving money and housing. We focus on whether individuals take any action to try to resolve problems and whence they seek advice about how to resolve them. Given available data, our conclusions are necessarily speculative. We find evidence that some institutional arrangements are better than others at reducing class inequalities in people's propensity to seek advice and take action to resolve civil justice problems. We also find that some institutional arrangements that appear effective at equalizing action-taking and advice-seeking still appear to channel different groups to different kinds of providers.

Introduction

Most civil justice problems experienced by the public are not taken to law. By this point in time, it is well-established that in contemporary market democracies the bulk of public problems that have civil legal aspects and raise civil legal issues¹ never make it to lawyers or to civil justice systems (e.g., Consortium on Legal Services in the Public 1994 (USA); Currie 2009 (Canada); Genn 1999 (England and Wales); Genn and Paterson 2001 (Scotland); Legal Services Agency 2006 (New Zealand); Murayama 2007 (Japan); Mulherin and Coumernalos 2007 (Australia); Pleasence *et al.* 2006 (England and Wales); see generally Sandefur 2008, pp. 346-349). People instead respond to these problems in a wide variety of ways, handling many on their own, electing to do nothing about others, and turning to non-legal third parties for assistance with, advice about, or resolution of still others. A small but growing body of research suggests that different groups of people – different social classes, different racial or ethnic groups, men and women -- handle similar problems in different ways (e.g., Bogart and Vidmar 1990; Genn 1999: Table B1; Genn and Paterson 2001: Table B1; Hoffmann 2005; Miller and Sarat 1980/1981: Tables 4 and 5; Pleasence *et al.* 2006; Sandefur 2007: Table 1; Sandefur 2009a; cf. Kritzer 2008; see generally Sandefur 2008: 346-352). What creates these differences and why they emerge are not yet well understood.

In this paper, we focus on one potential source of group differences in how people handle their civil justice problems: the design of a society's institutions of remedy for those problems. Institutions of remedy include not only law and legal aid, but also the many non-legal sources of advice, assistance and resolution that people may turn to with civil justice problems. One benefit of focusing on institutions of remedy is that aspects of their design

¹ We adopt Genn's (1999:12) illuminating and highly useful definition of "justiciable events," terming them civil justice problems in this paper.

can be influenced by public policy. Another benefit of this focus is that it reveals new information about how law fits in to the larger picture of how publics handle their civil justice problems.

We seek to identify factors that make institutions of remedy more inclusive by comparing public advice-seeking for civil justice money and housing problems in two different institutional contexts: the United States and England and Wales. We focus on three key differences between these contexts: the availability of authoritative sources of problem resolution; the availability of legal aid; and, the availability of legal advice. In comparison with the United States, England and Wales provides a greater variety of all of these. And, English and Welsh institutions of remedy appear to be more inclusive in some ways, but just as exclusive in others. The available evidence is circumstantial, but it is highly suggestive: English and Welsh institutions of remedy appear more effective at getting people across the socioeconomic order “in the door,” seeking some kind of assistance with their justice problems. American institutions of remedy get fewer people in the door, and large class differences exist in who seeks *any* advice and assistance in the United States. However, despite much more generous legal aid than the United States, England and Wales still evidences large class differences in who turns to law for help with civil justice money and housing problems. These differences appear even among problems of similar types.

Institutions of Remedy for Civil Justice Problems

All contemporary market democracies have established, recognized, legitimate, routine means through which members of the public may seek solutions for their civil justice

problems. These are institutions of remedy. One component of a market democracy's institutions of remedy is authoritative: its staff and organizations can provide definitive resolutions to civil justice problems. Law, in the form of courts, tribunals, lawsuits and litigation, falls into this category. But so, also, do many other kinds of organizations that are non-legal in a very specific sense: going to these organizations involves no explicit contact between the public and lawyers, legal organizations, or formal legal processes. These non-legal sources of authoritative resolution include: the complaint-handling offices of administrative agencies that regulate specific industries; those government ombudsmen who have authoritative powers; and, public compensation corporations that handle personal injury claims in some countries. Together, legal and non-legal sources of authoritative resolutions for civil justice problems compose a society's formal institutions of remedy. Institutions of remedy also comprise a whole set of auxiliary providers who complement formal institutions of remedy and sometimes are connected to them. Like formal institutions of remedy, these auxiliaries are third-parties with respect to the public's problems. These include advice agencies, community organizations, mediation services, resource centers, consumer advocacy groups, and the like. Auxiliaries may provide advice, information, referrals, or non-authoritative routes to solution through which parties to a dispute attempt to work a problem out on their own with auxiliary assistance. Figure 1 illustrates this basic framework.

[Figure 1 about here]

While these elements appear in the institutions of remedy of all market democracies, the specifics differ greatly from country to country. The United Kingdom and the United States

are contrasting cases in many respects. The United Kingdom's institutions of remedy provide the public with a diverse set of entry points and a wide variety of providers, including many non-law and non-lawyer services that are empowered to give legal advice or authoritative resolution. The United Kingdom also provides a civil legal aid system that, until the last few years, extended subsidy to a majority of the population. The United States' institutions of remedy fewer entry points, with non-legal third parties generally prohibited from providing legal advice by unauthorized practice rules. Legal aid in the United States is quite limited in comparative context.

