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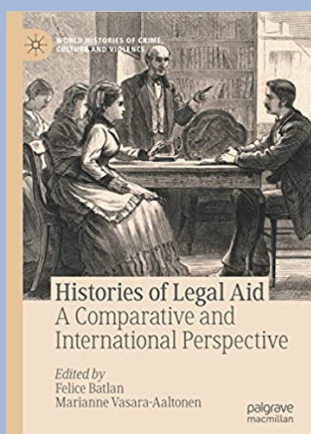


HISTORIES OF LEGAL AID: A COMPARATIVE AND INTERNATIONAL PERSPECTIVE

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Felice Batlan & Marianne Vasara-Aaltonen (eds) (2021) *Histories of Legal Aid: A Comparative and International Perspective* is published by Palgrave Macmillan in hardback priced at £109.99 ISBN: 978-3030802707.

The notion of offering legal assistance to the needy—what we can understand as legal aid—has a centuries-long history. In most countries, though, the second half of the 19th century saw this practice of legal aid take hold. That is where this book comes in to provide an original and compelling collection on legal aid that considers how modern systems of legal aid came to be. The book is the first to bring together a variety of countries in a historical work on legal aid. This mission carries within it two major fresh contributions to the growing scholarship on legal aid.

The first novelty is its choice of case studies. On first picking up this book, I was immediately excited that here was a comparative work on legal aid that did not focus on comparing England and Wales, Australia and New Zealand. There is stellar work comparing such jurisdictions although, at this point, such comparisons can be recognized as the most common that might be taken by an English-language text in the field. Instead, I was delighted that this book had a far wider span with

a focus across the Americas, Asia and Europe. As a scholar of legal aid, working in the Anglosphere, I am aware that I have many blind spots for the history of legal aid in other nations. I am likely not alone in that. Joyfully, *Histories of Legal Aid* provided me with the opportunity to start addressing some of the gaps in my knowledge. And I am sure it will for many others as well. The book looks at legal aid in eight countries. It explores legal aid in Belgium, Chile, China, Finland, France, Germany, Russia and the United States of America. The legal aid situation in these countries may not be widely known to many scholars working in the English language, highlighting something of the new contribution made by the editors of this collection by bringing these contributions together into one accessible compendium.

A second innovative aspect of *Histories of Legal Aid* can be found in its focus on the 19th and 20th centuries. While other works may examine legal aid from a comparative standpoint, the typical approach would be to consider the contemporary state of legal aid—important and useful for debates around policy and practice. In contrast to the standard approach, this book looks at the historical development of legal aid and thus goes further into the foundations of legal aid. What we get is an insight into the cultural and political forces that have shaped the legal aid system in each of the eight countries. We are offered a series of complex narratives wherein varying economic systems or contrasting social movements have led to legal aid taking on differing forms. Chapters approach their historiography from different modes and perspectives, which adds to the variety. The legal history provided offers such a fresh contrast to the more typical contemporary comparisons. The chapters provide a richness and a depth that left me with a stronger sense of what legal aid constituted in each country than I might otherwise have developed from reading the current situation of each jurisdiction set out side by side. By tracing the histories, the uniqueness of each example can be fully drawn out—the reality of the context and conditions that shaped the development of legal aid becomes apparent and comprehensible for each of the countries.

Creutzfeldt & Ors (2016) have noted the increasing calls for scholars of comparative law to pay attention to the social contexts of the laws they consider. A key element here is the need to study diversity as well as similarity. They suggest the question of *how* to do such comparative study in situations of different legal cultures and traditions is inherently complex and wrought with difficulty. Indeed, Creutzfeldt et al (2016: 379) explain that:

The issue that concerns scholars contemplating forms of comparison that go beyond doctrinal issues and span very different cultural contexts is the assumption of sufficient similarity in order to make the identification of difference meaningful. We need some way of speaking about the diversity of the human world without losing our grounding, to keep something firm in order to evaluate the significance of difference. This is particularly problematic when the subject matter is law in society or other socio-legal phenomena, which vary considerably and are found in different configurations, performing very different roles, across social contexts.

The unifying motif of *legal aid* helps the editors of *Histories of Legal Aid* bring these different examples together. They achieve this through their broad understanding of what constitutes legal aid, which is expressed early in their introduction:

Although the practice of providing some sort of broadly defined legal assistance to the poor has existed since the Middle Ages, legal aid gained new importance and was refashioned in the second half of the nineteenth century. Many countries reorganised what we would now recognise to be legal aid, and in other countries some form of legal assistance to the poor was first formally organised (1-2).

Looking at how this cord of legal aid is experienced across widely diverse national contexts, especially considering the varying trajectories of historical development, allows the editors to pursue their ambition of comparing legal aid in terms of, both, similarities and differences. As a result it is not only tight enough to allow coherence, but also flexible enough to work across contexts.

