Law and Power – Livin’ in the ’70s

David Neal

Something big happened to public consciousness about law and power in the 1970s. Somehow law got caught up in a broader social upheaval about equality and poverty and the scales that masked the power embedded in legal relations fell away. In the early 1970s, the founders of the Fitzroy Legal Service wanted to ensure that people charged with criminal offences in Magistrates’ Courts had legal representation. The founders of the Legal Studies Department at La Trobe University wanted to focus on law as a social institution and to make the power associated with legal knowledge widely available not only to its students but also to a wider public. Attorney-General Lionel Murphy announced that he would set up the Australian Legal Aid Office. They joined forces to light fires that burned brightly for a couple of decades and made significant and lasting contributions to the distribution of power in Australia and to the inflection of its legal institutions.

I want to tell some of that 1970s story against a contemporary political consciousness which contents itself with little more than ritual observance of equality before the law.

THE 1970s FITZROY

The landscape along Brunswick Street, Fitzroy in the early 1970s was pretty rundown. As you walked north from Victoria Parade, the stately old Cathedral Hall belied its nights as the alternative rock venue, the Much More Ballroom advertised by Nils Arup’s posters of a stoned-looking guy heading there to hear early 1970s ‘head’ bands like Spectrum and Tamam Shud, and caught on film in a young Peter Weir’s film, Three Directions in Australian Pop. Walking down to the corner of Gertrude Street, you came to two pretty tough ‘four cop’ pubs on diagonally opposite corners – the Champion and the Rob Roy. Just down Gertrude Street towards Smith Street, the Victorian Aboriginal Legal Service opened its doors in 1973.

Staying on Brunswick Street, you came to what was literally a ‘block’ of flats: multiple high-rise towers built by the Housing Commission of Victoria in the 1960s, euphoniously titled ‘Atherton Gardens’ but known to all simply as ‘the flats’. They housed 3500 low-income residents, many on social welfare benefits and many recent immigrants, particularly from Chile and Yugoslavia. Down the laneways off the main streets were boarding houses with numbers on the doors of rooms which housed whole families and provided the next layer of accommodation.1

1 See John Chesterman, Poverty Law and Social Change: The Story of the Fitzroy Legal Service (Melbourne UP, 1996) 51 ff for a more detailed demographic
Opposite the flats was social welfare central, the Brotherhood of St Laurence. On top of its welfare service delivery and second-hand clothes collecting, the Brotherhood had strong links with the new Whitlam Federal Labor government and strongly influenced welfare policy, especially in the voluntary welfare sector.

Just after the flats you could turn right and go down the grandly-named but narrow King William Street for about 50 metres before it opened out to reveal the neo-classical Fitzroy Town Hall. Up a flight of steps on its south face, you entered the Fitzroy Magistrates’ Court. Down the other flight of steps were the basement offices that first housed the Fitzroy Legal Service. The offices butted up through a partition wall to the Fitzroy police station on the western end of the town hall. And to complete this set of strange bedfellows, on the floor above the court, the Victoria Police Special Branch kept tabs on Vietnam War activists, communists and the like. They all looked over to the flats and the new-fangled ‘adventure playground’ on the opposite side of King William Street which supplied many of their customers.

Grand old two-storey Victorian shop buildings frame Brunswick Street. You can still see their names and dates starting from the 1880s on their pediments. But in the 1970s, the grandeur collapsed at street level: empty shops with locks on the doors, going concerns with painted-out front windows or those dusty white nylon curtains masking industrial sewing machines, vestiges of Melbourne’s dying rag trade and shoe making.

But the shopscape had started to change. By the mid-1970s, the rock entrepreneur, John Pinder, had opened a little cafe called the Flying Trapeze just down from the Brotherhood. It had funky food (terrific chocolate ripple cake), circus arts performers and stand-up comics. A few doors along, another new place, Trotters, was doing pates and terrines, just next to Pasquale’s which had been making good coffee since the 1950s. Down a bit on the other side of the street, next to a brothel, a woman opened a restaurant where she did the cooking and her barrister husband waited on the tables. Stephanie Alexander – soon to star on the Melbourne food scene – opened her first restaurant in 1976. It was still open after 9 pm or so when the last clients left Fitzroy Legal Service and offered great value for volunteers who had gone straight from their paid job to do the Wednesday night roster. Way down at the other end of Brunswick Street, near the old Fitzroy Football ground, Mietta O’Donnell had already opened her first restaurant in an old butcher’s shop with big windows softened by lace curtains. They were the north and south poles of the new Melbourne food scene.

description of Fitzroy in the early 1970s. And see Mary Ann Noone and Stephen Thomsen, Lawyers in Conflict: Australian Lawyers and Legal Aid (Federation Press, 2006) for the political and policy context of the times.

Stephanie Alexander, A Cook’s Life (Lantern, 2012).
II  Melbourne Law School

There was nothing downmarket about the Melbourne legal landscape in December 1972. The medieval cloisters of the Melbourne University Law School and its tranquil quadrangle had only been touched faintly by the swinging 1960s. In the early 1970s, the Law Students’ Society gave an afternoon garden party in the quadrangle for the visiting judicial eminence, Lord Denning. Houndstooth sports coats and pipes (for tobacco of course) could be seen in the passing parade of students, mostly destined for sedate city and suburban law firms or the Bar. But the charred wall in the Law School cloisters where a Vietnamese student had suicided signalled the harsher realities of the Vietnam War, the draft and the changing times.

The city law firms themselves still had multiple-barrel local family names like Hedderwicks, Fookes and Alston, or Ellison, Hewison and Whitehead. They had small numbers of partners and mostly grey offices lined with dusty law reports in city office blocks. The highly-designed offices of law firms with international branding and hundreds of solicitors were still a generation away.

The city law firms serviced the high-end commercial, insurance and property law market while a few large plaintiff law firms acted for the lucky people whose injuries tapped into motor accident or workers compensation insurance. The suburban firms did conveyancing, divorce and minor miscellaneous cases for people who could pay. For those who could not, there was a Legal Aid Committee which funded a tiny number of cases for those who found their way to its door.3

For a law graduate in 1972, options like working for a legal aid commission, a public interest law practice, a law reform commission, in the pro bono program at one of the big law firms, or even volunteering at a community legal centre did not exist. It was a much narrower legal world.

III  It’s Time

The Whitlam Labor Government came to power in December 1972. Its rallying cry – ‘It’s time for change’ – captured aspirations of voters under 23 who had never known a federal Labor Government, voters in their mid-forties who had never elected a Labor Government, and voters who were just sick of the sameness of the previous two decades and buoyed by the spirit of the 1960s. The new government’s focus on poverty, women’s

3 Jeffrey FitzGerald, Poverty and the Legal Profession in Victoria (AGPS, 1977) describes the type of legal work done by lawyers for poor people in Victoria in his report for the Poverty Commission. Ronald Sackville, Legal Aid in Australia (AGPS, 1975) has a detailed description of the available legal aid services. See too Chesterman, above n 1, 21-24.
SOCIO-LEGALITY: AN ODYSSEY OF IDEAS AND CONTEXT

issues, Aboriginal land rights, the environment, housing and poverty fired a host of social welfare action groups who became first-time insiders in national politics. Acting in the voluntary sector, independently of governments and established institutional frameworks, these groups transformed the areas they touched.

The impact of these social action groups extended into all aspects of Australia's social consciousness, including its legal consciousness. Indeed, the mental apartheid that separated the legal and social consciousness was one of the major changes of the era. What people describe as 'black-letter law'—the notion of law as a value-free, closed logical system—came under attack as never before. Three years before Foucault published his seminal work on knowledge and power, young lawyers who had already intuited the connection, swapped briefcases for tool kits and got to work on the system. In that same December 1972, the Fitzroy 'Free' Legal Service—a lightning rod for so many other changes in the legal landscape over the next few decades—opened its doors staffed entirely by night-time volunteer lawyers and non-lawyers.

There had been small legal advice services up to that time, but Fitzroy Legal Service caught the public imagination and sparked off a network of community legal centres around Melbourne, a movement which has since spread to every Australian State and has a national organisation. Providers of free legal services and community legal education, innovators in service delivery, law reform lobbyists, critics of established legal aid systems and sources of radical perspectives on legal issues—legal centres profoundly affected a legal culture that had hitherto been careless about distributing the power embedded in legal knowledge. They added a legal component to the welfare sector and provided legal assistance and information to tens and tens of thousands of people who would have otherwise have confronted an alien legal system unaided.

The year 1972 also saw another new institution emerge on the legal landscape. Melbourne's third university, La Trobe University, had opened in 1967 in the outer northern suburbs of Melbourne. Its planners decided to establish a Department of Legal Studies within its School of Social


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Sciences. It was not to be a law school and would therefore have none of the service obligations or restrictions on curriculum imposed by professional certification training. This was academically liberating: art for art’s sake. The Legal Studies Department was one of only two or three in the English-speaking world dedicated to the study of law as a social institution and committed to interdisciplinary approaches in its research and training. Located with the Departments of Sociology, Economics and Politics, its institutional ties were to departments which had their primary commitments to academic social inquiry. Its student numbers were fed by a novel and incredibly popular, if limited, legal studies subject that had started in Victorian high schools in the late 1960s. That subject and a curiosity about legal ordering brought large numbers of students to the new Legal Studies Department.