In comparative perspective, institutions of remedy in the United Kingdom are rich and diverse. To facilitate people's access to law, the United Kingdom employs an expansive *judicare* system in which the government funds the public's purchase of legal services from the private practice bar. This system has been in place, in one form or another, for more than sixty years; and, for most of that time a majority of the population, including the middle classes, have been eligible for *judicare* subsidies (Griffith 2008; Paterson 1991). Legal assistance is also available from the Law Centres, which employ salaried staff that specialize in social welfare and poverty law. Law Centre services are free, unless a client is eligible for legal aid, in which case the Centre receives the *judicare* fee (Law Centres Federation 2009). In the United Kingdom, non-legal formal institutions of remedy include both regulatory agencies and a number of government ombudsmen, including ombudsmen for housing, local government, financial services, and health services. Not every ombudsman has authoritative powers, but several of these offices provide a source of definitive resolution to the public's problems (Citizens Advice Bureaux 2009a).

Formal institutions of remedy are complemented by a set of well-known, long-established, nationally present advice providers. Headlining these are the Citizens Advice Bureaux (CABx), which provide advice about how to handle justice problems – and many other kinds of problems – via the internet, over the phone, and in person in more than 400 branches and 3,000 places around the country (Baldwin 1989; Citizens Advice Bureau 2009b; but see Blacksell *et al.* 1990). Many Local Councils (city and county governments) have their own advice services and offices of trading standards; according to a recent civil justice survey, these services provided 15% of all successful advice contacts for the public’s civil justice problems (Pleasence *et al.* 2006: Figure 3.3). The CABx and other services that exist to assist the public in solving its justice problems have an important power: they may dispense legal advice. While the legal profession retains sole rights of appearance in some fora, many different kinds of providers may and do dispense advice about when and how to use law to respond to problems that have civil legal aspects (Abel 1989).

The contrast between the United Kingdom and the United States is sharp. By comparison, the United States provides the public with law, not much of it, and not much else. The United State’s legal aid system is a lean one in comparative terms (Regan 1999): it serves only the poor. Further, Americans who are eligible for civil legal aid have available to them relatively few legal aid providers. Good data on just how few are scarce, but an analysis of information available for 1997 found that all sources of organized civil legal assistance combined – lawyers working as employees of legal aid programs that received state, federal, local government and/or private funding, and lawyers volunteering their services in organized civil pro bono programs – provided perhaps one full-time equivalent legal aid lawyer for every 5,000 people eligible for civil legal aid (Sandefur 2009b).

If Americans do not go to law, their alternatives are relatively limited and depend a great deal on where they live. For authoritative resolution, they have the option of turning to the complaint handling offices of local, state or federal regulatory agencies for assistance with some of their money and housing problems, such as complaints about billing practices or landlords' failure to keep housing in repair. These agencies will sometimes investigate and resolve problems brought by members of the public (e.g., Hogarth and English 2002; Ross 1995). If a member of the American public wants to handle a problem otherwise, the resources available to help her depend heavily on where she lives: both legal aid and its auxiliaries are distributed in an uneven way around the country, with the presence of services dependent upon the initiative of local groups (see, e.g., Sandefur 2009c).² Some communities have effective and well-known services that assist people with specific kinds of justice problems: for example, landlord-tenant resource centers, or media action lines that aggressively pursue solutions to consumers' problems (Nader 1980). Some communities have clearinghouses or referral systems that attempt to connect people with services that might help them with their problems; other communities do not have these resources. For example, the United Way funds 244 regional referral services, called "2-1-1," around the country (United Way 2008); some of these referral services are undoubtedly well-established, well-known and expertly run, while others are quite new and may be less so. One thing that characterizes such resources in every part of the country, however, is that they typically cannot provide legal advice. In the United States, the legal profession maintains a strong monopoly on the provision of advice about when and how to use law to solve one's justice

² Spatial inequalities in access to services exist in the United Kingdom as well (see, e.g., Economides and Blacksell 1987). Our point is that these inequalities are probably more pronounced in an American-style system, where service provision is very often locally initiated and usually is not centrally coordinated.

problems (Abel 1989; Rhode 2004). Figure 2 summarizes differences between the two institutional contexts.

[Figure 2 about here]

Members of the public who face civil justice problems in these two different countries thus have available to them very different institutions of remedy. The United States is a context that provides law, administrative agencies, and a patchwork of other resources that are both limited in the assistance they can provide with legal problems and available only in some localities. The United Kingdom provides law, administrative agencies, government ombudsmen, and highly visible, nationally distributed auxiliary resources that can provide legal advice as well as information and referrals. In the UK, people experiencing civil justice problems face many entry points into a rich network of remedy; in the United States, similar people with similar problems face fewer entry points into a sparse network. Our suggestion is that these differing institutional designs produce different patterns of public problem-solving.

Data and Analysis: Class Differences in Responses to Civil Justice Problems

National Surveys of Public Experience with Civil Justice Problems. To investigate the impact of institutional design on public advice-seeking, we compare how people handle civil justice problems involving money and housing in the United States and England and Wales. The data come from two different sources: the American Bar Association's published tabulations

from its 1992 “Comprehensive Legal Needs Study”³ and the England and Wales Civil and Social Justice Survey of 2004. These data sources are similar in important respects: (a) both ask about public experience with similar kinds of money and housing problems, including threats of foreclosure and eviction, difficulty paying bills, and trouble with creditors; (b) both inquire about problems that survey authors carefully chose to be problems that raise civil legal issues and have civil legal aspects; (c) both surveys focus on problems that people find serious and difficult to solve; (d) both inquire about problems that may or may not have been considered “legal” by the people who experienced them; (e) both inquire about problems that were taken to law, taken to non-legal third parties, handled by people on their own, and about which people did nothing; (f) both provide information for representative samples of national populations.