The book originated from a conference on the history of legal aid, which was held at the University of Turku, Finland. Here, scholars from across the globe came together to discuss the history of legal aid. We are told in the introduction how, at first, many of the attendees were surprised at the similarity of their national stories concerning the historical development of legal aid. However, as they worked through their examples, important differences also appeared—differences that became more pronounced as the chapters of the book were written. In the finished product, the individual chapters focus on their particular examples in and of themselves, which gives the reader space to focus on understanding each specific narrative. The introduction picks out some of the similarities and differences, but the editors ultimately opt to let the reader draw their own conclusions on the histories and make the connections themselves. So, for questions such as who funds legal aid or what that legal aid provides, the reader is invited to engage with the scholarship on display in the book. This works well in this instance as an approach to comparative study because

it allows the reader to consider the collection and the chapters however they want rather than being forced into a rigid, prescriptive structure that focuses as much on making the links as telling the story. Comparisons are allowed to emerge and evolve organically as the reader works their way through the examples, learning enough about each to make relevant links themselves. As a reader, I was certainly more interested in understanding these different histories in their own rights—whatever I choose to do with them next, I now have a good grounding from which to work.

On reading, I did note that there are trends that appear across different chapters. One of the most common threads that appears throughout the book is the social changes brought about by industrialization across the 19th and 20th centuries in different countries. This helps us to look across places but also to think across time as well—we can see, both patterns and divergences, as industrialization exerts its impacts across the world in, for example, urbanization and the growth of working classes. Legal aid arises as part of the sovereign state and whatever form modernity takes in any particular country with its inherent socio-economic challenges for many. It is this context specifically addressed by Vasara-Aaltonen's chapter on Finland wherein we see the beginnings of the system emerge amongst all the tensions of industrialization. What we see time and again in this book is an increasing need to tackle the problems faced by poor people in rapidly changing societies—which includes the role of philanthropy to fill the gaps in the state. Debaenst also grounds the chapter on Belgium in the charitable, and religious, origins of legal aid. We see the growth of the state, and consideration of the wellbeing of those facing poverty. However, there are contrasting decisions made about whether, how and whom to help—and thus also decisions about which people are left without help. There is a political dimension to all of this, and this affects the stories that are told about the history of legal aid. In Schafer's chapter on France, we see a writing and rewriting of the narrative about the role legal aid plays in society to meet the differing needs of the Second and Third Republics as it moves away from the revolutionary period. In Dong's chapter on China, we see legal aid through a lens of globalization as the country sought to show itself as a world legal player through a particular socialist framing. The distinctive political considerations of countries are important, and we see that across the book, rooted in developments worldwide since the Industrial Revolution.

Whatever the narrative of legal aid, the role of the legal profession is crucial, albeit looking at how this plays out across different countries takes us along varying paths. The manner in which the legal profession

has grown in various countries and regions can, in part, also explain why legal aid took a particular form. In Batlan's chapter on the United States, we are provided with a revisionist history that challenges the ideas that the legal profession was at the forefront of promoting legal aid and, instead, we see the role of women's movements and activism in helping the needy when elite lawyers may have been resistant. Pomeranz's chapter on Russia unpicks the way the legal profession became implicated in a process whereby the state considers how many civil and social rights it is willing to allow its citizens under varying regimes because this dictates what the legal profession can do. In Le Saux's chapter on Chile we are shown how legal professional organizations make keen use of legal aid as a means of establishing hierarchy and control amongst young lawyers. There are many ways in which the development of legal aid is entwined with the legal profession. Meanwhile, legal aid could exist beyond the legal profession. In Kawamura's chapter on Germany, we see the development of legal aid outside of the traditional legal profession as it grows amongst a diverse variety of sources. Korpiola's chapter on Finland explores legal advice provided in newspapers before the widespread development of legal aid.

Overall, what we get are breadth and depth of understanding about legal aid, and the role that legal aid can play in helping the disadvantaged in society. The international scope will be enlightening for many and makes this a distinctive, important contribution to the literature on legal aid. There is no need to see yourself as an explicitly comparative researcher to engage with or feel the benefit from engaging with the nine authors brought together here. But bringing these stories together allows us to get a firmer grasp than we might otherwise have on what legal aid is and what it can be, what it means to us and what it might mean to others. The variety can help focus our thinking. What the book does is put a range of national histories into an international context and this comparative method can help us look for common traits and local distinction which we can use to ground discussions on legal aid. One theme that emerges in the book is how ideas travel—those working on legal aid in one country might be influenced by another and embrace it or might be worried by what they have seen develop elsewhere and work to resist it. Seeing legal aid in all its shapes and forms, and the range of ways legal advice and assistance can be provided to those in need, can be inspiring. The book should interest anyone who works on legal aid specifically or access to justice more broadly because it gives an insight into the ideas that underpin this crucial point of interaction between citizen and state. I know it will inform my research on legal aid, even that

which does not consider any of the countries on display here. I am sure it will form a part of my teaching, as I show students the role legal aid plays in access to justice. Even those who consider themselves to have a firm, national focus on legal aid and access to justice should consider reading this book because we all have much to learn from it.

About the author

Dr Daniel Newman is a senior lecturer in law at Cardiff University with extensive research expertise on access to justice, legal aid and the legal profession. He writes on both criminal justice and social welfare law. His books have included *Legal Aid Lawyers* and *the Quest for Justice* (Hart 2013), *Justice in a Time of Austerity* (Bristol University Press 2021) with Jon Robins, and *Experiences of Criminal Justice* (Bristol University Press 2022) with Roxanna Dehaghani. He edits the book series, *Perspectives on Law and Access to Justice* for Bristol University Press with Jess Mant.

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