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Camaraderie and conflict: developing an occupational culture typology of publicly funded criminal defence lawyers in England and Wales

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ABSTRACT

Renewed interest in the working lives of publicly funded lawyers has resulted in a growing body of research that has analysed factors which might affect how criminal defence lawyers envisage their role.[1] Much of that work has adopted an ethnographic approach, producing important data that can tell us much about the occupational culture of publicly funded defence lawyers in England and Wales. This paper synthesises and integrates the findings of recent ethnographic work on publicly funded defence lawyers, adopting a broadly Bourdieusian approach to theories of occupational culture to draw out commonalities across the findings of various recent studies. We take these findings further, arguing that they can together allow us to develop a working typology or schema for the occupational culture of English and Welsh publicly funded criminal defence lawyers. We also draw on some lessons learned from key studies of "cop culture" to identify seven apparently pervasive yet fluid characteristics of the working culture of this occupational group, before suggesting areas for further development. The seven characteristics that we identify in this article are camaraderie; expertise; economisation; standardisation; conflict, social justice and adversarialism, and pessimism.

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Introduction

Scholarship into publicly funded criminal defence lawyers in England and Wales is a growing area of research. This paper offers a typology of criminal defence lawyer working culture to synthesise this burgeoning literature. Three decades ago, McConville et al's (1994) influential text, *Standing Accused*, was published. Based on a study of nearly 50 firms, that book

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described the service provided by criminal defence lawyers as often inadequate.[2] Three years later, Travers's (1997b) book, *The Reality of Law*, based on an in-depth ethnographic study of a criminal defence firm, was rather more sympathetic to the work performed by defence lawyers. Travers took note of the competing and sometimes conflicting agendas that can shape the work done by defence lawyers. These works helped to fill a gap, identified by Abel (1988), in our understanding of how lawyers organise their work. Both works have influenced our approach to analysing the work performed by defence lawyers, but there remains a tendency – recognised by Thornton (2019) – to polarise the behaviours of defence lawyers in binaries; good/bad, high/low quality, managerial/zealous advocacy. Drawing on McConville et al. (1994), Newman (2013) classified defence lawyer firms either as "radical" by focusing on client-centred practice, or as "sausage factories" where the client's needs are subordinated to the needs or wishes of the firm or court. Despite the enduring importance of that work, instead of polarising the ways in which defence lawyers perform their work, we here seek to draw out from the extant literature some thematic characteristics of publicly funded defence lawyering[3] that have been identified across a range of studies.

In recent years, and – we suggest – in light of heightened academic and political concerns about how criminal defence work is funded, we have seen revived interest in the ways that defence lawyers rationalise their work and how it is embodied through norms of practice. Such research has commonly taken the form of socio-legal case studies. These have typically been ethnographic in nature, and employed some combination of interviews with criminal lawyers and observation of the work performed by criminal lawyers. While the studies on their own may be of somewhat limited generalisability, this research – and the methods that they have employed – enables us to begin thinking about the overall practices of modern criminal defence lawyers in a more generalisable way. In doing so, we hope to avoid "preaching to the converted" (Travers 1997a, p. 361) about the current state of criminal defence work, but to use that valuable data to present an overall understanding of the issues that shape these lawyers' understanding and performance of their role. We recognise that the reliance of these studies on interview data means that they reflect rationalisations and interpretations by lawyers and by the researchers (Newman and Dehaghani 2022; Welsh 2022). These same accounts do, however, present the realities of the people being interviewed, which is key to the construction of occupational behaviour. This paper focuses on England and Wales to provide a coherent and manageable typology with which to initiate discussions into the value of understanding the working culture of criminal lawyering.

Our analysis draws on Bourdieusian theories of habitus, field, and cultural capital. We have also. been inspired by the development of "cop culture" in

the criminology literature as a typology to understand policing. We feel that that there is a comparable emergent development of criminal lawyer occupational culture that we can identify in contemporary legal studies but that this has not been captured with a typology of its own.[4] Importantly, it is not our aim to suggest that defence lawyers are a homogenous group, but we can and do identify some common features across studies which could further our overall understanding of the working practices of defence lawyers. It must be remembered, though, that much previous work tends to adopt a social constructivist stance. That work recognises that "objective knowledge of the social world is impossible to achieve and instead focuses on the socially constructed nature of knowledge" (Newman and Dehaghani 2022, p. 18). The idea that reality is constructed via interaction with others, including in the justice system (Flower 2020), is central to our work; an occupational culture is constructed by repeated interactions among members of a profession and the groups of people that work alongside that professional group. As Newman and Dehaghani said, "criminal justice matters are firmly located within real-life situations, and replete with social context and personal implications" (2022, p. 47).

We begin by discussing the idea of occupational cultures. This includes examination of how Bourdieu's theory of habitus can help us grasp the functioning of the specific legal culture under examination. We then move on to consider lessons from the "cop culture" literature which provide a springboard for the development of schemas in forwarding our understanding of occupational cultures. At this point, we draw on the legal professions literature to offer our own typology of publicly funded criminal defence lawyers. There are seven key characteristics in our schema: camaraderie; expertise; economisation; standardisation; conflict, social justice and adversarialism, and; pessimism. Finally, we offer some conclusions on the typology we have developed. We offer ideas on what might come next.

The reproduction of working culture

There is a vast literature on occupational culture in various contexts, so it is impossible to include each debate here. It is, though, widely acknowledged that "[a]ll occupations have typical cultures" (Reiner 2016, p. 239). Occupational cultures may be:

> defined as a pattern of assumptions, ways of seeing and working, and values shared by members of the organisation/group that have been found to be effective in fostering internal integration and external adaptation. These assumptions, values and so on are passed on from one generation to another through socialisation, so that new entrants learn to adapt to the sensibilities and cognitions of peer groups, consciously or unconsciously, to reduce their sense of alienation and anxiety (Chan 2014, p. 220).

Occupational cultures are "often elaborate" (Cooke 2022, p. 708) and inevitably context specific. As should be familiar to those who study and work in legal

practice, law is just one factor shaping lawyer behaviour "alongside a variety of social, political and economic processes" (Reiner 2016, p. 237). Legal practice requires lawyers to interact not just with other lawyers and their clients, but also with a variety of institutional and social structures, including other types of business, courts, public bodies, and economic structures. In this way, "cultural perspectives are mutually interdependent with practice and structural pressures shape them both" (Reiner 2016, p. 238). As Olsen and Hammerslev identified, analysing legal processes and lawyer behaviours "within their historical and social context allowed researchers to focus on how legal and social categories and everyday practices mirror broader social structures" (2021, p. 297).

While criticised for its ability to produce changes to the status quo, Bourdieu's (1987, 1990) analysis of how the interaction between the habitus (the "feel for the game") interacts with the field of practice (shaped by conflict between rules and practices) is useful for analysing cultures within legal practice. Chan explained that:

> [i]ndividuals who work in a particular field or subfield (occupation, organization, workplace or unit) often operate from a shared habitus that embodies the knowledge and skills, ways of thinking, practice methods and values held by the subfield. (2014, 222)

Drawing on Bourdieu's conception of habitus, it seems to us that "social practice is enacted, intentionally yet also intuitively, as a result of immersion in a field" (Sommerlad 1999, p. 320). Our field (i.e. our social environment) is the practice of criminal justice, which is also influenced by the power (or, in Bourdieu (1986) terms, capital) that a person is able to leverage in the field. Within courtrooms, professional participants (including, but not limited to, defence lawyers) "patrol and defend the boundaries of workgroup power" (Young 2013, p. 218). As Thornton explained, the "interaction between habitus, field, and capital explains someone's 'practice'" (2019, p. 569). In other words, "norms and values in the workplace concern how work should be done and how relations and social groups are formed around a common position, such as work and employment" (Cooke 2022, p. 707). As Bourdieu put it, there exists an "*internal politics of the profession*, which exercises its own specific and pervasive influence on every aspect of the law's functioning" (1987, p. 806, original emphasis). These socialisation practices mean that lawyers "learn to develop a professional demeanour" (Newman and Dehaghani 2022, p. 56. See also Sommerlad 2007).

