

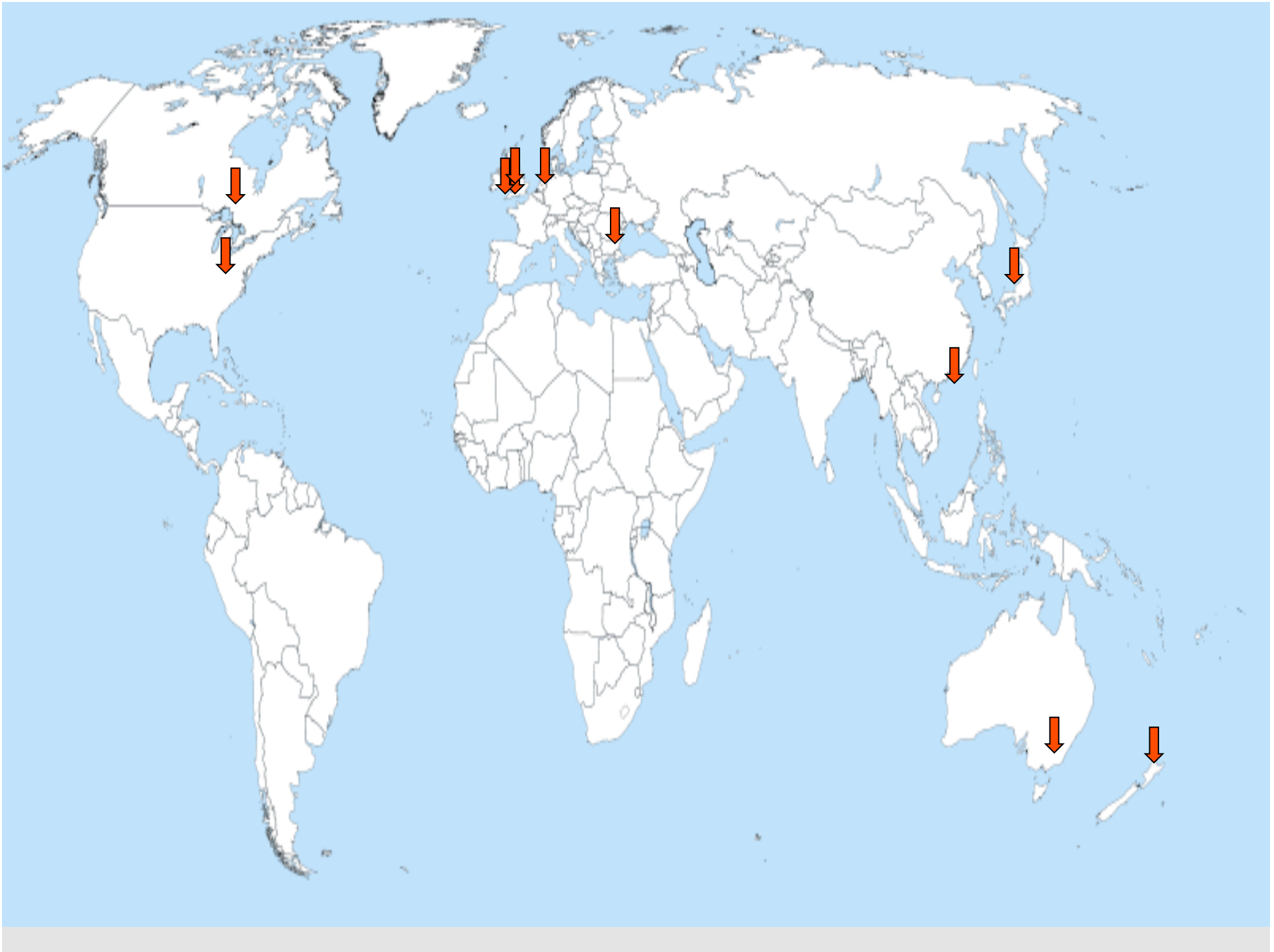
ILAG WELLINGTON 2009

Legal Needs Studies: Policy Impact and Potential

Hazel Genn

A decade of legal needs studies 1999-2009

- Where have they been done?
- Why have they been done?
- What have we learned?
- How have they influenced policy?
- Potential value in current climate?