Among other projects, the two new kids on the legal block – the Fitzroy Legal Service and the Legal Studies Department – combined to produce a legal first, a law book which became a best-seller. In April 1977, the Melbourne dailies carried banner bookshop ads for *The Thorn Birds, Roots* and the *Legal Resources Book*. The *Legal Resources Book* was a layperson’s guide to common legal problems in Victoria. *Echoing the opening of Fitzroy Legal Service itself, the press and the public flocked to it. A current affairs television feature on the book sparked a rush: the entire 4000 original print run sold out in the week before the official launch, and another 12,000 sold in the following months. Hosts of the then newish phenomenon of talk-back radio queued for interviews with the editors and invited callers to ring in and ask about their legal problems. In the 35 years since then the book (repackaged as the *Law Handbook* in 1987) has sold thousands and thousands of copies. Its online edition had some one million hits in 2012. Its equivalents have been published in every Australian State and the Northern Territory.*

*Something big happened to public consciousness about law and power in the 1970s. Somehow law got caught up in a broader social upheaval about equality and poverty and the scales that masked the power embedded in legal relations fell away. People joined the dots about law and power at all sorts of levels – neighbourhoods, schools, universities, courts, the media and legislatures – and used it as a means of redressing inequality and achieving social change. They lit fires which burned brightly for a couple of decades and made significant and lasting contributions to the distribution of power in Australia and to the inflection of its legal institutions.*

*In the early 1970s, Attorney-General Lionel Murphy told Parliament that, ‘the ultimate object of the government is that legal aid be readily and equally available to citizens everywhere in Australia and that aid be extended for advice and assistance of litigation as well as for litigation in all legal categories and in all courts’. The founders of the Fitzroy Legal*
Service wanted to ensure that people charged with criminal offences in Magistrates’ Courts had legal representation. The founders of the Legal Studies Department at La Trobe University wanted to focus on law as a social institution and to make the power associated with legal knowledge widely available not only to its students but also to a wider public.

I want to tell some of that 1970s story because it is a good story in its own right. But I also want to tell it against a contemporary political consciousness which cares far less about power imbalances and regards the use of law as an instrument of social change — especially if that involves the use of public funds allocated to legal aid — as somehow undemocratic.

At the time of writing, the issue which fuelled the founding of the Fitzroy Legal Service — the need to provide representation to people, especially young people, facing criminal prosecution in Magistrates’ Courts — is falling back into the abyss. Legal aid bodies across the country have cut legal aid so that only those facing a jail sentence receive representation.

This contemporary consciousness attaches little significance to the socio-legal issues which fired the 1970s and contents itself with little more than ritual observance of equalities before the law. This 1970s story means to highlight the political devaluation of equality before the law in contemporary political reckoning and to question the relative lack of priority attached to one of the basic commitments of our political system.

IV  THE FITZROY LEGAL SERVICE

In the late 1960s, the Vietnam War had produced a number of activists and draft resisters who in turn attracted a group of lawyers who defended them on charges arising out of demonstrations or resistance to conscription. They included barristers Peter Paris and Remy Van de Wiel, and solicitor Phil Molan who was associated with resident action groups and floated an idea for a ‘Robin Hood’ legal practice.

Meanwhile, a trio of YCW (Young Christian Worker) members had been working with young people who had been in trouble with the law. John Finlayson did general youth work in Fitzroy; Michael O’Brien worked with prisoners and as a lawyer with the Public Solicitor’s Office; and Lou Hill had worked in probation and parole and recently obtained a law degree. They had been grappling with the problems of organising legal representation for kids who had to go to court.

Cross-fertilisation occurred and on 14 December 1972, Finlayson, O’Brien and Hill convened a meeting in the plush mayoral room of the Fitzroy Town Hall and one thing led to another. None of them was ever shy about sharing their views and some of them did so in a series of 1984 interviews. So let them tell the story.7

7 'Interviews: Some Founding Mothers and Fathers’ in Neal, above n 5, 54.
John Finlayson:

I had been working in Fitzroy with kids. There had just been a review of the old Police Boys Club movement and it had been replaced by the new ideas about youth work. That led to the setting up of the Fitzroy Community Youth Centre, you know, drop in centres and things like that ... I tried to get these kids representation through the Legal Aid Committee but they were too slow and it was too hard to get help for the Magistrates’ Court where most of these kids were going. We'd always get knocked back. I talked about the problems with Lou Hill and Mick O'Brien. They were doing law at the time. We had some ideas about getting something going ... I'd also talked to Jenny Miller at the Council about getting some space to use as an office ... After my case (for selling liquor without a licence at a fund raising function for the draft resisters movement) I took [my barrister] Peter Faris to lunch. I started talking to him about the idea of getting some better legal services for kids going.

Peter Faris:

I did Finno’s case. He started talking to me about a kid’s legal centre and the trouble he had in getting representation. He suggested a meeting between interested people ... Between Finno’s case and the meeting in December I thought about what else could be done and who was around. I thought it should be on a bigger scale than just kids’ legal services. I also thought a night-time format would be good so that premises would be available and that there would also be volunteer labour available ... Finno called a meeting in the Mayoral Room at the Fitzroy Town Hall. It was very plush. I think there was about nine of us there.

Lou Hill:

A lot of the ideas at the time concerned making professionals responsible and making professions acceptable for radicals. People like Illich and Paul Goodman and Freire were being read. People saw the possibility of the legal centres being a significant change agent. They combined the politics of community and the politics of professions ... The YCW is also a radical action-oriented movement. I had met Finno and Mick O'Brien in the 1960s. Finno approached me and O'Brien about problems of representation.

Phil Molan:

I was about 36 in 1972 and had been in practice some ten to twelve years. I had worked for a number of city practices and was disillusioned with the way solicitors ran their practice, and sick of running a practice to make money. I was also concerned with the way the schemes of legal aid that were operating at the time ran ... People have different memories of how Fitzroy Legal Service started but my recollection is that Faris and I wanted out of the rat race. And then there was Finno who seemed to be interested in young people. Probably it was Finno more than anyone who was responsible for getting things going. Then there was Father Brosnan who was the chaplain at Pentridge who was pushing people to do things. And there was Mick O'Brien who was working out at Pentridge too. There was Remy who had been running a legal co-op in Collingwood somewhere I think and all of a sudden all of these things came together and Fitzroy Legal Service opened.
Remy Van de Wiel:

I had been working in the Free Store in Smith Street, Collingwood. It was run by anarchists. People would just come in there and take whatever they want. Everything was free. That really freaked a lot of people. I had been working there for about eight months in 1972 giving legal advice on two nights a week. A doctor worked there too. The local practitioners were upset by that and the Law Institute representative visited four times but missed me. I met someone at the Free Store who told me about the ideas to get Fitzroy Legal Service started. I had met some of the people. I went to the meeting in December. Someone was talking about doing a study or something but I did not want that. So I just told them that I was gonna start straight away ... for me it was just continuing the Free Store ideas: poverty is just a state of mind.

Peter Faris:

The opening of Fitzroy radically changed the concept of legal aid. It opened the flood gates to the extent that the profession could no longer say that needs were being met. It gave Murphy impetus. Here was a pilot scheme that was working and which would spur others. It was a pilot scheme that was working and which would spur on other services.8

And so, on 18 December 1972, Fitzroy Legal Service opened in two basement rooms ('the dungeon') of the Fitzroy Town Hall. Many in many ways it was an ideal location. It shared the dungeon with the Community Youth Centre Project run during the day by Finlayson. Twenty per cent of its clients lived in the flats across King William Street. Some of its clients came via the police station next door, and it was very handy to have the court located just upstairs.

Although Fitzroy Legal Service opened as the first fully-fledged legal centre, there was a spontaneous eruption of independent initiatives at the Victorian Aboriginal Legal Service just around the corner in Gertrude Street, Monash University's Springvale Legal Service in 1973 and some 30 other centres in the next few years.9

The Fitzroy Legal Service ran at night entirely staffed by volunteers until 1974. It operated between 6 pm and 10 pm, because the volunteers had day jobs and because this enabled clients to get advice without losing time from work. Funding was minimal. Neighbouring Collingwood Council donated $3000 to $4000 and other donations came to another $2000. The Fitzroy Council supplied phones, power and postage and the dungeon. At that time virtually no federal funds were allocated to legal aid. The State

8 Ibid 60.
schemes — the Public Solicitor (which dealt with criminal cases in County and Supreme Courts but not Magistrates’ Court crime) and the Legal Aid Committee which granted aid in a very limited number of cases — were seriously inadequate.

So Fitzroy Legal Service started without much in the way of structure — indeed some founding members saw structures as part of the problem. Philosophies, policies and structures did evolve, however, in the course of late night sessions after working at Fitzroy Legal Service, weekend retreats and formal meetings.

‘Community’ formed a cornerstone of the Fitzroy Legal Service ideology: lawyers would put themselves at the disposal of the community which would decide policy at public meetings. The first few public meetings, a testimony of the times, attracted hundreds of people and great media attention. Related to this notion of ‘having lawyers on tap, not on top’, were office procedures which put lawyers and lay workers on equal footing, involved clients in their own problem-solving, required Fitzroy Legal Service to open in the evenings (and weekends, for a while) to allow clients to attend without losing time from work, called for explanation of the legal concepts in terms clients could understand and, most importantly, laid down that services be free of charge and free of a means test.

Chaos reigned. Volunteers cope on an ad hoc basis with lots of clients. Warning shots were fired by the professional bodies: the Bar Council challenged barristers about seeing clients directly and the Law Institute complained about advertising. Puzzled telephone calls came in from lawyers who had received badly-typed letters on poor quality letterhead from the new legal service, and clients rolled in — some 273 per month by June 1973. But constitutions exercise a fatal attraction over lawyers and a constitution did come in July 1973, complete with a statement of objectives: free and accessible legal services; involving local citizens in recognition, understanding and solution of their own legal problems. The objects included broader aims: preventative law; community legal education; and law reform test cases and law reform. Avoiding band-aid approaches was part of the currency.

Concern for the problems of the poor was accompanied by a departure from older paternalistic charitable models: entitlement not charity was the ethos. Like other social services at the time, Fitzroy Legal Service placed special emphasis on community control and attempted to de-professionalise services in the sense that professionals could not automatically expect to control the service relationship. In particular, the legal centres

10 There is a discussion of these spatial issues in Megan Blair and Bridget Harris, ‘Just Spaces: Community Legal Centres as Levelling Places of Law’ (2012) 37(1) Alternative Law Journal 8.
11 The Constitution is reproduced in Chesterman, above n 1, 205.
sought to redress the imbalance in legal services which were only available to ‘the wrong side’.