In relation to legal aid lawyers, Cooke (2022) proposed a "shared orientation model" to explain informal processes through which legal aid lawyers perform their work. The strength of the model proposed by Cooke (2022) lies in its explicit ability to embrace a diverse range of practices within an overall occupational terrain, emphasising that the behaviours of legal aid lawyers shift

within a range of distinctive features of practice. The shared orientation of legal aid lawyers included knowledge-sharing, collaboration, camaraderie, and socialisation processes (Cooke 2022). Whether the characteristics that we identify below – some of which overlap with Cooke's (2022) model – represent an occupational culture or are more appropriate for a shared orientation model are beyond the scope of our discussion, but we are certainly of the view that the typology we propose is not monolithic nor inflexible in nature. In describing the common features identified through empirical work to prepare our typology of behaviour, we do not wish to lose sight of Thornton's point that "practitioner behaviour can be variable" (2019, p. 563), with differing circumstances likely resulting in practitioners placing varying weight on individual characteristics at any given time.

This recognition cautions us to avoid determinative approaches; the features of legal practice are interactional (Flower 2020). Legal practice in general involves "intense interpersonal interaction" (Westaby and Jones 2018, p. 120), which inevitably generates emotional responses. While all branches of the legal profession have traditionally been expected to act objectively and impartially, there is a growing sense that maintaining distinctions "between reason and emotion is not only impossible but also detrimental to the practice of law" (Westaby and Jones 2018, p. 109). Legal aid lawyers, for example, have been shown to hold intense connections between their personal values and professional life, which works to strengthen emotional responses as they undertake their work (Denvir et al. 2023). As we move further away from false narratives that law operates as reason above emotion (e.g. Flower 2020; Westaby and Jones 2018; Roach Anleu and Mack 2021; Clarke and Welsh 2022), so too can we move further away from projecting lawyers as rational, almost robotic, professionals in the legal process. In their professional settings, lawyers are – like other workers – required to conduct emotional labour which involves managing feelings and presenting publicly observable physical displays to their clients and other stakeholders (Hochschild 1983; Kadowaki 2015), including the police, prosecutors, court staff, and probation officers. This understanding allows us to probe behind a "mock bureaucratic façade" (Reiner 2016, p. 237), and move away from polarised views of what it means to practice criminal defence law, creating a more nuanced understanding of how twenty-first century defence lawyers understand and perform their roles. Crudely, studies have tended to argue that either defence lawyers care little about their clients because they are primarily interested in reducing their workloads (for example, McConville et al. 1994), or that they operate with strong social justice motivations but are required to operate with structural constraints. It seems likely, though, that both ends of this spectrum operate in practice. Literature on occupational culture, emotional labour, and the socio-economic and political landscape in which lawyers practice adds nuance to these debates. We provide below some context to that spectrum by employing

several rhetorical devices to explain and justify publicly funded English and Welsh criminal defence lawyers' work personally, professionally, and in its wider social context.

Key lessons from "cop culture"

Reiner's (2000) method for development of an occupational schema for policing inspired our own musings about whether an occupational culture could be developed for publicly funded defence lawyers in England and Wales. As scholars working in criminal justice, we were struck by the divergence in how we could talk about police officers as opposed to criminal lawyers. The operation of cop culture as a heuristic device in criminology assists engagement with discussions of policing practices, how police understand the world around them and how police officers interact with others. There is almost a short-hand that means scholarly debates can be quickly progressed to an advanced level due to the high-level analysis that is neatly caught in the concept. The themes that unite (and differentiate) key scholarship around policing are captured in an accessible manner. This concept of cop culture, then, helps those who are new to the field to effectively catch up on the conversation. Studies of the legal profession lack such common currency when discussing criminal defence lawyers. There is a plethora of research into lawyering practices, how lawyers understand the world around them and how lawyers interact with others within legal studies. Yet there is no accepted occupational culture typology that could be used to capture criminal defence lawyering as there is police officers.

Literature on criminal defence lawyering is more disparate and independent than that on policing, meaning that students and researchers must work through a wide range of complimentary and overlapping papers without ready connection to hook them in. There are also many potential overlaps outside of the direct study of lawyers; criminal justice is an area that connects with so many other aspects of life. There is thus an opportunity to communicate what is understood about criminal lawyers in a more coherent and captivating manner than presently exists. We believe there are themes in the existing literature and have taken it upon ourselves to bring them together, label them and offer an exploratory analysis in this paper. We do so because we want others to be to grasp the important and illuminating work that has been done on criminal defence lawyers. This is how and why we engage with cop culture, as an influence for us to take a similar step for criminal lawyers. It is possible and – for us – necessary to articulate the correlations and associations that are in place across this area of legal profession scholarship but are not necessarily made clear. As such, we do not propose to develop cop culture in tandem with criminal lawyer research, and we are not embarking on an attempt to compare and contrast the two fields – though these are fruitful avenues for

future scholarship following this paper. For now, though, we first need to set out the case for a cultural typology of criminal defence lawyers. This paper, then, uses cop culture to show that criminal lawyers are a prime candidate to have their working culture established also.

Reiner reminded us that the idea of police culture originated "in a clutch of empirical studies in the 1960s and 1970s, widely regarded as the classics of the field" (2016, p. 236). These studies were – like recent studies of defence lawyers – often ethnographic in their form. For example, Skolnick (1966) drew out the concepts of authority, danger and efficiency as key features of police working culture. Authority denoted the police as the symbolic upholders of law, danger developed with reference to the unpredictable nature of the job coupled with the potential for violence, while efficiency was concerned with the pressure to produce results. Reiner (2000) developed these working personality characteristics, suggesting that key characteristics of police working culture included a sense of mission (akin to a public duty), a drive for excitement and action, which would couple with cynicism and pessimism about declining public standards, a sense of pragmatism when trying to manage crime and criminals, social isolation and police solidarity because those outside could not understand the job, suspicion and stereotyping in relation to suspects, and a tendency towards conservatism, machismo and racial prejudice. These concepts have proved enduring, and sometimes borne out through empirical work (e.g. Miller 2019; Scalia 2020; Terpstra and Schaap 2013) and example cases, most infamously that of the botched investigation into the murder of Stephen Lawrence and the subsequent inquiry that branded the police institutionally racist (MacPherson 1999), and the recent review identifying institutional misogyny, racism, and homophobia in the Metropolitan Police Service (Casey 2023).

Maynard-Moody and Musheno (2003) have included police officers alongside teachers and counsellors as street-level workers. They suggested that such groups can be considered together and thus collect the combined stories of all to understand the ways these groups ascribe identities to the people they encounter and use these identities to account for their own actions. Publically-funded defence lawyers could fruitfully be read alongside such groups, as the story-telling of the legal profession can provide insight into their values and behaviours. Studies of all these groups recognise the importance of properly situating the work performed by different occupational groups within their broader social context.

Although they have different and often conflicting foci when handling cases at the investigative stages (Pivaty 2020), the work done by defence lawyers and the police does share some common structural features: they are public facing roles in which the scope of the work (and pay for it) is largely decided by the state and its needs. As will be seen below, both publicly funded lawyers and the police face state-imposed demands for efficiency. This distinguishes the

work performed by defence lawyers from the work done by privately funded and civil litigators that was analysed in Felstiner et al's (1980) pivotal work on the legal profession, and from the divorce lawyers whose behaviour was analysed by Sarat and Felstiner (1997). In civil legal problems, lawyers may play a more active role in shaping the dispute at the outset (Felstiner et al. 1980) than defence lawyers can play when faced with the case presented by state prosecutors, and defence lawyers will often be funded by the state through legal aid as opposed to privately funded by their clients. As Cooke identified, legal aid lawyers occupy "a unique and complex occupational group which sits on the peripheries of the wider lawyering profession" (2022, p. 705). Their position at the margins of the legal profession, appears to produce – as we will illustrate below – a sense of camaraderie among this group of lawyers, akin to the sense of solidarity among police officers identified above. This unique position also exists partly because, as Chan recognised in the Australian context,

> legal aid lawyers who serve clients of low socioeconomic status would occupy positions of lower economic capital than lawyers in commercial firms whose clients are businesses or corporations, yet for legal aid lawyers, their investment in the game may be motivated by the cultural and political capital of providing quality service and promoting social change (2014, 223.)