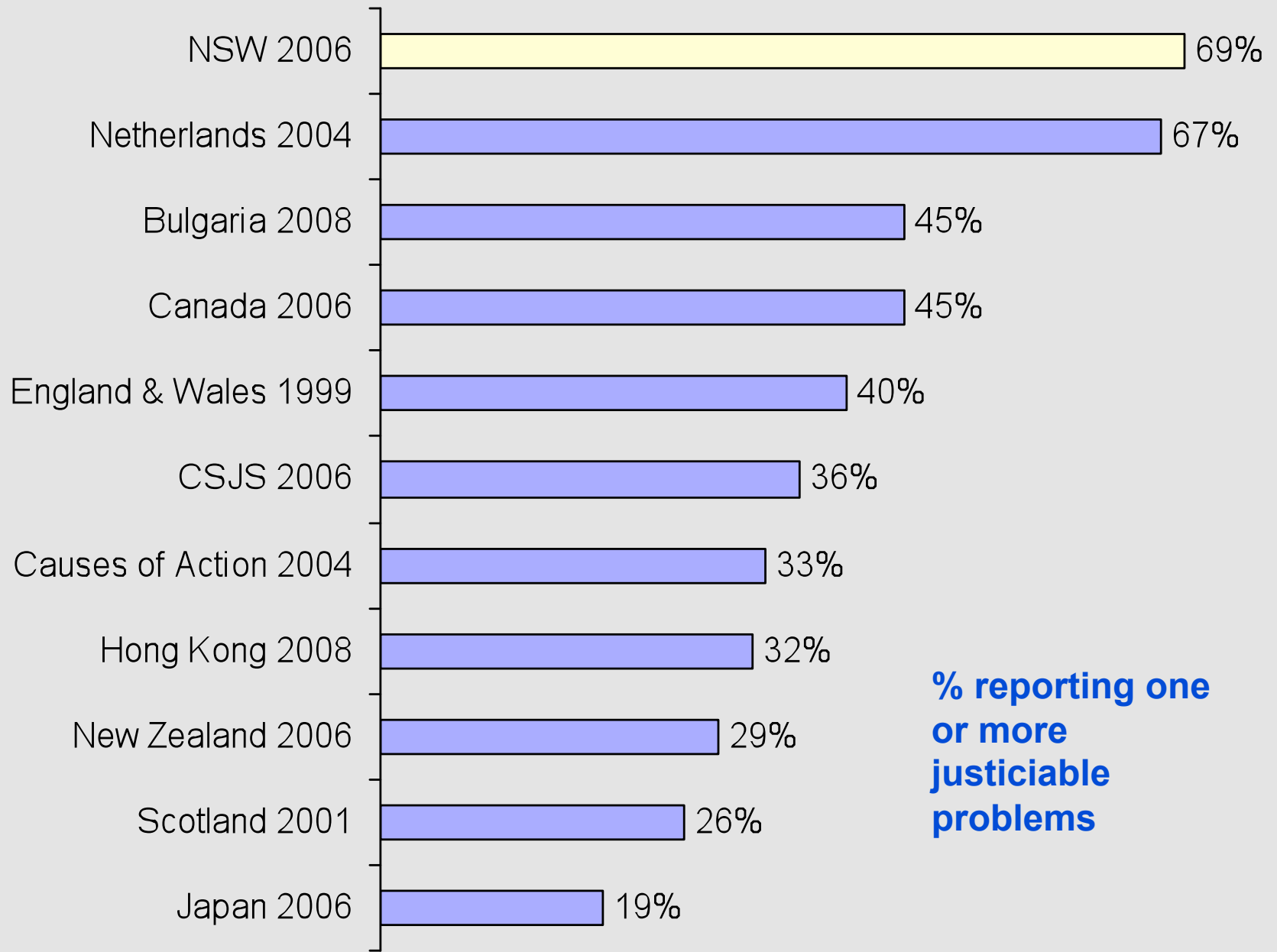


Why were they done?

- Access to Justice debates in mid-1990s being undertaken in information black hole
- Development of “bottom-up” population surveys based on concept of “justiciable problem”
- Key underlying questions of surveys:
 - What justiciable problems do the public experience?
 - How do they seek to resolve problems?
 - What do they want from the justice system?