The surveys are also different in a number of respects, including:

- Though the surveys ask about similar kinds of civil justice problems, the problem lists are not identical and the questionnaire wording differs between the surveys;
- The US survey sampled households, while the England and Wales survey sampled individuals;
- Socioeconomic groups are defined in different ways in the two surveys, by income in the US and by occupation in England and Wales;
- The England and Wales survey was comprehensive, while the US survey covered only the lower-earning 80% of the population;
- The US survey was administered over the telephone, while the England and Wales survey was administered in person;
- In the US survey, respondents reported on problems they had experienced during the past year, while in the England and Wales survey they reported on problems encountered during the past three years or since they turned 18, whichever was more recent;
- Both employed and non-employed respondents are included in the data from the two surveys, but the non-working populations may differ in some respects;

³ Unfortunately, the unit record data for the 1992 US survey were destroyed (xxx, personal communication, xx). These published tabulations represent the most current information for the US context – the next-most recent national survey was the Civil Litigation Research Project conducted in the 1970s (see Trubek *et al.* 1983).

- The two surveys were conducted in different years: 1992 in the United States and 2004 in England and Wales (see Consortium on Legal Services and the Public 1994; Phelps *et al.* 2005; Pleasence *et al.* 2006).

These differences prevent the available data from providing a precisely calibrated accounting of national differences in advice-seeking. However, the substantive similarities between the two surveys provide material for a revealing broad-brush portrait of advice-seeking in two distinct contexts.

Money and housing problems. The problems chosen for analysis here were selected because they are common, widely distributed across populations, often occur together in “clusters” of multiple problems, and can be highly consequential for the people who experience them (Bachievea, Wachter, and Warren 2005; Pleasence *et al.* 2004; Sandefur 2009a). Problems are grouped into types by their function in household economies; that is, they are grouped as available evidence suggests they are experienced by the public, rather than by how they are institutionalized in law or understood by service providers (Sandefur 2009a; cf. Kritzer 2008). For England and Wales, the money and housing problems examined include troubles with: livelihood; other anticipated sources of household income (e.g., rebate of security deposits); debts, bills and credit; housing security (e.g., trouble paying rent or mortgages, threats of eviction or foreclosure); and, housing conditions (e.g., pests, repairs). For the United States, the money and housing problems examined include debts, bills and credit, housing security and housing conditions. To lend further precision to the comparative analysis, debt, bills and credit problems are also analyzed separately.⁴

⁴ It would have been desirable to control for problem type in a number of other ways in the analysis, but the absence of unit record data for the US context makes doing so impossible.

Findings. Figures 3 and 4 report on how people handle civil justice money and housing problems in the United States and the United Kingdom. Responses to problems are reported for two groups of problems: money and housing problems and a subset of money problems that concerns debts, bills and credit. Figure 3 reports on the United States. In a context in which people have a choice between law and not much else, this is exactly what they choose. In the US in 1992, about a quarter of all money and housing problems and of debt, bills and credit problems specifically were taken to lawyers and/or courts or tribunals, whether as a sole response or in concert with other sources of advice. Similarly, more than a quarter of all money and housing problems, and about a third of debt, bills and credit problems were handled by inaction, by the household taking no steps to try to resolve the problem. Less than 10% of either type of problem was taken solely to non-legal third parties. The remaining problems, 33% of debt, bills and credit problems and 41% of all money and housing problems were handled by the respondent taking action without advice.

Figure 4 reports on England and Wales. In this context, many fewer of both groups of problems were handled through inaction: less than 10% of both types. Similarly, many fewer problems were handled by going to law: 11% of all money and housing problems and 6% of debt, bills and credit problems. On the other hand, many more problems involved non-legal advice, assistance, and sources of authoritative resolution: 30% of debt, bills, and credit problems and 38% of all money and housing problems. The remaining problems, 56% of debt, bills and credit problems and 52% of all money and housing problems were handled by respondents taking some action on their own.

Two signal differences emerge between the two institutional contexts. First, institutions of remedy in England & Wales appear more inclusive or welcoming than those of the United States. In England & Wales, these institutions served a larger share of the publics' money and housing problems than did those of the United States: 49% of money and housing problems in England and Wales, as opposed to 32% in the United States. The differences were smaller, but followed the same pattern for debt, bills and credit problems: 36% of such problems went to institutions of remedy in England and Wales, in comparison with 33% in the United States. Second, when Americans did not seek advice or assistance with their problems, they were more likely to do nothing about them than were people who did not seek advice in England and Wales. Americans did nothing in response to 33% of debt, bills and credit problems and 27% of money and housing problems generally; in England and Wales, the corresponding quantities were 8% and 6%.

In comparison with the United States, England and Wales also evidences greater socioeconomic equality in some kinds of advice- and resolution-seeking, but at the same time substantial socioeconomic inequality in the use of other kinds of routes to solving civil justice problems. Figures 5 and 6 illustrate this. Here, the quantities in the bar graphs are odds ratios, indicating the size and direction of differences in how two groups respond to similar kinds of civil justice problems. When an odds ratio is 1.0, there is no average difference between the two groups in the likelihood of responding to a problem in a particular way. When an odds ratio is less than 1.0, one group is less likely, on average, to take the action than is the comparison group. When an odds ratio is greater than 1.0, one group is more likely to take the action, on average, than is the comparison group. As before, quantities are reported for two groups of problems: money and housing problems generally,

and debt, bills and credit problems specifically. In Figure 5, for the United States, the groups compared are poor households eligible for civil legal aid, titled 'low-income' in the figure, and households who earned too much to be eligible for legal aid but still less than the 80th percentile of the US household income distribution (\$60,000 in 1992), titled 'moderate-income' in the figure. In Figure 6, for England and Wales, the groups compared are individuals whose occupational affiliation places them in the routine and manual group and those whose occupational affiliation places them in the professional and managerial group (Office for National Statistics 2005).