However we can also detect, here, a nod towards another characteristic of publicly funded defence practice that we discuss below: social justice and adversarialism. This could be likened to the police sense of mission, in that both defence lawyers and the police appear to regard themselves as upholders of key legal principles for wider societal benefit. However, defence lawyers will also share some features of legal practice with their civil law counterparts, which also operate to distinguish them from police officers (beyond the role itself). Both civil and criminal lawyers undergo the same types of study and training, and the organisations that they work within may be similarly structured according to the requirements of the Solicitors' Regulation Authority, the Law Society, the Bar Standards Board, the Chartered Institute for Legal Executives and, beyond these bodies, a sense of historical tradition. It is for the above reasons that, while influenced by overall understandings of lawyers' behaviour, we suggest defence lawyers can be marked out as a particular group within the wider legal profession, occupying a unique position in the landscape of legal practice. That position appears to influence the evolution of a particular set of working characteristics that we set out below.

Reiner's (2000) analysis of policing offers a useful start point for several reasons. Like cop culture, criminal defence practice is embedded in the stresses and demands that the work brings, internalised by lawyers as they traverse their professional responsibilities (Farrow 2022). Also like the police, the working practices of defence lawyers require them to navigate across diverse types of workspace; some more public facing than others. Those spaces include the

courtroom (as distinct spaces when the court is sitting and when it is adjourned), police stations, their offices, and when socialising within or beyond their work peer group.[5] The values that operate within the criminal justice system will also affect the ways that both police officers and defence lawyers operate, albeit in potentially diverse ways. As the English and Welsh criminal process has become oriented more towards crime control and away from due process (Welsh et al. 2021), suspects and defendants have become more marginalised (Welsh 2022) as part of an "anti-accused ideology" (Newman and Dehaghani 2022, p. 141). Like police officers, defence lawyers "bring different personalities and initial orientations to situations, although the structural weight of the problems they face then tends to shape some commonalities in response" (Reiner 2016, p. 239).

Practitioner perspectives: a developing typology for publicly funded defence lawyers

Smith noted that the "criminal defence lawyer is arguably one of the most recognisable legal professionals, highly prominent in the public consciousness as the "stereotypical" lawyer; that is, the tricky or devious representative protecting society's deviants" (2013, p. 111). Smith (2013) explored challenges to the modern defence lawyer role, discussing the existence of a gulf between idealised conceptions of defence lawyering and the day-to-day realities of defence practice. Over recent decades, criminal defence lawyers have reported that their work has been increasingly affected by low morale, elevated levels of stress, declining income, and mounting workload burdens (Sommerlad 2001; Thornton 2020).

Drawing on extant literature, we have identified seven characteristics of defence lawyering that appear frequently across the key studies in this area of scholarship. Inevitably, categories overlap, and are flexible. Indeed, lawyers themselves resist attempts to homogenise their work (Cooke 2022). What we propose does, however, represent a series of characteristics that appear to be given more or less weight in different circumstances, allowing lawyers to perform their role while upholding their own and wider views of the profession and managing the emotional labour made more demanding by the stresses and strains of this area of legal practice. Our key characteristics are camaraderie, expertise, economisation, standardisation, conflict, and pessimism. Despite inevitable overlaps, we deal with each in turn below, hoping that they can develop our understanding of the ways that publicly funded English and Welsh defence lawyers rationalise their practice.

1. Camaraderie

The first characteristic that we have identified points to the co-operative nature of criminal defence work. In various jurisdictions, criminal justice is performed

via teamwork, with defence lawyers occupying a significant role in the team alongside other criminal justice professionals such as prosecutors, judges, and the police (Flower 2018). Despite their distinct roles, prosecutors and defenders "often bind together in mutually convenient informal networks" (Snipes and Maguire 2007, 30). This appears, in England and Wales at least, to lead to the development of a particular courtroom workgroup culture[6] in which co-operation is viewed as vital to the maintenance of stable relationships (Carlen 1976; Welsh 2022; Young 2013), and as offering significant benefits when negotiating relationships between barristers and their clients, negotiation with the police (Newman and Dehaghani 2022; Pivaty et al. 2020), and during the course of negotiating the nature or extent of pleas that a defendant might enter (Welsh 2022). Cooke found that publicly funded lawyers employed camaraderie as a rhetorical device in relation to "socialisation, moral support, motivation or morale" (Cooke 2022, p. 716).

Twenty-first century demands for efficient case progression, ushered in via the Criminal Procedure Rules,[7] Criminal Justice: Simple Speedy Summary[8] and Transforming Summary Justice[9] in Magistrates' Courts, and Better Case Management in Crown Courts,[10] appear to have prioritised co-operative working practices over traditional adversarial principles (Johnston 2020; Newman 2013; Ward 2017; Welsh 2022). Indeed, conflict avoidance between defence lawyers and their opponents and the courts has become, to Tata (2019), a key tool in efficient case disposal. Johnston (2020) reported that some defence lawyers appear to have embraced further calls for co-operative working practices encouraged by demands for efficient case management activities and completion of case management documents (we will further discuss standardisation below). The small number of prosecutors who have been interviewed about this issue appeared to favour elevated levels of co-operation with defence lawyers (Welsh 2022). This type of camaraderie was recognised, by Carlen (1976), as capable of placing people who were willing to disrupt usually co-operative networks in a strong position. However, intensified demands for efficiency following the managerial turn in legal aid practice (Sommerlad 2001) appears to have increased a perceived need for camaraderie among defence practitioners (Welsh 2022). This is problematic, representing a challenge to the traditionally adversarial understanding of criminal justice practitioners that will be explored later in the article. As Newman and Dehaghani pointed out, the "possibility of developing "a bad reputation" with others, particularly the judge, could therefore impact on how others interacted with the lawyer and, perhaps most notably, upon the experience for the client" (2022, p. 82).[11]

Camaraderie might be developed via communicative performance among publicly funded defence lawyers. Cooke (2022) found that humour was likely to be used as a method of communicative performance among publicly funded defence lawyers. "Gallows humour" appears to offer a significant

coping mechanism among criminal defence professionals who are often required to mentally process the taint associated with defending suspects, some of whom are, of course, alleged to have behaved in socially repugnant ways (Gunby and Carline 2020).[12] It is possible – though data is lacking on this particular issue – that lawyers discussing clients in negative ways among themselves is also a form of gallows humour, developing shared experiences and thereby a sense of insider understanding and camaraderie.[13] These behaviours might contribute to a community of coping, which is discussed below in relation to conflicting emotions that might be experienced by criminal defence lawyers and has been explored in the policing literature as "canteen culture". There exists, though, a dilemma in how to approach such communities of coping. While they may serve constructive purposes for those within the occupational culture, it needs be noted that these coping mechanisms risk perpetuating and normalising biases, especially given the generally homogeneous nature of the legal profession.[14]

Camaraderie appears also to be a significant coping device in the context of a defence lawyer community which believes that those beyond the profession fail to understand the realities of the job (akin to solidarity among police officers). English and Welsh practitioners often expressed feeling that they "were ignored in policy debates." (Newman and Dehaghani 2022, p. 16). As Newman (2013) found, lawyers feel misunderstood and marginalised by outsiders. The profession "attracts little wider respect and internalizes negative messages" from politicians and the wider public (Newman and Dehaghani 2022, p. 110), contributing to a culture that may favour insiders. Negative media portrayals of criminal defence lawyers appear to create a sense that the value of the work they perform is misunderstood (Clarke and Welsh 2022; Welsh 2022). As we will explore further below, poor remuneration rates also appear to reflect that the work done by defence lawyers is undervalued and underappreciated (Clarke and Welsh 2022; Newman 2013; Newman and Dehaghani 2022; Newman and Welsh 2019).