Felicity Faris:

Fitzroy was part of a social movement. It combined revolutionary and radical politics and fused these into the legal service. It involved a human perspective coupled with the personal politics of working as a group for a common purpose. We saw issues of say eviction orders as symptomatic of the problems of low-income housing. The strategy was going to involve all kinds of citizens' issues not just a legal centre. We saw issues as arising in a legal context. We saw Fitzroy as a catchment area for all sorts of legal issues ... there were enthusiastic feelings about the possibility of change with Fitzroy Legal Service as a base. Already in those early days there was a feeling that things were happening at other legal services. A feeling of victory over the profession ... we formed work groups to deal with issues arising out of the legal system and its administration. We formed a women's group for example and tried to involve young local girls in a consciousness raising effort. There was also a marijuana action group and a publicity group.12

Remy Van de Wiel:

You have got to give people the opportunity to control their own lives. My idea was that a legal service ought to help people look after themselves. I thought people could change things outside parliament and that I had a skill that I could give away which would help them and I felt that I had a duty to give it away. We did have a lot of potential to change people's lives.13 ... We wanted to give people the opportunity to control their own lives. The legal service was meant to help people look after themselves ... I did not want any authority structures. I argued against that structure. Lawyers should not just give advice. It should be client self-management.14

The experiment generated quite a bit of light and heat. The media was fascinated but the legal professional bodies twitched uncomfortably under the radical challenge.

Felicity Faris:

The big attraction at the time was that it was free. Battles arose over that, especially with the profession. The feature which attracted the public ... it distinguished it from other services and attracted the press. It was very important with the public. For a long time we were known by people as free legal aid.15

The public loved the idea of a free legal service. Moves by the Victorian Bar to forbid barristers working at the Fitzroy Legal Service were abandoned in the face of public support and support from high places within the new federal government.

12 Neal, above n 5, 57.
13 Ibid 56.
15 Ibid.
V LIONEL MURPHY

Poverty became very much part of the national policy agenda in the early 1970s. The Whitlam Government had ambitious funding programs for welfare services. In March 1973, it broadened the pre-existing Poverty Commission to include four additional Commissioners to report on education, selected economic issues, social and medical aspects and law.16

The fact that law made it onto this list may be surprising to contemporary readers. Even then, the incoming Labor Government did not bring much in the way of a legal aid policy. It had been in the 1971 ALP platform, but there was little in the way of specifics. It did, however, have an activist Attorney-General in Lionel Murphy. He had visited Washington in January 1973, talked to legal activists like Ralph Nader and visited shopfront law offices which excited him.17 As ASIO was to discover, Murphy was impatient to get first-hand knowledge of his policy areas and was not about to wait for the Poverty Commission to report before he acted. He had heard that lawyers he knew from the Victorian ALP like Geoff Eames and Jim Kennan were involved in setting up the new Fitzroy Legal Service.

Lou Hill:

I remember the early days at Fitzroy Legal Service. It was chaos. We were working away in there one night early in 1973, just after the Service opened, when Lionel Murphy walked in out of the blue. Remy recognised him and told one of the other lawyers to sit down quickly and pretend he was a client so we'd look busy. We were very impressed that he'd visit the dungeon (ie the Basement of the Fitzroy Town Hall). He simply looked and listened and was very encouraging ... Murphy was an inspiration and encouragement to the legal aid movement.18

Murphy followed up on the visit with money. Phil Molan remembers: 'Barry Jones rang up Fitzroy [Legal Service] one night. I think he was in Murphy's office. He asked me how much we needed. I said $10,000 and we got it.'19 As one of Murphy's staffers commented:

That was a very radical thing to have done at the time. Lionel wanted to break the grip of the profession and promote an innovative, national scheme. He saw Fitzroy Legal Service as a potential model. He gave the grant straight to them, not through the profession, without strings attached. He liked to encourage non-conformity.20

18 Ibid.
19 Ibid. The actual figure seems to have been an interim grant of $2000.
20 Ibid, quoting Laurence Maher.
Later in 1973, Murphy addressed a meeting of legal centre workers at Fitzroy Town Hall and told them that their model was exactly what he wanted for the new Australian Legal Aid Office (the ALAO), a national shopfront legal aid service. This idea was a bolt from the blue but Murphy was keen to draw on the Fitzroy Legal Service model and its personnel for consultants and potential staff for both the ALAO and the Aboriginal Legal Service.

Geoff Eames:

Because of our involvement at Fitzroy, I remember myself and Eilish Cook became advisors to the new Labor Government and Legal Aid. Networking was important too. For instance, a number of the first lawyers to work at the Aboriginal Legal Service in Alice Springs, people like myself, Peter Faris and David Parsons had all worked at Fitzroy Legal Service. 21

In 1973, the Commonwealth Government had virtually no role in legal aid. Murphy proposed to change that root and branch with the establishment of the ALAO:

The government has taken action because it believes that one of the basic causes of the inequality of citizens before the law is the absence of adequate and comprehensive legal aid arrangements throughout Australia ... The ultimate object of the government is that legal aid be readily and equally available to citizens everywhere in Australia and that aid be extended for advice and assistance as well as for litigation in all legal categories and in all courts. On 25 July 1973 I announced a major step in the provision of legal aid services to persons in need, particularly disadvantaged persons. This was the establishment of a salaried legal service called the Australian Legal Aid Office that will have offices throughout Australia. It will provide legal advice and assistance on all matters of federal law, including the Matrimonial Causes Act, to everyone in need; and on matters of both federal and state law, to persons for whom the Australian Government has a special responsibility for example, pensioners, aborigines, ex-servicemen and new comers to Australia. The offices will provide a referral service in other cases. ...

On the problem of the provision of legal advice and assistance on an equal basis throughout Australia, I believe that the Australian Legal Aid Office will make an important contribution towards filling the gap between referral services and law society or legal aid committee schemes for aid in specified litigation. It is the view of the government that legal assistance to socially disadvantaged persons can most effectively be provided through a salaried legal service. For this reason the Australian Legal Aid Office has been established. The office will be staffed by salaried lawyers who will work in close cooperation with community welfare organisations, established legal aid schemes, referral centres and the private legal profession. I hope that the young lawyer with a social conscience will be attracted to join the office and, in particular, the woman lawyer who has a talent for this kind of work. ...

The service that the office will provide, broadly stated, will be: first, a general problem solving service of advice and assistance short of litigation to persons with an element of financial need – this will, in my view, take care

21 Neal, above n 5, 60.
of some 90% of all problems that worry the ordinary citizen; and secondly, the conduct of litigation, particularly family law, environmental and other litigation in areas of special concern to the Australian Government on behalf of persons who cannot afford the cost of representation in court ... but I do not see the new office operating merely in buildings in capital cities. I have been impressed by overseas developments, with which many honourable senators will be familiar, that have discarded the traditional conservative approach to legal aid and have set up 'store front' offices in cities and country areas where lawyers are few and problems are great. I see the role of the Australian Legal Aid Office as taking the law to the people who most need it. I want to see small unpretentious 'store front' offices open in the suburbs of the cities and in country centres. I want them to be the kind of offices to which the ordinary man or woman faced with a legal problem will go as readily as he or she would go to the garage with an ailing motor car. ...

The government's aim is that eventually no person anywhere in Australia should suffer injustice because of the unavailability of legal advice or inability to afford the cost of representation in court proceedings. Murphy's vision for the ALAO was radical then and now. Arguably, Murphy's vision would have seen the ALAO replace the community legal centres. It did not. But the demise of the ALAO is another story. However, another Murphy grant to Fitzroy saw the further evolution of the community legal centre model which has endured. In 1974, he wrote to the Fitzroy Legal Service:

Sirs,

I am pleased to be able to inform you that I have been able to approve a grant of assistance of $20,000 on behalf of the Australian Government to assist the Fitzroy Legal Service as a pilot legal aid scheme. You wrote to me on 31 July 1974 seeking assistance.

The grant is intended to assist the Service with the payment of the salaries of a full time lawyer and secretary-typist and with administrative expenses. I commend the members of the Fitzroy Legal Service for the initiative and enthusiasm they have displayed. My firm impression from meeting with yourselves and other members at the Fitzroy Town Hall is the extent to which the service has operated with the support of volunteers from all sections of the community including the legal profession. I hope that the Service retains its emphasis on the participation of volunteers.

Lionel Murphy
Attorney-General of Australia

That model of a small full-time staff coordinating volunteers has formed the backbone of legal centres across the country. While some of the idealism and notions of community control paled, there was a substantial change in legal culture and a significant shift in power structures as law was deployed in favour of thousands of people who had been outside its tent. By 1984, David Scott from the Brotherhood of St Laurence could locate legal centres:

22 Commonwealth, Parliamentary Debates, Legal Aid — Ministerial Statement, Senate, 13 December 1973 (Lionel Murphy, Attorney-General).

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somewhere in the mosaic of voluntary associations which are best known for pioneering, providing choice of service, independent research, community education and social action or advocacy. But they are as important for their membership as they are for their clientele. They provide the participants with opportunities for self-development. Much as they might deny these feelings, members of an organisation feel purposeful, at the frontiers of social change and altruistic. Involvement in a group working for a common purpose develops skills and interests that might have remained dormant in years of private practice, lecturing on law or working in a large legal bureaucracy. The workers learned to analyse issues, prepare plans, run an organisation, communicate and understand how to use and be used, by the media. They gained some understanding of the lives, the problems and strengths of the most vulnerable and powerless people in the community … Voluntary associations can be seen as ‘value guardians’ upholding practice principles of voluntarism, freedom of association, the right to criticise and the notion of pluralism.23

VI  THE LEGAL STUDIES DEPARTMENT

Almost a lifetime ago in 1978, I approached the august Melbourne University Law Review to publish an article on the innovative approach to the delivery of legal services by the then six-year old Fitzroy Legal Service. The article had no discussion of legal doctrine or decided cases. It did describe a radical initiative to provide legal services to tenants, migrants, Aborigines, students, and working class people in the inner suburban areas of Melbourne.