[Figure 5 and 6 about here]

Figure 5 reports that, in the United States, low-income households were less likely to turn to law for this group of civil justice problems than were moderate-income households: 49% less likely to turn to law for all money and housing problems (odds ratio = .61) and 27% less likely to turn to law for problems with debt, credit and bills (odds ratio = .73). Low-income households were correspondingly more likely to take no action in response to these problems: 66% more likely to do nothing in response to debt, bills and credit problems (odds ratio = 1.66) and twice as likely to do nothing about all money and housing problems in general (odds ratio = 2.0). For all money and housing problems, low-income households were only half as likely to turn to non-legal third parties as were moderate-income households (odds ratio = .50); but, for debt, bills and credit problems specifically, low-income households were about a third more likely (odds ratio = 1.36) to turn to non-legal third parties for advice or assistance than were moderate-income households.

The pattern for England and Wales is different in some ways, and similar in others. Here too, as shown in Figure 6, one observes substantial class differences in turning to law. In comparison with managers and professionals, working class people (routine and manual workers, in this analysis) were 30% less likely to turn to law with debt, bills and credit problems (odds ratio = .70) and two-thirds less likely (odds ratio = .34) to turn to law with money and housing problems generally. On the other hand, working class people were more likely to take their problems to non-legal third parties for advice or resolution: they were 40% more likely to do so (odds ratio = 1.40) with debt, bills and credit problems and 270% more likely to do so (odds ratio = 2.70) with money and housing problems generally. Doing nothing was a rare response to this group of civil justice problems in England and Wales, and it is equally rare among both working class people and professionals for money and housing problems generally (odds ratio = 1.0). For debt, bills and credit problems, routine and manual workers were about a third more likely (odds ratio = 1.36) to do nothing about the problem than were professional and managerial workers.

Discussion

Taking these findings together, one sees that, in comparison with the United States, England and Wales's institutions of remedy appear more inclusive in some ways, and equally exclusive in others. In England and Wales, a greater share of the public's problems were taken to institutions of remedy, whether to law or to non-legal sources of advice, assistance or resolution than is the case in the United States. Few people in England and Wales do nothing about civil justice money and housing problems, and this pattern characterizes problem-handling up and down the socioeconomic scale. By comparison, in the United

States, many people do nothing about this group of civil justice problems, and poor people are especially likely to do nothing.

However, in both countries, socioeconomic status is inversely related to the likelihood of taking money and housing problems to law. In both countries, groups of higher socioeconomic standing, as measured by income in the United States and occupation in the England and Wales, are more likely to take to law problems that groups of lower socioeconomic standing handle in other ways. This pattern holds even when problem type is controlled to include only civil justice problems with debts, bills and credit. And it holds despite the much more generous legal aid system of the United Kingdom.

In the United Kingdom, legal advice is more widely available from a variety of advice providers, its sources are well-known; and, it is relatively inexpensive – indeed, often free to everyone, as in the case of CABx. We have suggested that these factors play a role in creating what we have called the greater inclusiveness of the United Kingdom’s institutions of remedy.⁵ But accessibility – i.e, low cost, convenient location, many sources of legal advice – may have broader effects on how the public solves its problems.

⁵ This interpretation is supported by an analysis of class differences in advice seeking in another situation in which institutions of remedy are characterized by these factors: contingency fee services for personal injury claims. In the United States, personal injuries incurred through accidents on the road, at home and on the job are processed through a legal liability system that is supported by public and private insurance providers and a personal injury bar that works largely on contingent fee. Under this fee arrangement, lawyers are paid for their work only if their client receives some compensation as an award or settlement. The amount of the lawyer’s fee is set at a proportion of the money the client receives. Under this fee arrangement, initial consultations with attorneys about personal injury claims are typically free. In the US, low-income households took 32% of their personal and economic injury problems (i.e., slander and libel, but largely physical injuries due to accidents) to lawyers, while moderate-income households took only 25% of such problems to attorneys (Consortium on Legal Services and the Public 1994: Table 4-7). This relative equality is, in part, a product of three of the same factors that we have identified as making the United Kingdom’s institutions of remedy more inclusive: free legal advice (in this instance through a no win-no fee arrangement) that is well-established and highly visible (though aggressive advertising), as well as widely available. But, it is also a product of the different alternatives available outside “universal” institutions of remedy: moderate-income households are more likely to take such problems to their insurance companies, a resource to which fewer low-income households likely have access

Institutions of remedy may have both first- and second-order effects on how people handle their civil justice problems. Americans, famously litigious and known for their “inventiveness in the area of remedy” (Nader 1980:4), were nevertheless more likely than the English and Welsh to ‘lump’ their civil justice troubles. In comparison with people in the United States, people in England and Wales were more likely both to seek advice and assistance with problems, and to try to handle them on their own. Part of this difference reflects differences in available assistance and solutions to people who were experiencing problems at the time of survey. People in England and Wales had more sources of advice and assistance to go to, so they went to them; Americans had fewer, so they went less. However, people’s decisions about how to handle the civil justice problems they have today reflect the lessons of their experiences handling similar problems in the past (Galanter 1974; Sandefur 2007). Perhaps the higher rates of self-help, in favor of doing nothing, that we observe in England and Wales come about, in part, because people there have assimilated lessons about how to handle civil justice problems from past contacts with advice providers. This would be a second-order impact of institutional design: a populace that feels it has sufficient information, confidence and understanding to take action to respond to some problems on

(Consortium on Legal Services and the Public 1994: pp. 22-24). Here again, one observes that the choice of going to law or not is affected by the alternatives to law to which groups have access.