Kinghan (2021) similarly identified that socially progressive lawyers tended to operate across informal networks of interaction, and situated themselves distinctly from corporate lawyers in terms of developing shared belief systems which emphasised that money did not motivate their professional behaviour. In the context of feeling underappreciated, misunderstood, and undervalued, camaraderie provides a sense of community, differentiating between those who understand and those who do not. One negative consequence of such camaraderie is that it might extend to perceived and actual misunderstanding of the role by clients and the public (Newman and Dehaghani 2022). On the one hand, lawyers' sense of being misunderstood may provide a form of intra-community support, yet it might also alienate those outside the workgroup (Welsh 2022), thus exacerbating and entrenching feelings of being misunderstood. Newman and Dehaghani (2022), for example, found that clients

were often worried and frustrated by the perceived closeness of their defence lawyer with the prosecution legal team. With outside engagement, lawyers might be able to challenge mystique surrounding their role, yet other features of occupational culture might undermine their ability to perform that demystification work.

2. Expertise

A second characteristic can be found in the specialist nature of lawyering in terms of both legal and procedural knowledge, and the norms of practice in the courtroom, police stations, etc.. As with lawyering more broadly, English and Welsh criminal defence lawyers see a value placed on professional expertise (Clarke and Welsh 2022; Newman and Welsh 2019; Welsh 2017). Expert knowledge and the ability to exercise discretion in decision-making form key elements of legal professional identity and power (Boon 2014). Indeed, "good legal knowledge and technical expertise has long been recognised as an essential component of a lawyer's ability to provide legal services to a high standard" (Sommerlad 1999, p. 27). Such expertise marks the professionalised nature of the lawyers' role, offering a degree of autonomous decision-making powers. From a Bourdieusian perspective, "professionals' self-conception as independent actors necessitates an intense resistance to external influence" (Sommerlad 1999, p. 320). Defence lawyers have shown a tendency to feel affronted if their expertise is questioned by those outside the profession, such as by civil servants at the Legal Aid Agency (LAA) (Clarke and Welsh 2022) or by court staff conducting case management activities (Welsh 2022). Defence lawyers appear to view such challenges as a further affront to their professionalism – it being seen as distrust in their judgment – in the context of poor rates of pay, leading to further feelings of rejection, resentment, and lower morale (Thornton 2020). Newman (2013) reported the strong adverse reactions of defence lawyers when challenged about their knowledge or advice by their clients. This appears, then, to contribute also to a sense of camaraderie because those outside the profession do not properly understand what these lawyers must do, or their decision-making activities.

Expertise formed a significant part of legal occupational culture as courts became more professionalised (Leader 2020; Owusu-Bempah 2017). Formalised legal language can serve to maintain an epistemic community of professional autonomy (Welsh 2022), while also bolstering a sense of camaraderie between insiders who are able to understand the language used. Observation suggests that defence lawyers do not openly or consciously use legalese as a reflection of expertise, but tend to use specialist language which implicitly references particular legal provisions (Welsh 2013; Welsh 2022). Campbell (2020) found that the language used by legal professionals in magistrates' courts was significantly different from the language used by defendants.

This means, as Smejkalová puts it, the legal world becomes one that is "fully accessible only to those duly consecrated" (2017, p. 63), a process that Newman (2013) considered alienating to clients. While specialised language may be a way of expressing expertise and bolstering camaraderie, it does somewhat conflict with the altruistic social justice and adversarialism characteristics discussed below (Welsh 2022).

Furthermore, use of language to express expertise might be relied upon as a way of homogenising the profession under a guise of meritocracy. There are conspicuous areas in which research remains lacking about the criminal defence community, most notably in relation to race, gender and class among practitioners.[15] It does seem, though, that ideas of expertise may feed into notions of "legitimate competence" (Bourdieu 1986, p. 245) which reference the legal profession's broader view of its ability to dispense justice neutrally (Sommerlad 2015). While we are unable to address intersectional issues of diversity here, Sommerlad discussed the legal profession's "slow progress towards diversity, equity, and inclusion" (2015, p. 2334). Reliance on expertise may be a way of cognitively neutralising inequality within the profession while also being drawn on as a tool to help clients and therefore bolster the social justice outlook that the profession appears to share (as will be explored later).

Not only does expertise seem to form a part of a publicly funded defence lawyer's identity, it assists camaraderie in another way identified by Cooke (2022); knowledge sharing.[16] Participants in Cooke's (2022) study identified legal aid practice as especially knowledge intense. Lawyers conducing post-appellate casework in relation to possible applications to the Criminal Cases Review Commission also viewed their area of practice as especially intellectually demanding (Clarke and Welsh 2022). For participants in Clarke and Welsh's (2022) study, the intellectually demanding nature of the work created some sense of job satisfaction, while participants in Cooke's study appeared to appreciate the opportunities for collaboration provided by knowledge exchange, noting that the "appreciation of each other's working practice *keeps them going*" (2022, p. 716, original emphasis). As Cooke (2022) developed, these experiences around expertise and knowledge sharing appear significant to a sense of camaraderie developed among legal aid lawyers, providing some comfort to lawyers who feel targeted by governments and the media as "lefty human rights lawyers" (e.g. Bowcott 2020) and as immoral "fat cats" (e.g. Fouzder 2018). Maiman (2008) has explored how some cause lawyers – and the values they are seen to espouse – are represented in media depictions around the issue of human rights. It seems, to us, that expertise is a key characteristic of the culture of publicly funded defence lawyers, and one that supports camaraderie and perhaps offers some sort of cognitive shield against the challenges faced in this area of practice (Thornton 2019). Expertise may also work to further cement the homogeneity of the Bar, with notions of what counts as

excellence for barristers self-presentation and their work potentially problematic in terms of exclusion as well as perpetuating elitism.

3. Economisation

The third characteristic relates to the wider financial context in which legal aid lawyers – such as criminal defence lawyers – practice. There now exists a significant volume of literature about the negative impact that legal aid cuts and stagnant fees have had on the work performed by publicly funded defence lawyers in England and Wales. Defence lawyers appear to feel commodified (Newman 2016; Newman and Welsh 2019), in ways that move them (further) away from their social justice motivations for performing the work as traditionally envisaged (Cooke 2022). This idea that defence lawyers view themselves in an economised way relates to the way in which the services they provide have become the subject of greater regulation and scrutiny by their funder, the LAA. As legal aid services became the subject of new public management techniques since the 1990s, they have been required to meet ever stricter contracting and audit arrangements with the LAA (and its predecessors). Early in the twenty-first century, Sommerlad identified that state imposed regulatory requirements had altered the "structure, culture and ethos of the profession" (2004, p. 15). Elsewhere, Sommerlad persuasively argued that "the invasive character of quality and auditing procedures … and the fact that they are reshaping the juridical field, erod[e] the underpinnings of those attributes of autonomy and judgement which are central to the traditional conception of the profession" (1999, p. 321). Regulatory demands on English and Welsh providers of publicly funded defence advice appear to have intensified during the 2010s, such as the obligation to obtain and maintain quality audits overseen either by the SQM Partnership or Lexcel. These processes increase the ways in which the work is surveilled by the state (Cooke 2022) while also undermining another key characteristic of defence lawyering; expertise supported by professional discretion.