Within four years, by December 1976, the Fitzroy Legal Service had dealt with over 10,000 cases. Part of the innovation was to keep detailed statistical record cards about the clients and their cases. This would allow the Service to analyse the client base and its problems and to feed the results into substantive law reform and legal aid policy initiatives like the Australian Legal Aid Office and the work of the Commissioner for Law and Poverty.24

The article reported on case load, source of clients, their demographics, type of problem, service provided and outcome. It concluded with some observations and thoughts for the future: the very high number of cases handled (over 10,000); the spread of the model to another 32 voluntary legal services in the Melbourne area by 1978; and ‘a most disturbing thought that prior to 1972 there were no similar services from which people, especially poor people, could seek legal advice’.25 In terms of its reach, the study concluded that:

23  ‘An Outsider’s View of Legal Centres’ in Neal, above n 5, 33.
The high use of the service by ‘at risk’ groups — migrants, people in rented accommodation, people on pensions and benefits (especially the unemployed), and perhaps people in the 18-30 age group can be added, demonstrates the substantial success of the Fitzroy model in making contact with poor people.26

The article also concluded that:

The Fitzroy Legal Service model represents an economic and rational use of resources for the delivery of legal aid to a sector. It is not the total solution to the delivery of legal aid but an efficient way of making contact with those most in need of legal advice, and either giving them the help needed or referring them to those who can help. For the price of a small paid staff, the services of 70 volunteers, lawyers and non-lawyers, have been at the disposal of clients of the service. In terms of cost to the Federal government, which had contributed $40,000 to the end of 1976, this is $4 per case.27

But these developments and the issues they raised about the Australian legal system did not seem important to some members of the editorial board of one of the nation’s leading law journals. The student editor of the Melbourne University Law Review was very keen to publish the article, but encountered opposition from the then Dean of the Melbourne Law School because ‘this was not the sort of thing that we publish’. In many ways this was symptomatic of the black-letter law culture of the times both within the academy and the wider legal profession. The fact that the article was published was a tribute to the student editor and a small step in the broadening of Australian legal discourse.

It was also a sign of the opening of institutional spaces for those who wanted to broaden the legal culture. I was then a newish member of the Legal Studies Department at La Trobe University. I had graduated with a law/arts degree from Melbourne University in 1973. The doctrinal approach of the law school did not capture my imagination but I followed the path of interviews for articles at traditional city firms; neither of us sparked the other’s enthusiasm. I completed articles in 1974 at a Melbourne city law firm which specialised in crime, personal injuries and family law. My associations with Fitzroy Legal Service and my discomfort with billing clients had showed the partners that I was not the right fit. In 1975 like-minded friends who were already tutoring in Legal Studies at La Trobe suggested that I apply for a tutorship. I did and it was the right fit.

I had been volunteering at the Fitzroy Legal Service and became interested in doing empirical research on the Fitzroy Legal Service phenomenon. The Legal Studies Department had the interest, expertise and funding to support such projects. The empirical work was funded by a research grant from the School of Social Sciences which provided for two Legal Studies students to do the coding and card-punching from

26 Ibid.
27 Ibid.
the Fitzroy Legal Service client cards. The School of Social Sciences also supplied the expert methodologist who guided the data collection and statistical analysis using the then novel Statistical Package for the Social Sciences software. This was a new world for research on the Australian legal system and a great institutional space for those who wanted to explore and change it.

The law and society movement in the United States had started to gain traction in the early 1970s but non-law school university departments devoted to studying law as a social institution were thin on the ground and roughly contemporaneous with the Legal Studies Department. The Center for the Study of Law and Society at the University of California, Berkeley, was founded in 1961 primarily as a research institute but only developed its headline Jurisprudence and Social Policy doctoral program in 1978 along with a series of undergraduate subjects. The Oxford Centre for Socio-Legal Studies was founded in 1972 primarily as a research institute.

So the Department of Legal Studies at La Trobe University was a very early entrant into that scene globally and one of, if not the, first to accept large undergraduate intakes devoted to the study of law within the framework of a liberal arts curriculum. Like the Fitzroy Legal Service, the Legal Studies Department at La Trobe University was born into the heady political times of 1972, the year it offered its first classes. But the source of the idea for such an unusual department is the interesting cultural question.

La Trobe University had opened in 1967. As Susanne Davies makes clear, the planners of the new curriculum worked with a broad conception of interdisciplinary study and education for citizenship. The 1967 committee established by the Board of Studies to investigate the feasibility of a legal studies program endorsed its inclusion as a permanent department within the School of Social Sciences, co-located with the Departments of Sociology, Economics and Political Science. They planned for the department to be a fully-fledged department in its own right dedicated to the study of law and legal institutions as social phenomena. It was not to be merely a service department to a commerce faculty, or a stepping-stone to the establishment of a law school. It was aimed at students who would be doing general arts degrees, people with a general interest in law, and secondary school teachers who were teaching a burgeoning high school subject then called Commercial and Legal Studies.

These directions appear to be reflected in the earliest appointments. Certainly some of the leaders of the planning process – in particular the psychiatrist, Sir Eric Cunningham Dax, sociologist and first dean of the School of Social Sciences, Professor Jean Martin, and founding Chair of

28 Susanne Davies, 'From Law to 'Legal Consciousness': A Socio-legal Pedagogical Expedition' in this volume.
Political Science, Professor Hugo Wolfsohn, none whom was a lawyer — had strong views about the narrowness of legal thinking.

In 1968, Jean Martin interviewed Jeff FitzGerald, a Melbourne University law graduate doing a PhD course in sociology at Northwestern University in the United States, and proposed a joint appointment in Sociology and Legal Studies which he took up in 1973. Hugo Wolfsohn approached Roger Douglas, another Melbourne University law graduate — then doing post-graduate study in politics at Yale — with an offer of a lectureship which he took up in 1971.29 Along with many other appointees to the new department, they were refugees from the narrowly doctrinal mindset of their law school education.

Beyond these broad directions, if there was a grand plan for the Legal Studies Department, it got lost in the dynamics of the time. Its institutional location and a strong emphasis on interdisciplinary qualifications for staff said a lot about its stance against the contemporary black-letter law legal consciousness. But what would that become?

The foundation professor of Legal Studies, Kingston Braybrooke, was appointed in 1971. He had a strong background in American sociological jurisprudence,30 and wanted 'to do something different from merely teaching Law-School-type courses'.31 He mused ironically about the great virtue of a legal education — that it sharpened the mind ... by narrowing it'. Kingston Braybrooke recruited faculty who shared this perspective and 'tried as far as possible, to appoint people with qualifications in both law and a related social science or humanities discipline'.32 He was a true liberal who appointed staff who shared his general interdisciplinary perspective and then gave them space to convert it into courses and research.

Fitzgerald and Douglas had already been scouted by others. Kingston Braybrooke appointed lawyer-feminist, Kerry Petersen, in 1971 and, with Roger Douglas, they all taught the first students in 1972. In the following year, he added John Willis, a lawyer-classicist and Peter Sallmann, lawyer-criminologist to fill out a criminal justice stream in the department's program and to pre-empt moves to establish a Criminology Department.33

Free from the restrictions associated with certification of legal professionals, or providing service courses to accountancy students and the like,

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29 Interviews by the author with Roger Douglas 23 November 2012 and Jeff FitzGerald 27 November 2012.
31 EK Braybrooke, 'The Genesis of Legal Studies Department: Or How it All Began' (1979) LAURA 5, 8.
32 Ibid 7.
33 Ibid.
the field was open for them to make of it what they would. That included devising the courses they would teach. The political scientist, Roger Douglas had published a book, *The Social Aspects of Law: An Australian Perspective*, to provide some depth to the offerings available in the high school legal studies curriculum and university-level socio-legal subjects. But mostly, given the absence of suitable texts, they put together collections of copied readings.

Legal Studies courses at La Trobe proved to be incredibly attractive to students. The first-year class in 1972 was double the anticipated size and by 1974-1975, the two first-year courses attracted hundreds of students. The numbers were in some part a flow-on from general interest and from the legal studies subject at high school. Kingston Braybrooke made a point of the professor teaching first-year students. He structured his first-year Law and Society course to introduce students to three broad streams of legal life: first to ‘the protection of human rights against government action; second, consumer protection; and, third, the prevention of motor vehicle accidents [through the criminal law], and compensation for victims when prevention failed’. These three themes would then flow into later year courses. The Law and Society course led to courses on the legal regulation of government officials, consumer protection, the regulation of economic activity, industrial relations and others. John Willis’s charismatic teaching in a second first-year course, Criminal Law and Society, crowded lecture theatres and led a stream of later year courses in criminal justice, policing and penology. But others worked outside those streams as Kerry Petersen did with her course on Family, Society and the Law. She carried themes from her course into her co-authored *Pink Pages*, a first-ever directory of Australian women’s legal rights.

Aside from teaching, the new department’s members also had to choose the sort of research projects they would undertake and how to locate themselves within the academy and within the socio-legal framework of the times. The need to service large student numbers had drawn in a large number of tutorial staff who were mostly young, twenty-something lawyers, disaffected from the narrowness of their own legal training and inspired by the possibilities of law as an avenue for social change. Their impetus was to change legal consciousness, not simply to write about it. That impetus led to projects focused on social change through making legal knowledge available to people who traditionally had little or no access to it.

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As part of the law-in-action theme, they sent their first-year students to observe criminal cases in the Magistrates' Court over several days and submit a critical analysis of their operation. These observations were then revisited as the course progressed.

By the late 1970s, this interest in street-level justice fed into a systematic empirical observation study of criminal cases in four suburban Magistrates' Courts around Melbourne by a team of 10 members of the department led by Roger Douglas and Tom Weber. The project gathered a large amount of data on the workload of Victorian Magistrates' Courts, the types of offences dealt with, contested cases and pleas of guilty, cases dealt with by justices of the peace compared with those dealt with by magistrates, and the outcomes of cases. Published by the department under the title *Guilty Your Worship* in 1980, this was the first large observation study of Magistrates' Courts in Australia and one of few in the world. Given that Magistrates' Courts account for more than 90 per cent of all cases in Australian courts, this project too shone a light on parts of the legal system which had a major impact on the lives of the people appearing in those courts but drew little in the way of attention from the legal academy, the legal profession or government. Again, the institutional space created by the Legal Studies Department expanded the legal consciousness of the times.

Most members of the new department had strong associations with the incipient legal centre movement as volunteers, providing advice and sometimes representation. They carried their ideas about poverty and access to law as a means of social change beyond traditional law courses and articles in academic journals and into projects where lawyers and academics were seldom seen or heard.