What have we learned?

- Problem of comparison although common approach - variation in methodologies
 - Different survey methods
 - Different time periods
 - Variations in questions
- Key common finding:
 - Justiciable problems **ubiquitous**
 - Socially excluded tend to experience more problems



**% reporting one
or more
justiciable
problems**

What types of problems?

Country	1st most common	2nd most common	3rd most common
PJ England 1999	Consumer	Money/debt	Property
PJ Scotland 2001	Money	Consumer	Landlord
Netherlands 2004	Consumer	Employment	Money
Canada 2006	Consumer	Debt	Employment
Japan 2006	Injury	Neighbours	Consumer
NZ 2006	Consumer	Money/Debt	Benefits
CSJS 2006	Consumer	Neighbours	Benefits
Bulgaria 2007	Consumer	Neighbours	Benefits
Hong Kong 2008	Consumer	Prop Damage	Employment

Same aggravation all over the world...

But special kind of “everyday” problem.

Justiciable nature means individual citizen can invoke the power of the courts to enforce rights and entitlements.

What have we learned?

- Patterns and impact of justiciable problems
 - What types, who has them, what impact?
- Public responses and resolution strategies
 - What do people do and with what outcome?
- Advice-seeking behaviour
 - Where do people go for help and what determines choices?
- Use of formal dispute resolution processes
 - Who invokes the legal system and for which kinds of problems?

What have we learned?

- High proportion suffer one or more justiciable problems
- Problems often occur in **clusters**
- Cascade effect – one triggers others
- Can have serious impact on lives
 - Family break-up
 - Unemployment and loss of income
 - Ill-health or disability
- Link between unresolved problems and health, crime

Common findings

- Low income groups suffer **more** problems and are **less likely** to do anything about the problem
 - Sense of powerlessness/helplessness
- Resolution strategy **related to problem type**
 - Problems for which action most likely to be taken – family, consumer, property
- Advice-seeking **related to problem type**
 - Problems for which **legal advice** most likely to be sought – divorce, children, property,
- Advice sought from wide range of more or less appropriate sources – **people don't know where to go**
- Significant unmet need for accessible sources of information and advice

General conclusions on approaches to dealing with justiciable problems

Differences in disputing behaviour are much larger between different types of problems than between countries

“Japanese people are often characterised as being reluctant to assert their rights, preferring avoidance and conciliation to litigation. The Japan legal needs study suggests that the stereotype is not supported by evidence..”



Involvement in legal processes

- Small minority involved in legal processes
- Strongly related to problem type
 - Divorce and separation matters - **greatest use**
 - Neighbour, consumer, employment, money problems - **least use**
- Use of ADR **negligible** for all problems
 - Public not asking for it and advisers not advising clients to use it

How have results been used?

- **Refocusing justice policy thinking**
 - Developing a “customer” orientation
 - Wider than legal aid issues
- **Alignment of justice policy with broader government objectives**
 - Understanding link between access to justice and social inclusion agenda
- **Guiding legal aid policy thinking**
 - How to make more **effective** use of legal aid spend to **meet the needs** that citizens have
 - Designing services with needs in mind rather than funder convenience or provider assumptions

Need for joined-up thinking and action?

- Dawning recognition that justice system has to clean up the messes that other departments make
 - Poor decision-making on benefits – cost to justice system
 - Social housing policy may lead to cost on justice system
- That unresolved justiciable problems lead to pressure on other services and budgets
 - Does that person need expensive anti-depressants or do they need to sort out the problem with their landlord?

Policy Interest in “Impact”

- Treasury interested in cost of unresolved legal problems appearing in other budgets
- Discussion about social and economic costs of unresolved problems
- Estimating cost in public expenditure on physical and mental health, welfare benefits, social housing costs
- The downstream cost of unresolved problems is a powerful argument for protecting legal aid budgets

Smarter approach to advice

- Emphasis on **avoidance and early advice**
 - Concept of cascades and trigger events helps to focus thinking around early intervention
- Making advice more accessible
 - When can people go for advice?
 - Where are they likely to go for help?
- Renewed interest in Public Legal Education
 - Recognizing “unnecessary” helplessness
 - Facilitating self-help
 - Knowledge and skills-development

Potential of
legal needs studies
in current climate

What can they do?