The idea that defence lawyers have become commodified related not just to the ways they are audited, but also to how they are paid. Much defence lawyering in England and Wales is performed via payment by standard fee, which pays according to case categorisations rather than actual work required on the individual case.[17] The payment structure can encourage routinisation of casework and undermine time spent on client care activities, adding to standardisation and role conflict we discuss elsewhere (Tata and Stephen 2006; Welsh 2022). Denvir et al. (2023) have shown the wider legal aid sector is in a state of crisis due to underfunding, which has made it an increasingly unattractive area in which to work. Such echoed the findings of the Justice Committee (2021) that found legal aid firms across the board were struggling due to under-funding running down the sector. Indeed, successive studies since the

second decade of the twenty-first century have identified poor levels of standardised remuneration as the most significant concern for publicly funded defence lawyers, creating serious issues regarding recruitment and retention of defence lawyers and concerns regarding advice deserts (for example, Newman and Dehaghani 2022; Newman 2013; Welsh 2022; Thornton 2020; Clarke and Welsh 2022). The scale of the financial deficiency can be seen in an independent review of criminal legal aid that was recently undertaken by Sir Christopher Bellamy KC and made the case for funding for criminal legal aid to be increased for defence lawyers as soon as possible to an annual level of "at least 15%" above present levels to ensure that a "level playing field" between defendants and prosecutors was maintained (Bellamy 2021, p. 10). For Bellamy, "£135 m is, in my view, the minimum necessary as the first step in nursing the system of criminal legal aid back to health after years of neglect" (2021, p. 10).

That lawyers believe (and evidence supports the belief) that English and Welsh criminal justice is underfunded has become such a central feature of modern defence lawyer identity that "it creates a sense of solidarity in the face of a perceived unfairness" (Newman and Dehaghani 2022, p. 56). Economisation is connected to the characteristic of pessimism that will be discussed below, as highlighted in the unpaid labour and burnout that increasingly characterise working conditions in the legal aid sector (Denvir et al. 2023). Modern defence lawyers frequently complain about the unpaid administrative burden placed on them by the LAA, and that a perceived culture of refusing funding undermines lawyers' professional identity (Clarke and Welsh 2022; Newman and Welsh 2019).[18] Cooke argued that poor rates and systems of remuneration meant that the publicly funded legal "profession is becoming increasingly detached from its altruistic remit as it undermines the rights of workers within it to serve justice and help people most in need" (2022, p. 706). This is arguably the most pressing concern for modern publicly funded English and Welsh criminal defence lawyers, bringing such lawyers into recent and significant conflict with the Ministry of Justice (e.g. Quirk 2022).

4. Standardisation

The fourth characteristic that we have selected relates to the routinisation of practice in criminal defence. Lawyers who feel undervalued, powerless, and are underpaid might be more tempted to standardise the services they offer (Newman 2016; Newman and Welsh 2019; Young and Wall 1996). Standardisation of processes can perform a significant role in forming professional identity through task repetition and negotiation that those outside the profession do not (and cannot) understand (Leader 2020). McConville et al. (1994) were concerned about lawyers' reliance on providing a standardised service that lacked nuance and, sometimes, expertise. In 1999, Sommerlad described legal aid

lawyers' approach to mechanisation of legal work in consequence of a need to maintain profitability in light of increased regulatory intervention and funding cuts. In light of increased funding pressures, and reflecting earlier patterns identified by Tata and Stephen (2006), studies have consistently identified that lawyers need to take on large volumes of casework and/or to rely on more unqualified staff in order to maintain any semblance of profitable practice (Clarke and Welsh 2022; Newman 2013; Newman and Dehaghani 2022; Tata and Stephen 2006; Welsh 2022). The same studies identify the negative consequences of these processes for lawyer-client relationships, in that less time is available to spend on client care activities.[19] Accused people might notice this, with one such participant in Newman and Dehaghani's study stating that the criminal justice system is "just production-line convictions" (2022, p. 70).

While fee cuts and stagnation seem to have led to casework being conducted at ever greater volumes by defence lawyers, growing demands for efficient and streamlined court practises have increased the speed with which proceedings are conducted (Newman and Dehaghani 2022; Welsh 2022). An ever-more urgent need to "get through the [court] list" standardises the service that lawyers are able to offer their clients (Newman 2013, p. 96).[20] These two factors (volume and speed) appear to have led to increasingly formulaic processes to case management (Newman and Dehaghani (2022), with (potentially) complex legal matters progressively being reduced to completion of tick boxes on forms that lawyers must complete, with the effect of dehumanising clients (Newman 2013; Welsh 2022; Welsh and Howard 2019). Standardisation of case facts has become increasingly common across the criminal process in light of ever-more demands for efficient case progression (Tata 2020; Welsh and Howard 2019).

Lawyers have expressed frustration about processes that standardise their decision making, fearing that it reflects a lack of trust placed in their expert decision-making, even over the time that they need to spend on casework (Clarke and Welsh 2022; Newman and Dehaghani 2022; Welsh 2022). Additionally, the speed and standardisation with which cases are required to be processed appears to have significant negative implications for defendants' understanding of proceedings (Campbell 2020; Welsh 2022). The routinisation of proceedings serves to obscure the legal technicalities and language being applied to lay participants in these proceedings (Welsh and Howard 2019). Furthermore, as will be expanded on below, demands for efficiency challenge the zealous advocate model, while focusing on identifying issues at an early stage in proceedings challenges the primacy of acting first in the best interests of the client (Newman and Dehaghani 2022; Smith 2013). Ultimately, standardised case management practices can undermine "individual rights in favour of speed, and reconfigures our understanding of "justice" in a way that means efficiency is given greater priority in case management decisions than individual cases and circumstances" (Welsh 2022, p. 75). While lawyers

appear to feel pushed into standardising practices to comply with the demands of external stakeholders, this characteristic of defence lawyering seems to undermine more altruistic elements such as social justice motivations for undertaking the work.

5. Social justice and adversarialism

This fifth characteristic is grounded in the values that criminal defence lawyers would profess to hold. Although challenged by McConville et al. (1994), the tradition of English and Welsh defence lawyering regards adversarialism as "an essential component in this jurisdiction's criminal justice system, central to equality of arms, due process and the enforcement of the prosecution's burden of proof", as enshrined in common law and as part of Art. 6 European Convention on Human Rights (Smith 2013, p. 112). Defence lawyers act, in principle, to shield their clients against the power of the state (Johnston 2020). According to Smith, "the emergence of both adversarialism and the defence lawyer in English and Welsh criminal justice were, effectively, simultaneous and inextricably linked" by the professionalisation of criminal justice and shifts in political and social approaches to equality and fairness during the eighteenth and nineteenth centuries (2012, p. 5). Smith (2013) develops three key principles that represent the lawyer in an adversarial process, which he terms the "zealous advocate" model: the duties to the client, to the court, and to the public The duty to the client obliges lawyers to act fearlessly, in the client's best interests,[21] with detachment (which requires refrain from moral judgment about the case or client and accepting instructions from any client in need for representation), and with confidentiality, which reflects that the nature of the relationship requires trust that information will be kept privileged in the context of the burden and standard of proof. Notably, though, those obligations may be limited by duties owed to the court to "help facilitate an even, efficient and economical process" (Smith 2013, p. 115) requiring that "ambush" defences raised at the last minute should be avoided. The duties owed to a client may also be tempered by a duty owed to the public that "the defence lawyer's behaviour should be characterised by unimpeachable propriety and morality" (Smith 2013; p. 116. See also Johnston 2020). At its heart, though, the zealous advocate model tends to favour client interests over those of courts and the wider public: it is client-focused duties that should take greatest prominence.

For publicly funded defence lawyers, as Sanderson and Sommerlad argued, there is a strong "case for providing universal access to legal advice and representation as a necessary corollary to the provision of public welfare goods and the objective of social justice" (2011, p. 80). This social justice argument has, however, long been tempered by (largely political) concerns that lawyers will rely on their expertise to shape cases so that public funds are ineffectively spent (Sanderson and Sommerlad 2011). Nonetheless, the social justice

characteristic remains an important feature of modern defence lawyer rationalisation of their work in common law jurisdictions (see, for example, Baćak et al. 2020). Cooke found that the legal aid lawyers' profession has typically been defined by a "devotion to serving in the public interest, and fore-fronting client-centred practice" (2022, p. 707), with 29 of her 30 interview participants sharing a charitable sense in relation to their work. McConville et al. (1994) and, more recently, Newman (2013) raised concerns whether lawyers practice the client-centredness that they profess to exercise. Yet the research cited throughout this paper indicates that the profession itself processes its actions in the context of social justice motivations, which can provide support for a zealous advocacy model of practice (Boon 2014).