One of those projects flowed from the Commissioner for Law and Poverty, Ron Sackville, who knew Jeff FitzGerald’s sociological qualifications and commissioned a report on *Poverty and the Legal Profession in Victoria*. FitzGerald and his team interviewed a cross-section of Melbourne solicitors and barristers about their contact with and the work for poor people. Unsurprisingly for the times, he found that they did not do much work for poor people, except in areas like workplace and motor accidents where insurance covered fees, and divorce. Like the Magistrates' Court project, this was evidence about previously unexplored areas of legal life.\(^{37}\)

Two department projects stand out: the *Legal Resources Book* and the establishment of the West Heidelberg Legal Service. They were not academic projects in a traditional sense or addressed to an academic audience through refereed journals, or traditional legal textbooks addressed to legal practitioners and devoted to the synthesis and explication of legal doctrines. Of commercial necessity, these traditional texts are directed

\(^{37}\) FitzGerald, above n 3, 66.
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to lawyers working for clients who will pay them. But projects like the *Legal Resources Book* and the West Heidelberg Legal Service were making radical points about legal knowledge and legal practice, both reflecting and carrying into reality the social change ethos of the times, particularly in relation to poverty law. In synthesising and explicating poverty law to people who could not pay and to their advisers in community legal centres members of the Legal Studies Department used their institutional base to realign patterns of knowledge and power.

I want to explore these two projects in some detail to show how the spaces opened by the Legal Studies Department and the Fitzroy Legal Service in the 1970s connected in a way which at the same time reflected and contributed to broadening the legal culture and the legal consciousness of the times.

VII  THE LEGAL RESOURCES BOOK

By the mid-1970s, the staff of the Legal Studies Department had grown to about 20. As noted above many of them also volunteered at community legal centres and did some Magistrates' Court appearances. Many of them also wrote for and served on the editorial board of the *Legal Service Bulletin* (now the *Alternative Law Journal*), which had begun life as a Fitzroy Legal Service newsletter, but by 1974 had turned into a journal and grown a national audience of 2300 subscribers by the early 1980s. It focused on alternative legal practice, legal aid, law reform and social policy issues. But there was an information gap at a very practical level.

Google was not even a gleam in its creator's eye in the mid-1970s. In fact, the technological clock had just reached IBM golf ball typewriters, with the all-important self-correcting ribbon. In the basement offices of Fitzroy Legal Service, you could not even imagine a time when AustLII would make cases and legislation available anywhere on a laptop computer. Even the most basic information on government practices and decision making was inaccessible. The first *Freedom of Information Act* had to await the election of the Cain Labor Government in 1982. In policing matters, information was tightly held. Unlike the Miranda Rules in the United States, in Victoria the rights of a person who had been arrested were set out in a police manual affectionately known as the 'Brown Bomber', which was not publicly available. The Victoria Police made a point of refusing to publish it.

The Fitzroy Legal Service made a pre-emptive strike on this piece of nonsense in 1976 by printing a 'Citizen's Rights Upon Arrest' legend on T-shirts with Fitzroy Legal Service contact details and selling them at

38 See David Brown, 'A Critique of the Legal Service Bulletin' in Neal, above n 5.

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street stalls. Senior police drove past one of the stalls a couple of times but kept their distance. Meanwhile, the press were more than pleased to photograph Legal Studies student data gatherers, Kim Young and Andrea Powell, modelling the T-shirts outside the Fitzroy Legal Service with a quizzical policeman caught in the background.

When poor people came to legal centres for advice on problems of poverty — for example, whether the government could administratively deny a young school leaver’s unemployment benefit — there was very little in the way of case reports, statutes or any reference material at all about the entitlements of pensioners and beneficiaries under the Social Services Act. The complexity of that Act defied departmental officers who attempted to explain the statutory basis for established payment patterns but the idea of loose-leaf guides to social security law — like those available to explain the Income Tax Assessment Act — was a pipe dream. There was no internal review mechanism for decisions about pensions and benefits until 1975 and no appeal to the Administrative Appeals Tribunal until some years later. Twenty-four per cent of Fitzroy Legal Service’s clients received pensions or benefits. Tenancy issues were another major problem area. In 1974, a former Fitzroy Legal Service volunteer set up the Tenants Union in Brunswick Street; Fitzroy Legal Service referred clients with tenancy problems there.

The need for specialised accessible legal information on these topics quickly became apparent. The lack of information for volunteers in the community legal centres which were springing up around the suburbs was presenting a real problem. How were volunteer lawyers — whose day jobs involved working for people who could pay for solutions to mainstream problems — to find answers to poverty law problems? Social security legislation was opaque; tenancy and consumer finance legal expertise was generally held by lawyers for landlords and finance companies; volunteers who were family lawyers struggled with criminal law problems and vice versa.

The Fitzroy Legal Service expedient to deal with this was to start building up a folder of information on the problems commonly raised by legal centre clients. This was the folder which grew into the Legal Resources Book.

39 Chesterman, above n 1. 105-106.
40 The Fitzroy Legal Service clearly identified test cases and law reform as part of its mission. In fact, few test cases were run. One of the exceptions was a case run by one of the Fitzroy Legal Service’s founding fathers, Phil Molan, when the Fraser government had attempted to impose a three-month waiting period for unemployment benefits on school leavers. This had no statutory basis and was declared to be unlawful: Green v Daniels (1977) 51 ALJR 463.
41 Neal, above n 9. 498.
Although the genesis of the project came from the Fitzroy Legal Service folder, the production house moved to the Legal Studies Department. Over a couple of years, Julian Gardner (splitting his time as Legal Co-ordinator between Fitzroy Legal Service and La Trobe) and I shared my office at La Trobe and started writing and commissioning chapters from colleagues in the department, backed by office and secretarial support from the department. Twenty-one of the 31 contributors came from the Legal Studies Department. Where they lacked the expertise, they shoehorned friends and colleagues from outside the department.

The conception for the project changed too. From being a ready reference folder for lawyers working in legal centres, it morphed into a layperson's guide to common legal problems and a resource for social workers, Citizen's Advice Bureau workers, high school legal studies teachers and students. It pitched the language to ordinary people and concentrated on topics where no legal information resources were readily available. That ranged from contact advice about the burgeoning number of legal centres — over 30 by 1978 through metropolitan Melbourne and three country locations — to the criteria for obtaining legal aid, guidance on consumer contracts, buying cars, fencing disputes, social security entitlements, tenancy, mental health, etc.

The format for the book changed too. Pitching the book to lay people dictated plain language. *Wordsmyths and Images* — just over the road in Brunswick Street — got the brief for the art work and lived up to their name. Headings and margin notes guided the reader's eye and line drawings by Michael Fitzjames and Jon Puckridge for the cover of the book and each of the chapter headings brilliantly imaged a list of desperately legal-sounding chapter headings and lightened the text on the page.

Then there was the problem of keeping the book up to date. Creating a book of 410 pages had itself been a mammoth enterprise. The idea of publishing further editions was unthinkable. So we came up with the idea of publishing the book in a loose-leaf binder — just like the 'real' legal text books — and publishing regular updates. Then we had to find cheap binders, and someone to publish the book. Some desultory approaches to publishers produced no interest. A fat legal manual directed to readership in only one State had no commercial appeal to them. So, apart from finding cheap binders, how to find the money to print the book at all? The RE Ross Trust underwrote the printing costs, but the money still had to be found up front. Pretty much the whole balance of the Fitzroy Legal Service's budget for the year paid for the 4000 copy print run. How in the world to sell 4000 copies was a problem which would have to take care of itself in the future. How to get them into bookstores was fluked through a friend whose father ran Collins bookstores and provided tips on commissions, who to phone and how to pitch the idea to other stores. Convincing them to sell it for $10 drew heavily on their social consciences, but they did it.
A week before the launch of the book in 1977, Julian Gardner was able to arrange to appear on the ABC TV current affairs program, *This Day Tonight*, to talk about the book. The whole 4000 copies sold out before the launch. A second print run of 4000 copies sold out immediately, prompting an order for a further 8000 copies. The big bookstores ran half-page advertisements in the daily papers spruiking the *Legal Resources Book* along with the other two bestsellers of the time, *The Thorn Birds* and *Roots*. Mail and telephone orders poured into the Legal Service so that volunteers, family, friends, passers-by and anyone else who could help ran impromptu distribution groups. Talk-back radio stations lined up for interviews and requested impromptu legal advice for callers; another first and one that prompted a later call from the Law Institute of Victoria reminding us that they were watching. One of the best pieces of consumer feedback came from a publican who kept the book behind the bar to solve bar room arguments.

The Legal Studies Department continued its support for the project through Margaret Harrison who edited the annual update service for the next three years and by engaging Julian Gardner to do part-time teaching in its new Access to Law subject. Sales from the *Legal Resources Book* reached 35,000 over the next seven years and generated $100,000 income for the Fitzroy Legal Service enabling it to employ publications staff and fund other projects. In 1987 it converted into an annual bound volume as the *Law Handbook* and now in its 35th year runs an online edition as well. The online edition has over one million hits a year. Many of the chapters of the *Legal Resources Book* dealt with areas where there was virtually no information available either to the clients themselves or to the lawyers representing them from a legal centre's client perspective. This was particularly true of consumer credit arrangements of all sorts which were legally complex and, in the case of the standard form contract produced by the Victorian Automobile Chamber of Commerce, printed in tiny font with pink type on pale pink paper. The *Legal Resources Book* carried a translation of this contract.

Legal centre clients regularly found themselves bound to finance agreements for second-hand cars that had been sold to them by people who did not own them. Even though the registration papers misleadingly showed the seller who had paid the registration as 'registered owner', it frequently turned out that the seller was in fact a hirer under a hire-purchase agreement. There was no way of finding out whether the car was actually owned by a finance company. The seller would take the money and run without paying out the hire-purchase. The hire-purchase company would then trace the car to the new owner and repossess it or demand payment. The purchaser would then be left with a horrible choice:

42 Chesterton, above n 1, 100-102, 136-138.
no car but still paying out the loan used to purchase it; or keeping the car 
and paying out the old loan as well as the new one. This was financially 
crippling for people struggling to make ends meet.

I remember writing to a hire-purchase company for one such client on 
cheap Fitzroy Legal Service letterhead pointing out that they had been 
negligent in failing to register their interest in the car with Vicroads and 
that they should withdraw. I got a call back from a partner at establish-
ment firm, Corr and Corr, acting for the finance company who, patiently 
if a trifle condescendingly, explained to me some of the mysteries of 
consumer finance. He even sent me a copy of an unreported Supreme 
Court judgment which tied the ownership issue up in a bow on behalf of 
the finance company.