- Legal needs studies focus on **civil justice** issues
- Raise the **profile of civil legal aid** at a time when demands of **criminal justice** sucking-up available funds
- Increasingly important to underline the significance of **civil justice system** in
 - Underpinning economic activity
 - Making effective social justice agenda
 - Supporting social order

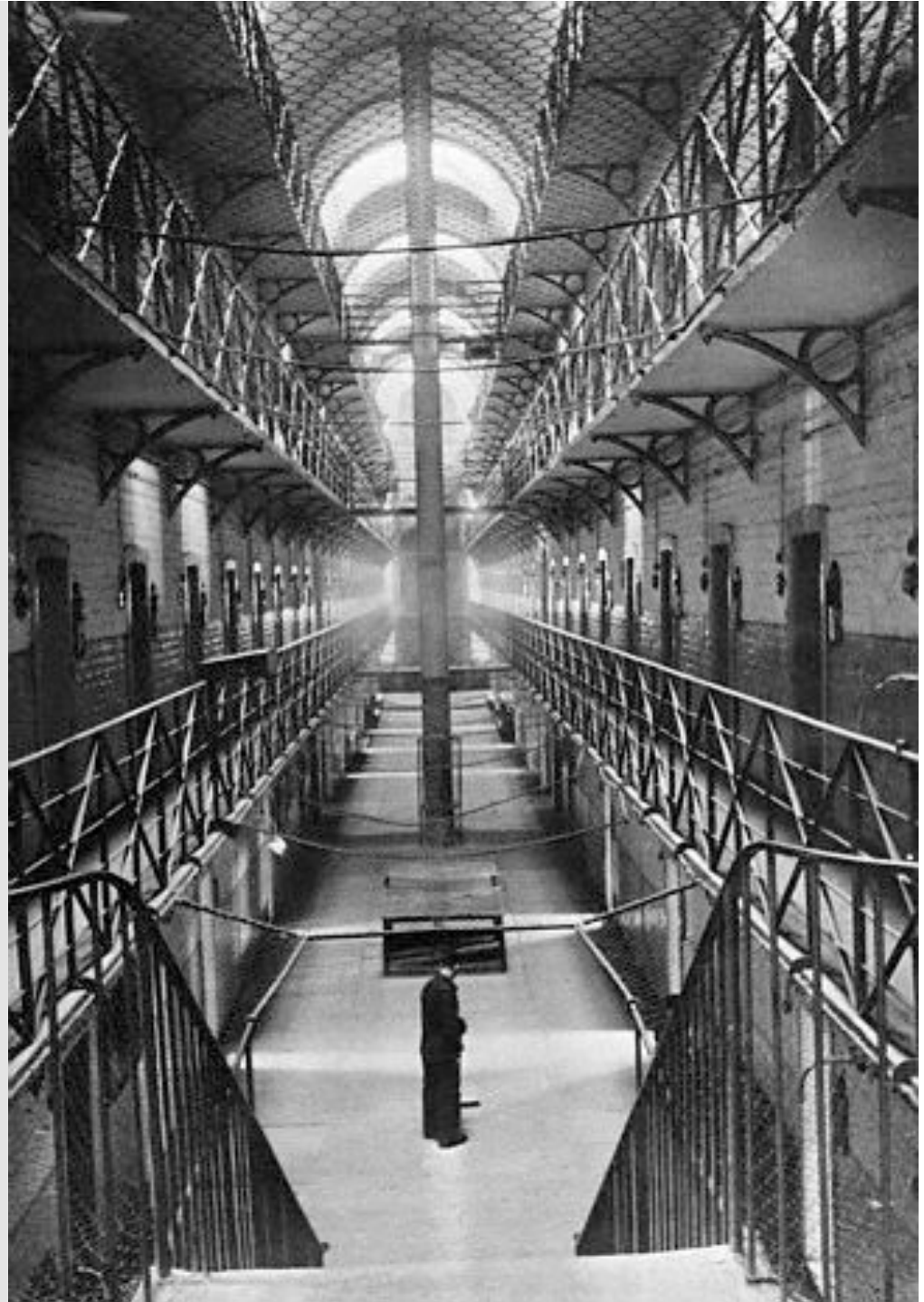
Decade of criminal justice growth

- Legislative 'hyperactivity'
- Crime control agenda
 - more crime, more enforcement, more defendants, more incarceration
- Human Rights Act Legislation
 - more due process protections
- More professional defence lawyers
- Increased cost of criminal legal aid



Civil justice in decline?