Developing the ideas of Sommerlad and Wall (1999) from the wider legal aid sector, Newman (2013) forwarded the idea of a "social agenda" as a central element in the self-conception of criminal legal aid lawyers. More recently, Newman and Dehaghani identified that defence lawyers tended to be drawn towards criminal defence work "either through calling or "social agenda," or out of interest and passion" for criminal law and practice, or through happenstance (2022, p. 49), though they found that only a minority expressed a social justice calling in those explicit terms. Many criminal defence lawyers will certainly say that they do not perform legal aided criminal defence practice for the money, but out of a wider sense of civic duty and obligation to uphold the due process values of the criminal justice system (Clarke and Welsh 2022; Cooke 2022; Newman and Welsh 2019; Thornton 2020). This social justice orientation appears to be pervasive among publicly funded and socially progressive cause lawyers, forming a key part of their shared orientation (Cooke 2022; Kinghan 2021). Even those in Newman and Dehaghani's (2022) study who did not clearly express a social justice agenda seemed to remain in that area of practice not because of the (inadequate) income it generated, but because they had a sense of job satisfaction, often through the opportunities for social engagement and interaction it presented. This characteristic has, therefore, the potential to equalise other aspects that may be more deleterious to defence lawyers' conception of their role (such as being economised). Increasing financial and performance pressures might, however, ultimately undermine the social justice and adversarial ethos of publicly funded defence lawyering to such an extent that it becomes unsustainable to balance those features of occupational culture (Clarke and Welsh 2022; Thornton 2020).[22] Consequently, efforts to control and standardise defence lawyer's work might have resulted in their failure to act with sufficient zeal (Boon 2014).

6. Conflict

Our sixth characteristic involves the different priorities that criminal defence lawyers must manage in their practice. As has been noted above, some of

these characteristics clash and would seem to reflect competing facets of the defence lawyer experience. As Chan observed,

> the field of legal practice can be conceptualised as a space of conflict and competition which reflects the economic, social, political and symbolic capital available to lawyers – both individual resources (such as family background and connections; experience, knowledge and skills in legal practice; autonomy; access to information and reputation) and organisational and professional resource (such as the size and profitability of the law firm, promotional opportunities, the power and influence of the legal profession, and professional independence). (2014, 223)

Specifically in relation to publicly funded criminal defence lawyers, Smith (2013) recognised that, even for zealous advocates, conflict between their lawyerly duties creates conflicts in practice. For example, the "interests of the client regularly contradict those of the Court and wider public, yet all command the defence lawyer's loyalty to some degree" (Smith 2013, p. 117). For Smith, "[t]he defence lawyer is therefore regularly faced with ethical dilemmas, resolution of which necessarily involves assigning favour to one obligation over another" (2013, p. 117). Johnston described this as placing defence lawyers "on the horns of a trilemma: he needs to accumulate as much knowledge about the case as possible; to hold it in confidence; and yet to never mislead the courts" (2020, p. 42).

While the defence lawyer's role has perhaps always been characterised by conflict and ethical indeterminacy (Tata 2007), as can be elucidated from the arguments presented in the literature detailed across this article, increased financial pressures and demands for efficiency have shifted defence lawyers further away from zealous advocacy and further into conflict between the competing interests set out across their duties to clients, the court and the public (Thornton 2019; Welsh 2017). Johnston found that lawyers in his study "frequently did speak of themselves in terms of being an adversarial protector of defence rights, but these views were often tempered by the competing obligations in the case management era of the modern criminal trial" (2020, p. 44). These conflicts have been compounded by increasingly crime control oriented legislation driven by anti-defendant rhetoric, such as the attenuation of the right to silence and the burden and standard of proof under the Criminal Justice and Public Order Act 1994 and the Criminal Procedure and Investigations Act 1996 (which requires that suspects disclose their defence), and the provisions of the Criminal Justice Act 2003 which increase the likelihood that both hearsay evidence and evidence of a person's prior "bad character" will become admissible during a criminal trial. A variety of legislative and policy provisions, and common law interpretations deriving therefrom,[23] that require lawyers to prioritise the interests of the court over the interests of the client have the potential to undermine the "relationship of trust between lawyer and client, [and] increases the potential for ethical conflict" (Smith

2013, p. 122; Johnston 2020; Welsh and Howard 2019; Welsh 2022). Attempting to maintain a zealous advocacy model in the face of both structural and personal conflicts have the potential to cause lawyers considerable levels of stress and anxiety (Yakren 2008), contributing to a sense of pessimism and lowered morale (Newman 2013; Newman 2016).[24]

The above detailed "financial position places pressure on lawyers to do the job in a way they perceive to be improper" (Thornton 2020, p. 238). There exists a frequently reported conflict between what lawyers perceive to be "doing the job properly" and the financial and efficiency-demanding pressures of practice (Newman and Dehaghani 2022; Thornton 2020; Welsh 2017). Thornton explained that the "habitus required to financially survive and thrive in this field is that of a person pre-disposed towards favouring their own finances above other considerations" (2019, p. 582). As Newman and Dehaghani also found, "while individuals may enter the criminal defence professions out of commitment to public service and the rule of law, they may inevitably be placed in a position that forces them to compromise their principles to meet the standards for the business" (2022, p. 37).[25] One area in which these conflicts seem to play out in is in relation to plea discounts. As discussed above, a reasonable approach to plea negotiations may reflect a sense of camaraderie between lawyers in criminal justice. However, entering into plea negotiations can damage trust and rapport with clients (McConville 1998; Mulcahy 1994), yet refusal to engage in/discuss pleas can be detrimental to clients too (and victims and the justice system) (Welsh 2022). As with Flynn and Frieberg's (2018) analysis of plea negotiations in Australia, it seems that there is never a perfect outcome, only one that that is reasonably acceptable as just. This point is supported by Tata's (2007) conception of ethical indeterminacy in publicly funded criminal defence work. Tata posits that there is rarely a stark choice between one set of interests (or characteristics) over another, but rather that conflicts that arise in the working practice of defence lawyers are "more subtle and complex than is depicted by a straightforward contradiction between lawyer self-interest and client interest" (2007, p. 494). Given the complexities of characteristics of modern defence lawyering outlined here, we agree that dichotomous approaches to the culture of publicly funded defence lawyers as good/bad, client/self-serving etc. are unhelpful.

One way in which conflict might manifest among publicly funded English and Welsh criminal defence lawyers is through "canteen culture". In relation to police occupational culture, Waddington (1999) contended that it is important to distinguish between how officers talk amongst themselves and how they actually perform their role. Waddington points to "a gap between canteen chatter and the reality it purports to depict" (1999, p. 289). Analysis of such behaviour from emotional labour perspectives terms this behaviour (of distinguishing between image presented to customers and displays of frustration, upset, and pain among colleagues) as communities of coping, in which public

facing service workers seek informal support from each other (Burke et al. 2020; Korczynski 2003). However, as van Hulst observed, opposing talk and action "in a fundamental way is to exaggerate their differences and downplay their interrelatedness" (2013, 637). As a matter of common sense, there may be disconnection between what occupation members talk about doing, and their attitudes to their work and people they interact with, and the actual work performed. We also need to set the working practices of defence lawyers in the context of possible conflict between what they say and what they do. Newman (2012, 2013) was disheartened by the negative ways in which lawyers spoke about their clients among themselves when the clients were out of earshot. Harbord (forthcoming) expressed similar dismay about the pejorative descriptions of clients expressed by defence lawyers they observed. There exists, though, insufficient data on how far these expressions of canteen culture and storytelling among defence lawyers affects the actual work performed in terms of both substantive justice (fair outcomes) and procedural justice (due process protections). It seems likely that expressions of at best antipathy, and at worst hostility, towards clients among lawyers in conversation could reflect a perceived need for, and build on, camaraderie, but they also seem to represent a manifestation of conflict in terms of the emotional labour performed when trying to balance the features of practice set out in this typology. Consequently, conflict might arise as lawyers are required to tread lines between possibly value-laden emotional factors and traditional views of objective professionalism (Westaby and Jones 2018).