Of course, access to lawyers does not necessarily mean access to authoritative resolution. Lawyers are not equally likely to take on the personal injury problems of both low- and moderate-income households. This is not surprising, given that lost wages are typically a substantial component of any award from which a lawyer’s fee would come, and wages are higher in higher-earning households. Despite being more likely to be taken to lawyers, the personal injury problems of low-income households were less likely to end up in courts or hearing bodies. Eleven percent (11%) of the personal injury problems of poor households involved a court or administrative hearing body in some way, in comparison with 19% of similar problems of moderate-income households (Consortium on Legal Services and the Public 1994: Table 4-10). Similarly, more of the contacts that low-income households had with lawyers appeared not to make it past the “free initial consultation”: 20% of *all* lawyer contacts were free to low-income households because of this mechanism, in comparison with 11% of the lawyer contacts of moderate-income households (Consortium on Legal Services and the Public 1994: Table 4-9; on case screening generally, see Daniels and Martin 2002; Kritzer 2004; Trautner 2006). A public compensation corporation, which at least hears all claims, has the potential to be much more equalizing than a market that pays law’s gatekeepers by commission.

its own. The converse might be a second-order impact in the American context: a populace that feels it cannot reasonably take unaided action about a substantial portion of its justice problems.

Conclusion

Our analysis is suggestive, rather than definitive. We have focused on national differences in the design of institutions of remedy for civil justice problems, but many other differences exist between these societies, and these differences likely play a role in creating some of what we observe. Methodological differences between the national surveys also complicate the comparisons. How much of the differences observed is the consequence of institutional design, and how much is due to other factors cannot be determined from the data that we have at present.

This analysis raises an important methodological and theoretical issue that future studies should tackle directly: the idea of similar problems. At least three plausible principles exist for grouping problems: as they are treated in black-letter law; as they are treated by service providers; and, as they are experienced by the public. These three principles will often produce very different groupings of similar civil justice problems. For example, consider the common justiciable problem of unpaid overtime. In the US context, problems with unpaid overtime are covered by wage and hour laws. However, if someone believes that the overtime wages were not paid because of his or her race, sex, religion or national origin the problem falls within the purview of civil rights law. When a member of the public takes this problem to a service provider such as an attorney, how the problem is treated and whether it

is taken on for service depends, in part, to whom it is taken. So, for example, a US public interest law firm might take such a claim if it were construed as a rights issue or a systematic practice of labor exploitation, but perhaps not if it appeared to be an isolated case. If a member of the public took the same problem to a lawyer working on contingent fee, that attorney would consider, among other things, whether the amount at stake was sufficient to cover the cost of her taking the case. On the other hand, for the person who lost those wages, the predominant issue might simply be the financial loss, regardless of the reason for it, the various law that might remedy it, and even if the amount at stake seemed small to other people. Different principles will produce very different groupings of problems and, consequently, different pictures of inequality in advice-seeking, action-taking, and access to justice.

The broad-brush patterns of difference between the US and UK contexts are striking and very suggestive. By stepping back from law to examine the institutions of remedy of which law is part, one sees a convergence of circumstantial evidence that points to ways in which these institutions can be more or less inclusive of the public and its problems (cf. Mayhew 1975). For countries like the United States, that are beginning to grapple with the inadequacies of existing legal aid systems (e.g. Legal Services Corporation 2005), stepping back from law to look at institutions of remedy as whole provides glimpses of additional means through which a nation might expand its citizens' access to substantive justice. The findings also raise a question about the sufficiency of legal aid as a tool to equalize access to justice. Even in a context with relatively generous legal aid, many people do not go to lawyers, but instead take their problems to non-legal sources of advice and resolution. And,

even in a context with expansive legal aid, social class or socioeconomic differences emerge in how people handle their civil justice problems.

REFERENCES

- Abel, Richard L. 1989. "Comparative Sociology of the Legal Profession," Chapter 3 in *Lawyers in Society: Comparative Theories*, edited by Richard L. Abel and Philip S.C. Lewis. Berkeley, CA: University of California Press.
- Bachieva, Raisa, Susan M. Wachter, and Elizabeth Warren. 2005. "Mortgage Debt, Bankruptcy, and the Sustainability of Home Ownership." Pp. 73-112 in *Credit Markets for the Poor*, edited by Patrick Boton and Howard Rosenthal. New York, NY: Russell Sage Foundation.
- Baldwin, J. 1989. "The Role of the Citizens' Advice Bureaux and the Law Centres in the Provision of Legal Advice and Assistance," *Civil Justice Quarterly* 8:24-44.
- Currie, Ab. 2009. "The Legal Problems of Everyday Life," *Sociology of Crime, Law and Deviance*, volume 12 (in press).
- Blacksell, Mark, Andrew Clark, Kim Economides, and Charles Watkins. 1990. "Citizens Advice Bureaux: Problems of an Emerging Service in Rural Areas." *Social Policy and Administration* 24(3):212-225.
- Bogart, WA and N Vidmar. 1990. "Problems and Experience with the Ontario Civil Justice System: An Empirical Assessment." Pp. 1-54 in *Access to Justice*, edited by AC Hutchinson. Scarborough, ON: Carswell.
- Citizens Advice Bureau. 2009a. How to Use an Ombudsman. http://www.adviceguide.org.uk/nm/index/your_rights/civil_rights/how_to_use_an_ombudsman.htm (visited February 21, 2009).
- Citizens Advice Bureau. 2009b. About Citizens Advice. <http://www.citizensadvice.org.uk/>, visited February 21, 2009.
- Consortium on Legal Services and the Public 1994, *Legal Needs of the Low- and Moderate-Income Public*. Chicago, IL: American Bar Association.
- Currie, Ab. 2009. "The Legal Problems of Everyday Life," *Sociology of Crime, Law and Deviance* 12:(in press).
- Daniels, Stephen and Joanne Martin. 2002. "It Was the Best of Times, It Was the Worst of Times': The Precarious Nature of Plaintiffs' Practice in Texas." *Texas Law Review* 80:1781-1828.
- Economides, Kim and Mark Blacksell. 1987. *Access to Justice in Rural Britain: Final Report*.
- Galanter, Marc. 1974. "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change." *Law and Society Review* 9:95-160.