- Fixed justice budgets
- Cost of criminal legal aid protected by HRA
- Cost of prisons
- No new money
- No votes in civil justice, no supporters
- Civil justice undefended



Access to civil justice as a social good

- Ability to participate in public redress systems is a measure of the health democracies
- Critical question = not ‘what rights do we give or what obligations do we impose’?
- But ‘what opportunities do we provide for the public to make good their entitlements’?

Fundamentals of Access

- **Awareness** of rights, entitlement, obligations and responsibilities
- Awareness of **procedures** for redress
- Ability effectively to **access** redress systems
- Ability effectively to **participate** in redress process in order to achieve just outcomes

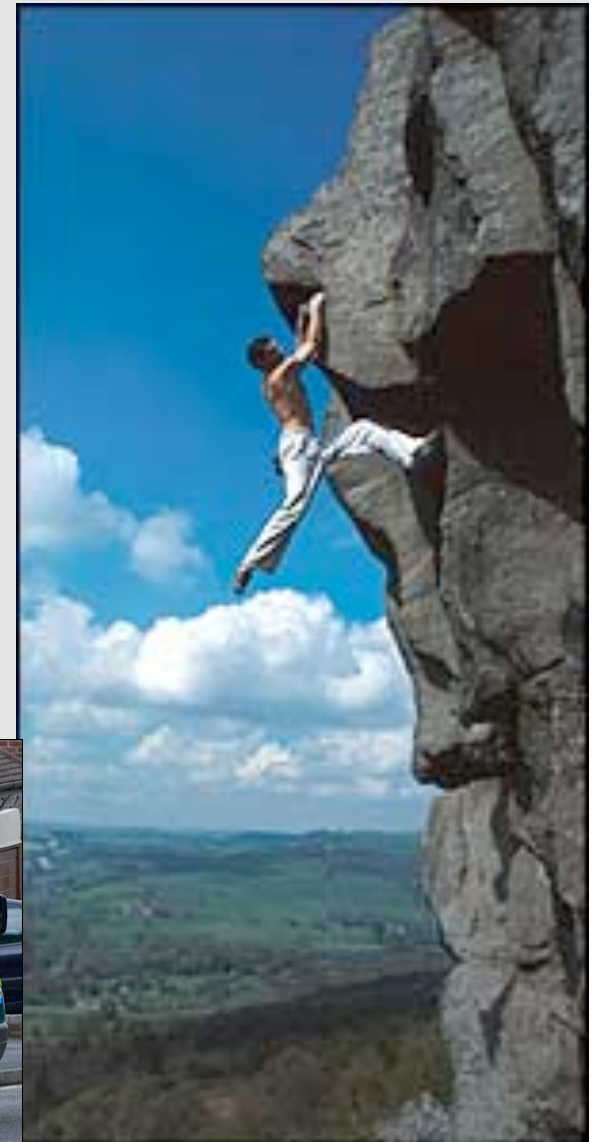
Legal needs studies, civil legal aid and recovery from recession

- Legal needs studies can document impact
- Public interest in access to justice will become greater in tough times
- Civil justice system supports enforcement of rights, access to entitlements and resolution of conflicts that might flow from recession
- Civil legal aid necessary not only to lift up socially excluded BUT equally important in current climate to PREVENT slide into social exclusion

Barrier at top of the cliff or ambulance at the bottom?

- Civil legal aid has both protective and restorative potential
- It is **both** the barrier at the top of the cliff (information, advice, PLE)
- **And** the ambulance at the bottom of the cliff (advice and representation)

How ambitious or limited are your access to justice objectives?



Homelessness

New types of customers