7. Pessimism

A seventh characteristic can be found in the sense of negativity that pervades criminal defence work. To follow what has gone before we can see that, at its core, the modern practice of defence lawyering appears to be characterised by conflicting agendas, often requiring lawyers to perform roles in ways that damage one characteristic that could increase morale (e.g. social justice and adversarialism) in favour of other characteristics that serve to entrench their occupational culture (e.g. camaraderie) or balance characteristics that compete with each other (expertise versus standardisation). It would, though, be wrong to think that lawyers are unaware of the conflicts they experience, or that conflicts are easily dismissed by them. Instead, they seem to feed into a sense of pessimism amongst practitioners. Defence lawyers have expressed feeling "torn" between the above discussed conflicting duties (Welsh 2017), feeding into feelings of powerlessness among publicly funded defence lawyers, which damages their morale (Newman and Welsh 2019).

The warning claxon for declining morale among criminal defence practitioners has been sounding for many years (Moorhead 2004; Thornton 2020). Smith and Cape described the prospects for English and Welsh criminal

legal aid as "bleak" (2017, p. 63) while Cooke identified that legal aid lawyers operate in an increasingly precarious economic world, as "significant cuts to civil and criminal budgets changed the legal aid terrain beyond all recognition" (2022, p. 705). In consequence, defence lawyers appear to feel increasingly alienated from their motivations for performing defence lawyering, from wider social understandings of their role, and from their clients (Newman 2016; Newman and Welsh 2019). To Cooke, these issues have fed into a sense of precarity among legal aid lawyers, which "have strengthened the solidarity amongst workers within it, as they become particularly eager to keep the profession alive" (2022, 709). This means that camaraderie might increasingly come into conflict with social justice and adversarialism. As Newman and Dehaghani said, "if these lawyers are frustrated and fed up, it may be less likely that they will act out of kindness" (2022, 116).[26] Overall, publicly funded English and Welsh criminal defence lawyers are overworked and underfunded, representing (as in the Mexican context) "the least favourite child" (Ang 2023) of the welfare state.

Newman and Dehaghani (2022) found that both lawyers and accused people and their family members felt frustrated and disheartened by restricted time afforded to casework. Lawyers who spoke with Thornton (2019) were similarly concerned that a lack of time represented a significant cause of frustration among defence lawyers, who again frequently reported feeling torn between their clients' needs and their business needs, especially in light of reduced/stagnated legal aid fees. Lawyers who participated in Thornton's study reported that these issues caused "a great deal of frustration with their working lives." (2020, p. 234). In other studies, lawyers consistently expressed frustration about efficiency drives, increased (unpaid) bureaucratic demands on their time, and funding cuts stymying the ideal situation; spending plenty of time with clients, building trust, and continuous representation (Clarke and Welsh 2022; Newman 2013; Newman and Dehaghani 2022; Thornton 2020; Welsh 2022). In his independent review, Bellamy noted the pessimism that now pervades those in and around criminal defence:

> This is not just a question of remuneration, although that is a most important aspect: it is also a question of morale. A feeling that 'nobody cares' and 'criminal legal aid has no future' was often articulated to me in roundtables in both Wales and England. (2021, 45)

The pessimism can be felt by those charged with producing the next generation of defence lawyers. As teachers of criminal justice at university, Harris et al. (2021) have reported the predicament they face in communicating the concomitant need for criminal defence alongside the problems faced in criminal defence. As discussed earlier, the recruitment and retention crisis that results from so many of the challenges outlined in this article make it hard to

encourage law students to enter criminal defence work at the very moment in which we need more criminal defence lawyers. For Harris et al:

> the challenges facing criminal defence (and the criminal justice system more broadly) raise an ethical dilemma in relation to those students who wish to pursue a career in criminal defence: without encouraging our students to enter the profession, we are in effect contributing to the demise of the profession; without "new blood", the profession is most certainly going to perish in 10–15 years' time, if not less. On the other hand, we feel reluctant to encourage our students to enter the criminal defence profession when we understand – through previous practice, through discussion with our colleagues and peers in the profession, and through our academic research and scholar-ship – that the profession offers few opportunities for social mobility and progression. (2021, 64)

Such feeds into the mood captured by Dehaghani and Newman (2021), when they report a lack of "resilience" amongst criminal defence lawyers. Looking forward, there is much negativity resulting from the kind of problems we have outlined here.

Conclusions

This article presented seven characteristics, identified from extant literature, that appear pervasive in the modern occupational culture of publicly funded English and Welsh criminal defence lawyers. We have argued that this particular group of lawyers display characteristics such as camaraderie, expertise, a sense of being economisation, and that their work is standardised while they exhibit a sense of social justice and adversarialism. We posit that these characteristics often come into conflict with each other, and that the cumulative effect of these characteristics and conflicts between them leave defence lawyers pessimistic. In developing this typology, we draw on key features of the field (criminal justice) that reflect the capital (e.g. expertise) held by defence lawyers, and how that influences the habitus (the working personality and environment).

We hope that our typology represents a starting point for development of literature in this field. There are several issues and nuances that are rarely explicitly addressed in existing literature, and so cannot be properly addressed here. These include issues relating to protected characteristics, socio-economic class, and intersectionality. There is some evidence to suggest the Bar in particular is more difficult for women and those with caring responsibilities to navigate (Newman and Dehaghani (2022)), while the legal profession as a whole tends to be homogeneous in terms of social and cultural capital, even where some gains in relation to race and gender may have been made (Francis and Sommerlad 2009; Long forthcoming). It would be useful to explore these issues further to examine the extent to which this proposed typology is capable of representing intersectional difference. Another area for future development lies in the impact of technology on these proposed characteristics.[27] The rapid and

complex move to increased used of technological "solutions", especially in the context of the Covid-19 pandemic may especially alter characteristics relating to efficiency and economisation among the profession.[28]

We have focused our typology on England and Wales where there is a healthy and growing literature on criminal lawyers – with scholars building on and critiquing each other in a way that means the nascent links were already developing organically and just needed someone take a concerted effort to set them out fully. England and Wales also has a distinct story that can be read across much of the literature, the specific journey of the rise and fall of legal aid that can be charted as a narrative across the boom years of criminal lawyer scholarship. All the same, this paper is offered in an international journal. Many readers will be interested in jurisdictions other than England and Wales. We have tentatively drawn out connections with literature from other jurisdictions where it seemed appropriate to do so. However, we do not believe it would be feasible to offer an international typology of criminal defence cultures in this paper. This is the first paper to offer an occupational typology of criminal lawyers – setting out the initial iteration of this working culture is a complex process in and of itself. While there may be deeper links that can be made with, for example, Australia,[29] we would neither be able to do justice to the scholarship of England and Wales nor that of other jurisdictions by forcing them together in the same opening paper. There will be too much cultural specificity and too great a divergence in policy and practice to allow for the discrete, accessible typology we are committed to offering here. We recognise the need to be disciplined in keeping our typology tight to ensure it is intelligible and usable but, while it is focused solely on England and Wales, we hope it will of interest to others. We would like that our paper would be followed by authors who are interested in bringing in scholarship from other jurisdictions to compliment (and challenge) our England and Wales typology. There is, for example, a well-developed body of literature on criminal lawyers in the United States,[30] which would be a fruitful avenue for a paper that developed a working culture typology in its own right but that could, thereafter, also be compared and contrasted to ours in England and Wales. There are ample variations that could and should be examined, reflecting different socio-economic, political, and jurisdictional differences globally.