Genn, Hazel *et al.* 1999. *Paths to Justice: What People Do and Think about Going to Law*. Portland, OR: Hart Publishing.

Genn, Hazel and Alan Paterson. 2001. *Paths to Justice Scotland: What People in Scotland Do and Think about Going to Law*. Portland, OR: Hart Publishing.

Griffith, Adam. 2008. "Dramatic Drop in Civil Legal Aid Eligibility," <http://www.asauk.org.uk/fileLibrary/pdf/Dramaticdrop.pdf> (visited February 14, 2009).

Hoffmann, Elizabeth A. 2005. "Dispute Resolution in a Worker Cooperative: Formal Procedures and Procedural Justice." *Law and Society Review* 39:51-82.

Hogarth, Jeanne M. and Maureen P. English. 2002. "Consumer Complaints and Redress: An Important Mechanism for Protecting and Empowering Consumers." *International Journal of Consumer Studies* 26(3)

Kritzer, Herbert. 2008. "To Lawyer or Not to Lawyer: Is that the Question?," *Journal of Empirical Legal Studies* 5(4).

_____. 2004. *Risks, Reputations and Rewards: Contingency Fee Legal Practice in the United States*. Stanford, CA: Stanford University Press.

Law Centres Federation. 2009. How Do Law Centres Operate? <http://www.lawcentres.org.uk/lawcentres/detail/how-do-law-centres-operate/> (visited February 27, 2009).

Legal Services Agency. 2006. *Report on the 2006 National Survey of Unmet Legal Need and Access to Services*. Wellington, NZ: Legal Services Agency.

Legal Services Corporation. 2005. *Documenting the Justice Gap in America*. Washington, DC: Legal Services Corporation.

Mayhew, Leon H. 1975. "Institutions of Representation: Civil Justice and the Public." *Law and Society Review* 9:401-429.

Miller, RE and A Sarat. 1980/81. "Grievances, Claims and Disputes: Assessing the Adversary Culture." *Law and Society Review* 15:525-566.

Mulherin, Geoff and Christine Coumarelos. 2007. "Access to Justice in Disadvantaged Communities." Pp. 9-43 in *Transforming Lives: Law and Social Process*, edited by Pascoe Pleasence, Alexy Buck and Nigel Balmer. London: TSO.

Murayama, Masayuki. 2007. "Experiences of Problems and Disputing Behavior in Japan." *Meiji Law Journal* 14:1-59.

Nader, Laura (editor). 1980. *No Access to Justice: Alternatives to the American Judicial System*. New York: Academic Press.

Office for National Statistics. 2005. *The National Statistics Classification User's Manual*. Basingstoke, Hampshire: Palgrave Macmillan.

Paterson, Alan. 1991. "Legal Aid at the Cross Roads," *Civil Justice Quarterly* 10:124-37.

Phelps, Andrew, Bruce Hayward, and Tim Hanson. 2005. *2004 English and Welsh Civil and Social Justice Survey Technical Report*. Prepared for the Legal Services Research Centre. (<http://www.lsrc.org.uk/publications/2006tech.pdf>) (last visited May 28, 2008).

Pleasence, Pascoe, with Nigel Balmer and Alexy Buck, 2006, *Causes of Action: Civil Law and Social Justice*. 2nd edition. London: TSO.

Pleasence, Pascoe, Nigel J. Balmer, Alexy Buck, Aoife O'Grady, and Hazel Genn. 2004. "Multiple Justiciable Problems: Common Clusters and their Social and Demographic Indicators." *Journal of Empirical Legal Studies* 1(2):301-329.

Regan, Francis. 1999. "Why Do Legal Aid Services Vary Between Societies?," in *The Transformation of Legal Aid: Comparative and Historical Studies*, edited by Francis Regan, Alan Paterson, Tamara Gorieley, and Don Fleming. Oxford: Oxford University Press.

Rhode, Deborah. 2004. *Access to Justice*. New York, NY: Oxford University Press.

Ross, H. Laurence. 1995. "Housing Code Enforcement as Law in Action," *Law and Policy* 17(2)

Sandefur, Rebecca L. 2007. "The Importance of Doing Nothing: Everyday Problems and Responses of Inaction." Pp. 112-32 in *Transforming Lives: Law and Social Process*, edited by Pascoe Pleasence, Alexy Buck and Nigel Balmer. London: TSO.

_____. 2008. "Access to Civil Justice and Race, Class and Gender Inequality," *Annual Review of Sociology* 34:

_____. 2009a. "Civil Justice and Socioeconomic Inequality." Ms. under review.

_____. 2009b. "Lawyers' Pro Bono Service and Market-Reliant Legal Aid." In *Public Lawyers in the Private Interest: The Evolving Role of Pro Bono in the Legal Profession*, edited by Robert Granfield and Lynn Mather. New York: Oxford University Press.

_____. 2009c. Sources of Advice and Assistance: A Portrait of In-Litigation Assistance in California Counties. Report to the Right to Counsel Committee of the California Access to Justice Commission, March.