But this was only one aspect of consumer credit law that allowed the 
sharks to eat vast numbers of minnows. Car sales people regularly topped 
up the car sale deal with fat commissions on bodig insurance and finance 
deals. People who wanted to pay out finance contracts early found that 
the finance contract structured the payments so that they had paid almost 
all of the interest charges upfront under the notorious rule of 78. The 
payments at the back end of the contract left them still owing the largest 
part of the purchase price.

All this found its way into the Legal Resources Book by 1977 so that 
these standard forms of car financing and the mechanisms for calculating 
interest rates could be disseminated to consumers and their advisers. 
That identified issues and provided a platform to build on in updates 
and future editions of the book. In the early 1980s this – combined with 
a growing number of better-resourced and more specialised legal centres, 
new law graduates who could get jobs in those centres, and newly 
emerging financial counsellors – brought about very significant additional 
protection for consumers.

VIII THE WEST HEIDELBERG LEGAL SERVICE

The Legal Studies Department's second major project aimed at bringing 
the law – and the university – to the people was the West Heidelberg 
Legal Service.

West Heidelberg is a working class area about 13 kilometres north 
of Melbourne. Its great claim to fame was to have housed the Olympic 
Village accommodation for the 1956 Melbourne Olympics. The village was 
converted into a housing commission estate after the games, adding to 
the already extensive housing commission accommodation in the area. 
The accommodation was poorly built, cramped and had little in the 
way of recreational facilities or developed open spaces. The percentage 
of people who were unemployed or on pensions and benefits was higher
than the state average: 'Overcrowding, lack of privacy and absence of social and recreational outlets breeds tension and anxiety which can erupt into domestic, neighbourhood and public disputes'. There were many adolescents in the area, some of whom worked hard at school and excelled at sport, and some who got into trouble with the law. West Heidelberg had a 'reputation' which created a sense of community born of a form of discrimination. But it was tough and, certainly, if you were a young male from out of the area you made sure that the money for your cab fare along Bell Street did not run out at night anywhere near the Olympic Hotel or the Coliseum Hotel in the shopping area known as the Mall.

The Poverty Commission commissioned studies of districts with special needs. West Heidelberg was selected for study and the 1976 report found significant levels of poverty and unemployment and an urgent need for a wide range of medical, dental, counselling and educational services. The report's key recommendation was to establish a Community Health and Welfare Centre. In fact, the centre had already opened in 1975 in two adjoining converted blocks of housing commission flats in the Olympic Village. The new centre was one of the bright spots on the map of West Heidelberg. The centre's director had a very broad view of health that integrated medical and associated services into a visionary one-stop shop model. By 1978, the centre had a full-time staff of 17 including two doctors, a clinic sister, three social workers, two community nurses, an occupational therapist, a counsellor, a youth worker, a credit counsellor, an administrator and four office staff.

The report had recommended the establishment of a legal aid service in the new centre but that was not part of the initial set up. A local solicitor, John Cairn (later the local member for the area and in 1982, State Premier) did some voluntary sessions at the centre once or twice per week.

La Trobe University sits on the northern border of West Heidelberg. By 1976, the university had established the La Trobe University Legal Service on campus for students of the university. That course had started to offer some clinical legal training to Legal Studies Department students and used the university's counsellors to help train them in interviewing and mediation skills. Members of the department provided advice and representation.

Subjects offered by the department — especially Family, Society and the Law, Criminal Law, and Consumer Protection — corresponded with

prevailing problems at the West Heidelberg Centre. More specifically, the department had started a course called ‘Law and the Poor’ in 1974 and another course, ‘Access to Law’, in 1977. The latter course drew on the growing United States literature on the delivery of legal services and supplemented it with reports which were flowing from the Poverty Commission and the research that had been done on the Fitzroy Legal Service.45

By some chance — now lost in the mists of 1977-1978 but possibly due to the encouragement of Vice-Chancellor John Scott, who actively encouraged the university to engage with the local community — someone thought that the department should start a clinical legal education centre at the West Heidelberg Community Centre. The idea fell on fertile soil given the interests of the department members who saw the idea of co-locating a legal centre with the range of health and welfare services at the West Heidelberg Centre as an innovative and exciting model for holistic service delivery. This would be the first community legal service to operate in a community health centre where there would be access to a range of support services including medical practitioners, social workers, youth workers and financial counsellors.

The Legal Studies Department set up a committee and met with the director of the centre, Bill Newton, and John Cain to develop the idea. The proposal involved funding for a lecturer level position for a person who would be a half-time teaching appointment to run the course on Access to Law, and half-time working in the West Heidelberg Community Legal Service providing legal services to clients of the centre. The department also funded a secretary to support the solicitor.

The other major component of the plan incorporated a clinical legal education component for Legal Studies students. Given the department’s law-in-action focus, and building on the Magistrates’ Court observation reports required of first-year students, the clinical program was a natural progression. The plan was that students would do voluntary work at the West Heidelberg Community Legal Centre under the supervision of the solicitor and submit reports or research projects for courses like Law and the Poor or Access to Law.

Initially, the Legal Studies Department’s proposal met some resistance from the university, ironically on the basis that the Legal Studies Department was not a law school. As it happened, clinical legal education in Australian law schools was virtually non-existent at the time: Monash University’s pioneering clinical program at the Springvale Legal Service had opened in 1975.46 The Legal Studies Department overcame

45 For example, FitzGerald, above n 3, and Neal, ‘Delivery of Legal Services – The Innovative Approach of the Fitzroy Legal Service’ above n 9.
46 Smith, above n 9, 50.
these objections by stressing its commitment to critical analysis of the law in action and making a contribution to the community in which the university was located.

Finding the hybrid solicitor who could combine academic and poverty law practice skills was the next challenge. In 1978, Phil Molan's orbit around the legal centres movement came full circle. As we have seen earlier, Phil Molan had been a lawyer for about 10 years before becoming one of the founders of the Fitzroy Legal Service. His office had been located in the Northland Shopping Centre just over the Darebin Creek border with West Heidelberg and he knew the problems confronting people in the area:

The women of West Heidelberg were significant here. Many of those women came from just dreadful marriages and had saved up for years and years for a divorce. They would take part-time jobs just to get money for a divorce ... In those days it would cost something like three to four hundred dollars.47

By 1978, Phil had resigned from the Aboriginal Legal Service (where he had been the first employee solicitor) and was working on a higher degree:

I was doing my Masters degree at La Trobe University and was offered a tutorship and then lectureship at La Trobe University in the Legal Studies Department to lecture on legal aid. Part of the job’s specification was to set up a legal centre in the West Heidelberg Community Centre. So I went back to the women of West Heidelberg. I think some of them had still not got their divorces. The legal service that we then set up was run in the Community Health and Welfare Centre and this was a superb location. It was just very good to have a legal service in a Community Welfare Centre. We could look at people’s problems in tot. There were psychiatrists, doctors, youth workers, social workers, a community nurse, a lawyer, an educationist and you name it. All the caring professions worked there ... it was really good to have the facilities of the university and the students and the computer. I was lecturing in a course on legal aid and the students would come and work at West Heidelberg and their work would be assessed. Very soon the enrolment tripled and a lot had to be excluded. They would give basic legal assistance and had some legal research projects going, for example, a project on legal needs in West Heidelberg.48

The West Heidelberg Legal Centre opened in the Community Health and Welfare Centre building in 1978. Within two months, word spread quickly that there was ‘a new lawyer bloke at the centre’ and demand for his services was strong.49 Contact with the health and social workers provided the legal workers with unrivalled resources for dealing with complex problems. Contact with the university brought with it access to department members with specialist skills, back-up representation, and a well-resourced law library.

47 Neal, above n 5, 61.
48 Ibid 63-64.
The La Trobe students provided more resources. Students did a lot of the liaison work with the families, the social and youth workers and the financial counsellors and supported the lawyer doing the court work. Some of their first research projects involved the Women's Refuge and the Youth Groups. The students became familiar with the web of debt, family break up and police problems confronting some of these families: contact with police who 'liked' the younger brother for an offence because it was sort of thing his older brother (by then in jail) had done; the range of financial difficulties underlying debt summonses, and family break up.

The Legal Service also delivered community legal education, talking to local schools and community groups and contributing a column for the residents' newspaper. The university's Human Resources Centre assisted in the development of educational material and its Counselling Service provided training in interviewing techniques to the student volunteers.

By the end of the 1970s, the West Heide Legal Centre had provided a lot of services to a very needy local area, an important dimension to the program of the Legal Studies Department, and a strong base for some of the big law reform activity undertaken by the growing legal centres movement in the 1980s. It also provided a model of integrated welfare service delivery in an area of great social need.

IX NOW THE HAVE NOTS WON A FEW

In 1974, one of the most perceptive students of legal culture wrote a seminal article called 'Why the "Haves" Come Out Ahead: Speculation on the Limits of Legal Change'. He shot some pretty large holes in the equality before the law story. Most likely, if you get caught in the law net, you are a one shot player. On the other end of the net, you might well find a repeat player (a finance company, an insurance company, the social security department). Repeat players have resources, the ability to weave the net by carefully structured contracts or legislation, and to pick and choose the cases that they run to maximise their position. They are also in it for the long run so it makes economic sense for them to invest their

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50 More recent research projects are listed on the Centre's website <http://www.communitylaw.org.au/clc_westheidelberg/ch_pages/about_west_heid_reports>.

51 Molan, above n 43, 41.

52 Marc Galanter, 'Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change' (1974) 9 Law & Society Review 95. Legal aid budget cutters seem to prefer Galanter's later article, 'Justice in Many Rooms: Courts, Private Ordering and Indigenous Law' (1981) 19 Journal of Law and Legal Pluralism 1. They wrongly read this article as justifying cut backs in litigation funding on the basis that forcing poor people to settle their grievances outside court is (a) an option and (b) does not give an advantage to the party which can afford to litigate.
resources in weaving and repairing the nets and keeping a good supply of sharks on hand.