This article is designed to synthesise and develop our understanding of this area of legal practise, and not to cast judgment on how lawyers work, nor to identify areas that need to be addressed. We emphasise again – as Reiner has in relation to police working culture – that the characteristics we identify are fluid and not monolithic. Practitioners are "people with embodied frailties and strengths," embedded in a "complex web of wider relationships" (Newman and Dehaghani 2022, p. 44), often experiencing their own vulnerabilities (Dehaghani and Newman 2017). Both extant research and our own analysis point, albeit implicitly, to the issue that better pay will not of itself ameliorate

some of these cultural practices. Studies demonstrate that key to lawyer morale is more than money; they also need professional respect and autonomy that can increase morale and improve happiness (Clarke and Welsh 2022; Krieger and Sheldon 2015; Thornton 2020). Characteristics such as expertise and camaraderie may be significant drivers of morale, but appear to be undercut by economisation, standardisation, and conflicting agendas.

Different lawyers will, naturally, be guided to different extents by the characteristics we have identified, and may situate them differently to maintain their own occupational identities. That said, it also seems clear that "[s]ocial bonds among workers within a given occupation produce and sustain efficacy as they ground normative realities, even more so when working under precarious conditions." (Cooke 2022, p. 707). Ultimately, grounding such normative realties might be considered important to develop integration between self and work identities in ways that may influence career success and satisfaction, as well as personal wellbeing (Arriagada 2023).

We invite others to engage with our typology – to develop and improve it. We hope it will provide those new to the area with an insight into what the dominant understanding of defence lawyers is and inspire them to conduct their own scholarship. We welcome those more experienced in the legal professions scholarship to provide their input into how the state of the literature currently stands. A fruitful avenue for taking forward our typology would be to engage lawyers themselves; to see if they recognise themselves in the schema, and explore whether it can be used in a way that can help communicate, both, the importance and the precarity of criminal legal aid work.

Notes

1. We use defence lawyers to include legal executives, solicitors and barristers working in private practise. An underdeveloped area for further reflection in this context is the role of the salaried Public Defender Service, which, despite representing a tiny fraction of criminal defence service provision in England and Wales, might operate with a different set of characteristics and objectives.
2. It needs to be noted that the authors included – and gave much attention to – the role of unqualified representatives in their critique.
3. We use the terms "publicly funded" "legal aid", and "legally aided" interchangeably. All terms reflect work performed by defence lawyers which is funded by the state, akin to the Public Defender Service in North America but conducted via a judicare model in England and Wales (and Scotland and Northern Ireland, albeit under different state contracting regimes). We have also focused, in this article, on lawyer behaviour at the post-investigative stage of proceedings, i.e. after a suspect has been charged with an offence, though some characteristics will be pervasive across settings, such as economisation.
4. Our synthesis is inevitably shaped by our own experiences and backgrounds. We are both concerned with access to justice and the working practices of defence lawyers and – while we presently occupy the same field of work, having both completed

PhDs in socio-legal studies – we come from quite different working backgrounds. One of us read sociology at undergraduate level before going on to complete several higher degrees in related fields. The other read law with human resources management at undergraduate level, qualified as a solicitor and practised defence law for several years before returning to academia to complete further – primarily legal – studies.

5. We do not address the ways that defence lawyers socialise, either among themselves, with the wider criminal justice community, or beyond that. Cooke (2022) has explored this issue among legal aid lawyers more broadly, while Hale's observation that camaraderie at the Bar involved "fighting hard in court one minute and going off for a drink together the next" (2021, p. 75) holds true in the authors' experiences.
6. The term "courtroom workgroup" was proposed by Eisenstein and Jacob (1977) to assist in explaining how low-level courts make decisions. It generally consists of the professional actors in courtrooms; lawyers, court clerks, and sometimes probation offers and members of the judiciary.
7. The Criminal Procedure Rules were first introduced in 2005 (and most recently updated in 2020). The defence is expected to work with the prosecution in the management and progression of cases adhering to efficiency-driven procedures, and must provide the prosecution with information about witnesses, written evidence and points of law.
8. Criminal Justice: Simple, Speedy Summary (CJSSS) was a policy initiative introduced in magistrates' courts in 2006 by the former Department for Constitutional Affairs. The initiative was designed to reduce the number of hearings per case and increase the speed with which case cases concluded.
9. CJSSS was followed by Transforming Summary Justice, which was a cross criminal justice agency initiative to again improve efficiency in the criminal justice system, particularly in magistrates' courts.
10. Better Case Management was another policy aimed to improve efficiency in the English and Welsh criminal process, but this time focused on Crown courts. It was introduced in 2018 and revived in early 2023.
11. An area for further development is how suspects and defendants perceive those co-operative relationships. Newman and Dehaghani's (2022) research, and anecdotal evidence from courtroom observations suggests that accused people view such relationships of camaraderie with suspicion, and something which brings lawyers into conflict with clients' best interests.
12. Gunby and Carline (2020) noted that similar coping mechanisms have been reported to operate among police officers.
13. More optimistically, Newman and Dehaghani (2022) found, lawyers did tend to separate clients into good or bad clients depending on their susceptibility to legal advice, and whether a regular or first time client, but did not seem to actively denigrate their clients.
14. The impact of these coping mechanisms appears as an unresolved tension in the literature that requires further attention.
15. Denvir *et al.* (2023) have produced recent data on legal aid lawyers as a sector but recognised the need for further research into these themes.
16. While we focus on England and Wales, Ang (2023) similarly identified that Mexican public defenders might use "down time" to communicate, share knowledge, and socialise with other criminal justice professionals in order to build networks.
17. Cases are categorised by both offence types (theft, assault, etc.,), and by stage that the case reached (guilty plea, trial, etc.). See Welsh (2022).
18. Defence lawyers also recognise that underfunding in prosecution services and the police has a negative impact in the criminal process. See Newman and Dehaghani (2022), Thornton (2020), and Welsh (2022).

19. It should be noted that poor time availability appears to be a consistent feature of complaint about defence practice (e.g. Morison and Leith 1992)
20. It seems that high casework volumes leading to routinisation of work in criminal justice systems might be a global trend. See for, example, Arriagada (2023) in relation to Chile.
21. The duty to act in clients' best interests is enshrined as one of the core tenets of the Solicitors' Regulation Authority principles, and as a core duty in the Bar Standards Board Handbook.
22. Furthermore, the strength of social justice narratives appears to transcend geographical boundaries, as Arriagada (2023) found a keen sense of social justice narratives among penitentiary defenders in Chile.
23. Including, for example the decisions in *Gleeson* [2003] EWCA Crim 3357, *Chorley Justices* [2002] EWHC 2162 (Admin), and *Chaaban* [2003] EWCA Crim 1012, all of which prioritised the court's needs over those of the defendant (Smith 2013; Johnston 2020; Welsh 2022).
24. Similar conflicts between economic and political pressures for swift case resolution and ethical obligations (including zealous advocacy) have been noted among public defenders in the US context (Das 2019).
25. See also the findings of studies such as Tata (2007) and Welsh (2017).
26. Funding cuts have led to perceived recruitment and retention crisis, which is borne out by statistics produced by the Law Society and Bar Council. For thorough discussion see Bellamy (2021).
27. Newman *et al.* (2021) have highlighted the need for further scholarship on how the use of technology is impacting legal aid lawyers.
28. A range of literature about comparatively recent technological innovations is emerging. See, for example, Townend and Welsh (forthcoming) on England and Wales, Rossner *et al.* (2021) for a comparative study of the UK and Australia, Bandes and Feigenson (2020) in the North American context, Flower and Ahlefeldt (2021) in the Swedish context, Olujobi (2022) in relation to five countries in Africa, and Castelliano *et al.* (2021) in the Brazilian context.
29. The edited collection by Flynn and Fisher (2018) shows the value of bringing together these two jurisdictions.
30. For example, Das (2019), Baćak *et al.* (2020), Emmelman (2018), Church (2019), Patton (2016).

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