_____. forthcoming. "The Fulcrum Point of Access to Justice: Legal and Non-Legal Institutions of Remedy." *Loyola of Los Angeles Law Review*.

Trautner, Mary Nell. 2006. *Screening, Sorting and Selecting in Complex Personal Injury Cases: How Lawyers Mediate Access to the Civil Justice System*. PhD Thesis. Department of Sociology, University of Arizona.

Trubek, David M., Joel B. Grossman, William L.F. Felstiner, Herbert M. Kritzer, and Austin Sarat. 1983. *Civil Litigation Research Project Final Report*. Madison, Wisconsin: University of Wisconsin Law School.

United States Bureau of the Census. Table 6. People Below 125 Percent of Poverty Level and the Near Poor: 1959 to 2006. <http://www.census.gov/hhes/www/poverty/histpov/hstpov6.html> (visited March 2, 2009).

United Way. 2008. 2-1-1 US Nationwide Status. <http://211us.org/status.htm> (visited February 27, 2009).

Figure 1. Institutions of Remedy for Civil Justice Problems

| Institutional component | Powers and services | Examples |
|--|--|---|
| <p>Formal Institutions of Remedy</p> <p>Legal</p> <p>Non-legal</p> | <p>Empowered to produce authoritative resolution to the public's civil justice problems</p> | <p>Courts, tribunals, lawsuits, litigation</p> <p>Government ombudsmen, public compensation corporations, administrative agencies</p> |
| <p>Auxiliaries</p> | <p>Information and advice about how to handle civil justice problems</p> <p>Non-authoritative routes to problem resolution</p> <p>Referrals to sources of information, advice and assistance</p> <p>Referrals to formal institutions of remedy</p> | <p>Advice agencies, community organizations, media action lines, trade organizations</p> |

Source: Sandefur forthcoming: Figure 2.

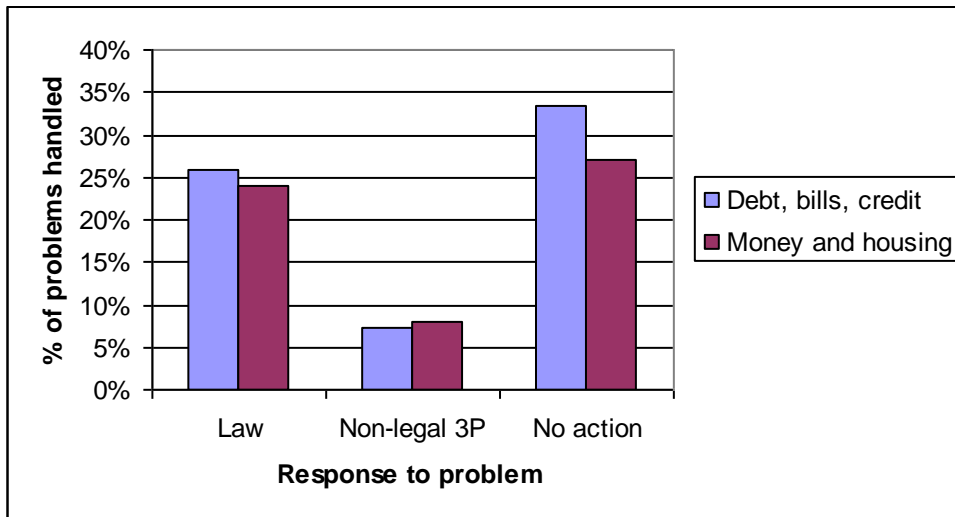
Figure 2. Institutions of Remedy for Civil Justice Problems: United Kingdom and United States

| Institutional component | United Kingdom:2004 | United States:1992 |
|--|---|--|
| <p>Formal Institutions of Remedy</p> <p>Legal</p> <p>Non-legal</p> | <p>Courts, tribunals, lawsuits, litigation</p> <p>Legal aid extends subsidy to 41-46% of the population^a</p> <p>Government ombudsmen, administrative agencies at the local and national level</p> | <p>Courts, tribunals, lawsuits, litigation</p> <p>Legal aid extends subsidy to 19.7% of the population^b</p> <p>Administrative agencies at the local, state and national level</p> |
| Auxiliaries | <p>Can dispense legal advice</p> <p>Well-established, well-known, nationally present advice and referral providers (e.g., CABx)</p> <p>Local resources also available, including community organizations, elected representatives, and Local Council advice services</p> <p>Additional nationally available resources include trade organizations and professional bodies</p> | <p>Cannot dispense legal advice</p> <p>Most auxiliaries are local, and not available in all localities (e.g., city landlord-tenant resource centers, community mediation centers, local media action lines, one's city, state or federal elected representatives)</p> <p>Nationally available resources include the Better Business Bureau and other trade organizations and professional bodies</p> |