This article was a useful correction to some of the utopian 1970s ideas about law as an agent for social change. It also led to an under-selling of the extent of the changes in the redistribution of power through law that did occur in the 1970s through the combined efforts of the people and projects I have been describing here, and the worth of the case work that was done for thousands and thousands of people in community legal centres. I have a favourite example.

The biggest consumer fight of the 1970s had the national chain of Waltons department stores on one side and Lynda Blundell, on the other. She joined forces with the legal centres movement and won.

Lynda Blundell, self-described 'housewife', was born in the slums of Carlton and was living in a housing commission house in Broadie (Broadmeadows) in the 1970s. She had an account with Walton's stores which sold low-quality household products in a national chain of department stores. It combined its in-store practices with a fleet of high-pressure door to door sales and payment collection staff who targeted housing commission tenants. Waltons had a range of credit deals including the infamous Waltons' 'store currency', funny money for use in the store that incurred interest at around 40 per cent even if the customer did not buy goods immediately.

In 1973, a local social worker told Lynda Blundell about the Fitzroy Legal Service and encouraged her to set up a legal service in Broadmeadows. She took up the idea and organised a group of local housewives to set up the Broadmeadows Legal Service. Lynda Blundell's group of housewives had trouble finding volunteer lawyers at Broadmeadows which lacked the inner city chic of the Fitzroy Legal Service. 'We had never contacted professional people in any way. It was the first time we had contacted solicitors and we learnt to work and socialise with them.' A consumer lawyer bookended this comment when he said that until he worked in legal centres, he had had little contact with working class people and their legal problems.

In 1974, Lynda Blundell teamed up with Danny Spijer who was then the first employee solicitor at the Fitzroy Legal Service and she 'agreed to be the bunny for a test case to run a Magistrates' Court case testing the validity of store currency'. Store currency raised a range of legal questions, including the applicability of interest rate limits under the Money Lenders Act. They succeeded in that case but that did not stop the Waltons juggernaut.

53 Neal, above n 5. 54. See too, Chesterman, above n 1. 99-100.
54 Interview by the author with David Niven, 28 November 2012.
55 Neal, above n 5. 55.
Lynda Blundell then put together a ‘Waltons Survival Kit’ and ran a long-running public campaign against Waltons, including demonstrations outside stores and TV and radio interviews. Waltons was a very aggressive combatant and used its legal resources to threaten its opponents. At one stage the then Liberal Commonwealth Attorney-General threatened to withdraw funding from the Fitzroy Legal Service if it did not abandon its ‘political’ campaign against Waltons. Lynda Blundell and various media organisations covering the issue were threatened with defamation suits.

But by the late 1970s, the legal centres’ movement had both legal and political resources to join combat. Litigation was a good strategy in large-scale consumer finance deals. In many cases, Waltons’ contracts had been made with someone who was under contracting age: 21 until 1978 and then 18. Waltons’ record-keeping did not enable them to prove the terms of the contracts they had made with consumers, the amount of the repayments, who was the contracting party and so on. The Waltons Action Group stoked the fire at a public level by releasing Waltons training manuals, obtained from disaffected former employees.

Waltons eventually succumbed to sustained media and parliamentary pressure and closed its last store in Victoria in 1983. The idea that a Broadmeadows housewife could have closed down a national department store’s Victorian chain would not have occurred to anyone in 1972. In 1983, it happened. The legal centres movement and Lynda Blundell made the difference. Legal centres provided the initial rallying point for Lynda Blundell and her housewives and the legal expertise to run cases. Together they identified the points of attack on Waltons’ practices, prepared and distributed information kits for other consumers, published their strategies and successes to the wider legal centres movement through the Legal Service Bulletin, and ran public campaigns to put political and ultimately legislative pressure on Waltons. This was a major change that prevented predatory practices and meant that neither Waltons nor other repeat players in the consumer finance industry could plan on walkover victories any longer.

But the closure of Waltons stores in 1983 was not the end of this war. When the stores closed, Waltons sold its debts to commercial recovery agencies. Their debt collection practices carried the poisoned Waltons chalice into the 1980s. West Heidelberg Legal Centre took up the cudgels, picking up another link between the two decades and the themes I have been exploring.

Consumer credit was a recurrent theme in the West Heidelberg Community Health Centre story. Credit counsellors intersected with lawyers dealing with debt summonses and, given the high concentration of housing commission accommodation, Waltons had been very active in the West Heidelberg area. When the additional newly-funded case work lawyer, Gary Sullivan, arrived at the West Heidelberg Legal Centre in
1982, his immediate focus was on police cases against young people. But the financial counsellors were encountering persistent complaints about aggressive collectors chasing Waltons debts. He picked up the story begun in the 1970s by Lynda Blundell and revived the Waltons' Action Group. But by then debt collectors like Commercial Recovery Management were the enemy rather than Waltons itself.

Garry Sullivan brought a case in the Magistrates' Court to revoke the private agent's licence of Commercial Recovery Management. Together with Legal Studies Department member, John Willis, they fought debt claims that had been poorly documented in the first place, challenged the legality of the Waltons store currency, and defended claims against clients who had originally borrowed $1000 but who were still making payments years later notwithstanding having paid the original amount several times over. Ultimately they exhausted the pursuers.

X DRAWING THE THREADS TOGETHER

By the end of the 1970s, there had been a quite profound change in Australian legal culture. For the first time, there was a heavy focus on the reality of equality before the law, most especially focused on access to law for people who were poor. Certainly the seeds of change had been sown in the late 1960s but they blossomed in the early 1970s with the election of the Whitlam Government in December 1972. The Whitlam Government was itself a reflection of the times as much as an author of the changes. Dissatisfaction with the narrowness of legal culture burst out all over the place. As Lionel Murphy came down from Canberra, his head filled with ideas of shopfront law offices in the United States and an idea for an Australian Legal Aid Office, Fitzroy Legal Service came up to Canberra with a vibrant and radical operating critique of legal service delivery. Simultaneously, the academic planners of La Trobe University – who came mainly from disciplines other than law – made a strong institutional critique of the narrowness of legal culture in creating a Department of Legal Studies in its School of Social Sciences. The Legal Studies Department then prosecuted that critique through its teaching program and the projects it undertook.

For the first time, a significant amount of legal resources flowed into problems affecting people who had been to all intents and purposes excluded from legal assistance. And there was a great thirst for that assistance. For Fitzroy Legal Service to deal with 10,000 cases in its first four years of operation is an astonishing statistic. And Fitzroy Legal Service, closely followed in 1973 by Springvale Legal Service, was only the first of some 32 legal centres operating by 1978.

SOCIO-LEGALITY: AN ODYSSEY OF IDEAS AND CONTEXT

The *Legal Resources Book* was an extraordinary publishing event. The commercial publishers who turned down the opportunity to publish a 410-page lay person's guide to the law in Victoria could hardly have foreseen the *Legal Resources Book* sitting alongside *Roots* and *The Thorn Birds* in bookshop windows selling 16,000 copies within a few months of publication. Nor could they have foreseen its survival ever since, first as an updated loose leaf service and then – from 1987 – as the *Law Handbook* in an annual hardback, paralleled more recently by an online edition.

At the top-down level, the Australian Legal Aid Office, the reports of the Commissioner for Law and Poverty, and the establishment of law reform commissions changed the legal landscape significantly. But the changes described here – though indirectly funded by the Commonwealth Government through university funding and direct grants to legal centres to hire coordinators – were bottom up initiatives heavily dependent on voluntary commitments by legal academics, lawyers and lay people who could all have chosen to pursue other interests, and enthusiastic media and public support.

Some who have written about these changes leave the 1970s with some sense of disappointment. Expectations about radical or even revolutionary changes in the position of the poor through the legal system were always too optimistic. The disappointment focuses on the extent to which casework overtook law reform, test cases and broader changes.

That perception lacks perspective. In particular it lacks perspective of what legal life looked like on Brunswick Street, Fitzroy in December 1972 from the point of view of the people living in the flats, from the point of view of the lawyer and non-lawyer volunteers who set up a shopfront legal service in the town hall basement, from the point of view of law graduates who wanted to work in a wider legal world and from the point of view of Legal Studies Department students who had an academic interest in law.

In the first place, this meant that a lot of legal knowledge and organisational resources became available to people who lived in the flats. Whatever the ultimate figure – Fitzroy Legal Service's 10,000 cases in four years multiplied by some 30 other centres – legal centres helped many, many thousands of people who were worried enough about a legal problem in their lives to seek assistance; assistance that had not been available before. Describing this as band-aid seriously understates its worth and misses the structural flow-on to the attitudes and practices of police, landlords, credit providers and government decision makers who now had to deal with people who had legal representation at varying levels, be that a phone call or letter, through to litigation and legislative...
changes. And it says nothing about the organisational lessons learned by the legal centre workers and people like Lynda Blundell. 58

Second, there was a Department of Legal Studies in Australia devoted to the academic study of law, freed from the black-letter thrall of the traditional law schools of the time. This provided teachers, researchers and students with a much wider field of operation unconstrained by vocational criteria. It also provided a pool of academic legal resources for a variety of important local projects. Some of them — like Guilty Your Worship and the Report on Poverty and the Legal Profession in Victoria — shed light on parts of the legal system that had been left unexplored. Others — the Legal Resources Book, the Legal Service Bulletin 59 and The Pink Pages — organised the legal knowledge base and made it accessible to thousands and thousands of people either directly or indirectly via their legal advisers in legal centres, other advice centres and through lawyers in private practice. Whatever benefits the department’s transition from Legal Studies Department to Law School beginning in the 1990s may have brought, the sense that something was lost in the departure from the original vision is hard to resist. Kingston Braybrooke’s quip about the narrowing character of legal education comes to mind. Perhaps not so much in the legal education per se, but in its tie to professional qualifications and knowledge that will be ‘useful in practice‘ rather than interesting and important for its own sake.

Third, both the Legal Studies Department at La Trobe University — through the Fitzrovia Legal Service and later the West Heidelberg Legal Centre — and Monash Law Faculty — through the Springvale Legal Service and the Nunawading Legal Service — forged links with the legal centres movement and this provided the foundations for further broadening the local legal culture in the 1980s. That flowed into broader legislative changes both in the government provision of legal aid and in substantive law areas.