^aGriffiths 2008

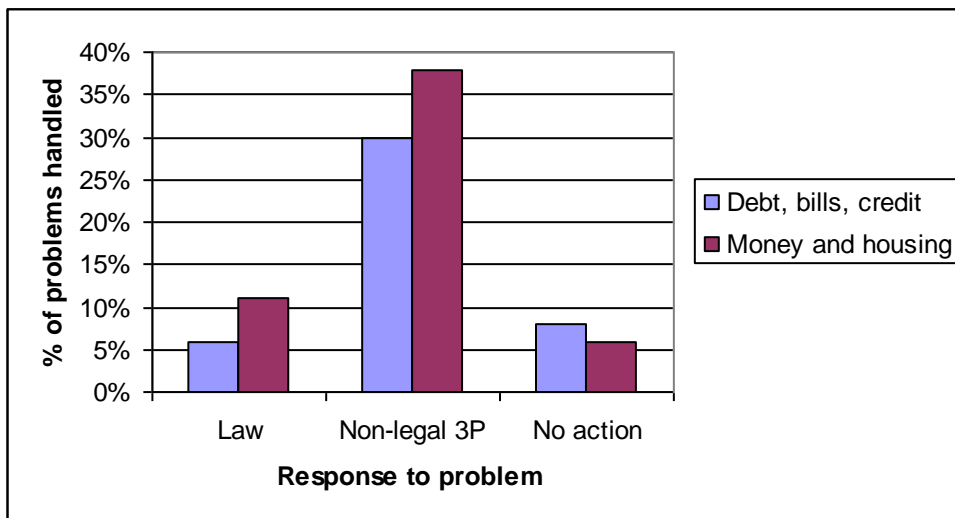
^bUS Bureau of the Census 2009

Figure 3. Responses to Money and Housing Problems and to Debt, Credit and Bills Problems in the United States, 1992. Percent of Problems Taken to Law, to Non-Legal Third Parties, and about which No Action Was Taken.



Source: Consortium on Legal Services and the Public 1994: Table 4-1.
n=1,077 money and housing problems. n=555 debt, bills and credit problems.

Figure 4. Responses to Money and Housing Problems and to Debt, Credit and Bills Problems in England and Wales, 2004. Percent of Problems Taken to Law, to Non-Legal Third Parties, and about which No Action Was Taken.



Source: England and Wales Civil and Social Justice Survey, 2004.

n=466 money and housing problems

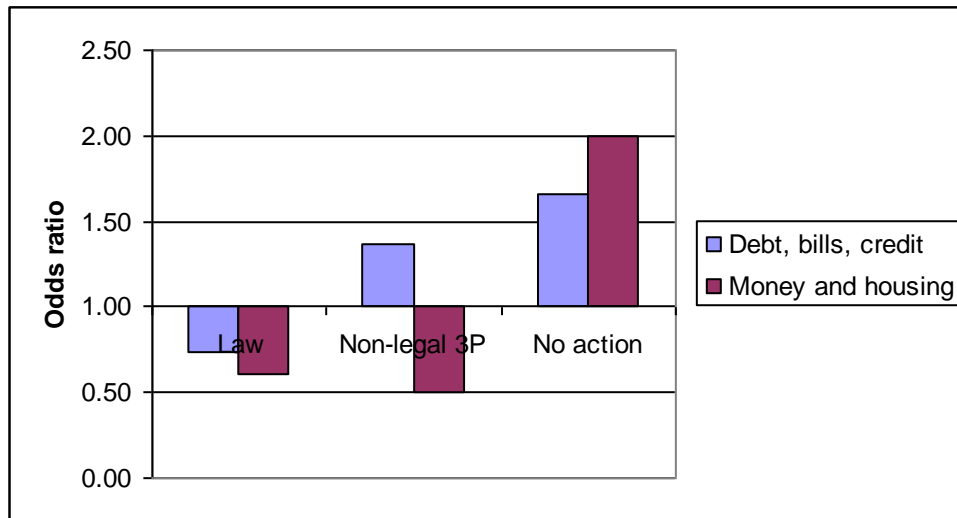
n=146 debt, bills and credit problems

Estimates

are

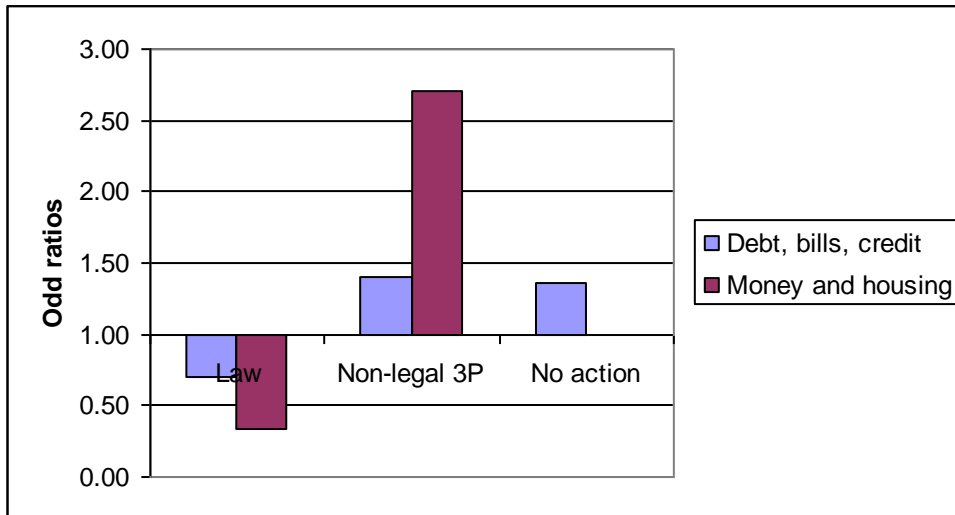
weighted.

Figure 5. Socioeconomic Differences in Responses to Civil Justice Problems: Odds Ratios Comparing Low Income Households to Moderate Income Households: USA, 1992



Source: Consortium on Legal Services and the Public 1994: Table 4-1.
n=1,077 money and housing problems. n=555 debt, bills and credit problems.

Figure 6. Socioeconomic Differences in Responses to Civil Justice Problems: Odds Ratios Comparing Routine and Manual Workers to Professional and Managerial Workers: England and Wales, 2004



Source: England and Wales Civil and Social Justice Survey, 2004.
 n=466 money and housing problems.
 n=146 debt, bills and credit problems.
 Estimates are weighted.