Fourth, the terms upon which government provided legal aid changed. By 1978, Legal Aid Commissions became part of the landscape, replacing Murphy’s vision for the ALAO which had withered in the face of a conservative federal government and a threatened constitutional challenge by the Victorian legal profession. 60 But the idea that the federal government could retreat to a pre-1972 level of non-involvement in legal aid was politically impossible. The federal government would continue to provide 55 per cent of the funding for the new Legal Aid Commissions

58 For further examples of the worth of casework done by legal centres, see Jeff Giddings, ‘Casework, Bloody Casework’ (1992) 17(6) Legal Service Bulletin 261.
59 The Legal Service Bulletin was based at Monash Law Faculty but had several Legal Studies Department members on its editorial board and among its regular contributors.
60 See Chesterman, above n 1, 84ff on the threatened constitutional challenge.
until 1997. And the legal profession would not dictate the terms on which the new commissions would operate. The Legal Studies Department and Fitzroy Legal Service organised a successful conference in 1976 to critique the draft legislation for the Victorian Legal Aid Commission. The Victorian legal profession agreed to redraft its submissions and put Fitzroy Legal Service on the redrafting committee. Julian Gardner, former Legal Coordinator of the Fitzroy Legal Service and co-editor of the Legal Resources Book, became its first head and community legal centre lawyers have played significant roles in the work of the commission as employees and board members.  

Fifth, lawyers with a legal centres background came into government. In 1982, a new State Labor Government took office, with ex-West Heidelberg Health Centre volunteer, John Cain, as Premier and former Fitzroy Legal Service volunteer, Jim Kennan, as Attorney-General. The new government had an ambitious law reform agenda and quickly established a Victorian Law Reform Commission. Two members of the Legal Studies Department were appointed as Commissioners during the 1980s.

In substantive law areas, the legal centres movement had developed specialised expertise in areas like policing, prisons, tenancy law, consumer credit, women’s issues and mental health. In each of these fields, through the courts and through the legislative process, schemes of legal regulation improved the legal position of poor people dramatically. The example of the 1976 Fitzroy Legal Service T-shirt with ‘Your Rights When Arrested’ written on it – a device to satirise the secrecy surrounding Victoria Police’s ‘brown bomber’ – became a relic in 1983 when s 464 of the Victorian Crimes Act set out a statutory code for the arrest and interrogation of suspects.

But there were other examples. By the 1980s, the legal centres had a fund of case histories which they used to highlight reform areas and back legislative strategies. The hire-purchase trap for used car buyers, described earlier, is one example. Chattel securities legislation in the early 1980s required hire-purchase companies and other lenders to register their interest in a vehicle. From then on, innocent purchasers could check the register and determine whether there was clear title to the car. If the hire-purchase company had failed to register its interest, the purchaser got good title.

A group of lawyers and newly formed financial counsellors set up the Consumer Credit Legal Service in 1982. One of their first campaigns

62 Law Reform Commission Act 1984 (Vic). The two Commissioners were Peter Sallmann and David Neal.
64 Chattel Securities Act 1981 (Vic) and its replacement, Chattel Securities Act 1987 (Vic).
focused on finance companies which had moulded an old form of commercial security — the bill of sale — to household credit. The finance companies took bills of sale over children’s beds and bedding and other items to coerce payments. An inspired strategy from consumer advocate Dennis Nelthorpe saw him collect a load of items subject to bills of sale in a trailer and unload them at the front of AVCO Finance’s Geelong store in satisfaction of the security. The media was fascinated, the bluff was called and the company was embarrassed. Bills of sale for consumer finance were dead.

They also used new credit legislation — legislation shaped by their lobbying — to enforce the shutting-down of previous abuses. In 1984, the Credit Act realigned the rule of 78 — the front-loading of the interest component of loan repayments — in favour of consumers. Some finance companies went into denial about this but litigation run by the Consumer Credit Legal Service convinced them that this change was not only on the books but that it could bite them.\(^6^5\) They underlined the point in 1990 when they persuaded the Credit Tribunal to refuse to license HFC Financial Services, the eighth largest consumer credit provider in the country.\(^6^6\) This caused the company to refund some $20 million to consumers and establish a fund which helped provide ongoing funding to the Consumer Credit Legal Service.

These were significant gains in consumer finance, an area which lent itself to structural changes because an abuse in one contract would tend to be repeated in thousands of other contracts.

And sixth, the growth of Legal Studies in the secondary schools’ curriculum and in the teachers of that curriculum through the Department of Legal Studies has meant that the training for citizenship in the legal area of social life has now been spread to thousands and thousands of citizens.

XI Postscript — 40 Years Later

Important as the 1970s changes in public consciousness about law and power were, it is equally important to notice what a low base they started from. It is shocking to think how thin the reality of equality before the law was in 1970. But I echo what one of my masters wrote about the rule of law in 1975, in thinking (and hoping) that this history from the 1970s may provoke some readers to reflect on law and power in the first decades of a new century in what is still a lucky country.\(^6^7\)

\(^6^6\) On 12 September 1989, the Credit Licensing Agency refused HFC a licence. HFC unsuccessfully sought a de novo hearing in the Supreme Court: HFC Financial Services Ltd v Director of Consumer Affairs and Consumer Credit Legal Service Co-operative Ltd [1990] VSC 63.

In 2012, the Law and Justice Foundation of New South Wales published its *Legal Australia-Wide Survey: Legal Need in Australia*, a massive survey based on a national representative sample of over 20,000 interviews. Its findings provide an invaluable benchmark on legal need. Fifty per cent of respondents had experienced one or more legal problems in the preceding 12 months. Just over half of them had a legal problem which was substantial and had a severe or moderate impact on everyday life, including income loss or financial strain, stress related illness, physical ill health and relationship breakdown. Eighty-eight per cent of the respondents knew about legal aid, but only 36 per cent knew about community legal centres. Twenty per cent simply took no action and a further 30 per cent dealt with the matter without advice. People who did seek advice only sought that advice from a lawyer in 16 per cent of the cases.

In population terms these are large numbers. Eight and a half million Australians experience a legal problem in a 12-month period, and 3.7 million of them have three or more problems. About a quarter of the population experience a substantial legal problem each year. Only about half of the people with a legal problem seek advice for it.

In the survey 31 per cent dealt with the legal problem without any advice and 18 per cent took no action. In the group that did seek advice only 16 per cent sought that advice from a lawyer. Only 10 per cent of the cases ended up in court.\(^6^8\) This means that about a million people obtained legal advice from a lawyer in the 12-month period. This is a large number but the 7.5 million people who did not obtain legal advice from a lawyer dwarf it.

Another, much bleaker perspective comes from the court-end of the legal aid spectrum. For all the expansiveness of the Murphy vision for the federal government's contribution to legal aid, Legal Aid Commissions fell into State hands by the end of the 1970s. The Commonwealth continued to fund them (and hold the purse strings) to the tune of 55 per cent for the next three decades and it also funded coordinating staff for what became a national network of community legal centres.

But since 1997, successive Commonwealth governments have savagely stripped back their contribution to Legal Aid Commissions. Legal Aid Commissions serve the acute and expensive litigious end of the legal service spectrum where client needs are the most intense. In 1997, the Howard Government cut Commonwealth funding back to 33 per cent by renouncing responsibility for 'persons for whom the Australian Government has a special responsibility' and tying its money to matters arising from Commonwealth laws. This has reduced the Commonwealth

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contribution to the State-based Legal Aid Commissions by millions of dollars per annum: it would take an additional $76.2 million in the 2014 financial year to return the Commonwealth to a 50 per cent share.\textsuperscript{69} Despite intense criticism from the then Labor opposition, successive Labor governments from 2007 have failed to restore funding to the pre-1997 levels. Even that level of funding was very low at $28 per capita compared to the United Kingdom which was spending $86 per capita on 2009 figures.\textsuperscript{70} The Commonwealth’s contribution to that was $10.58 per head in 1997; it dropped to about $8 in the early 2000s and now sits at $8.97 per head in 2013.\textsuperscript{71} That is not much justice.

These cuts have caused Legal Aid Commissions to announce deep reductions their services. In four States, some people who fall below the famous poverty line drawn by the Henderson Poverty Commission in the 1970s do not satisfy the legal aid means test.\textsuperscript{72} There is virtually no legal aid in civil cases and the Commonwealth disavows any responsibility for matters arising out of State criminal law.

Of all the cuts, perhaps none is as symbolic as the cut introduced by Victoria Legal Aid in 2013 denying legal aid to people facing criminal charges in Magistrates’ Courts, unless they are facing an immediate prison sentence if convicted.\textsuperscript{73} If you remember from earlier in this story, that was the major catalyst for forming the Fitzroy Legal Service. For all the gains, this is a miserable outcome. Being convicted of a sex, drugs or dishonesty offence—even without a jail sentence—has a devastating effect on a person’s life chances. The effect is most acute for young people. If equality before the law—one of the key components of the cluster of ideas underpinning the rule of law means anything—it starts with making sure that people charged with criminal offences at least have a lawyer to represent them in court. It is part of the liberal political deal (not just the ideal) between citizens and governments that you will get a fair go under the law, and that if government is going to prosecute and punish you, you will get a fair trial. But in contemporary Australia, federal and State governments are welshing on that deal and betraying the ideal.

This retreat of the Commonwealth Government from acute legal services for the very poorest during the 2000s is a national disgrace. And the fact that they have been electorally able to do so speaks volumes about

\textsuperscript{69} Budget analysis provided by PriceWaterhouseCoopers to the Law Council of Australia.

\textsuperscript{70} PriceWaterhouseCoopers, \textit{Legal Aid Funding: The Challenges of Co-Operative Federalism} (Report to the Australian Bar Association, the Law Council of Australia, the Law Institute of Victoria and the Victorian Bar Association, 2009) 51-62.

\textsuperscript{71} Ibid 31.

\textsuperscript{72} Ibid 36.

current public unconsciousness about rule of law values. This story about the 1970s shows that it was not always like this. Why the change?

I worry about a contemporary populism which is so dismissive of and careless about the legal framework which is so deeply woven into our social, political and economic relationships. It lacks fellow feeling for those whom it tags 'losers', it lacks the imagination to see that 'it could happen to me', and it infects our political reckoning about what is important in our legal and political ordering.