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## Ex-prisoners' Need for Legal Aid in Denmark

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### Introduction

This chapter examines and discusses the legal vacuum ex-prisoners face after being released from prison in Denmark, which makes them feel abandoned while facing their cross-legal and non-legal problems—a time when there is a high-risk of recidivism (Roxell 2009; Graunbøl et al. 2010). Legal aid studies have not only shown that lower-class individuals have complex problems, but also demonstrated that these disadvantaged groups are less likely to take their problems to the legal system and to take legal action (see e.g., Smith 1919; Carlin and Howard 1965; Abel-Smith et al. 1973; Eskeland and Finnes 1973; Eidesen et al. 1975; Sejr 1977; Lid 1981).<sup>1</sup> Within the rich Norwegian tradition of providing legal aid services and doing legal aid research critical voices have been raised. For example, Mathiesen (1975) has argued that legal aid offered to disadvantaged population groups seemed to meet a range of structural barriers in society. These structural barriers, however, did not limit or otherwise erode

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the legal aid offers directed to the top of the social hierarchy; they only negatively affected the societal bottom (Mathiesen 1975, p. 189). Similarly, Eskeland questioned whether legal aid has the potential to act as a 'problem-solver' for all population groups or meet the needs of the disadvantaged (Eidesen et al. 1975, p. 10). According to the larger body of critical legal aid research, 'access to justice' is unequal as it depends on one's income level and social position in society.

If we change our focus slightly and study these critical legal aid research findings from a law *in* society perspective combined with a linguistic approach, it is possible to identify complex explanations of why disadvantaged citizens tend not to approach the legal system for assistance as part of a transformation process. In their 1981 study on the origin of legal cases, Felstiner et al. (1981) suggested that a problem has to undergo a transformation they called the *naming-blaming-claiming process* before the problem can be introduced to and enter the legal system. The naming transformation requires that the wronged party reflect on and voice his/her problem as a violation; the blaming transformation involves the wronged party identifying the party which caused the problem; and the claiming transformation requires the wronged party to confront the party which violated them, and ask the party to remedy the mistake. If the problem is not solved between the parties the conflict can form the basis of a legal case. The naming-blaming-claiming process is demanding, and the wronged party needs to face this transformation of the problem with sufficient mental, social, and linguistic resources to meet the legal system's unconscious expectations of collaboration and negotiation (Felstiner et al. 1981; see also Jefferson 1988; Pomerantz 1978; Newman 2013). Thus, the wronged party needs to be familiar with their legal rights and obligations to be able to name, blame, and claim the problem as a potential legal case. The naming-blaming-claiming process can provide us with knowledge about what happens before social problems are taken to the legal system and transformed into legal cases, and thereby also contribute to an understanding of the many challenges faced by potential but reluctant legal aid clients, which inhibit them from taking legal action.

This chapter's main focus and target group, ex-prisoners, like many of the poor population groups included in the International and Nordic

legal aid research, are in need of support even before they have named, blamed, or claimed legal action, as they need encouragement to go through with the process of making a social problem into a legal issue (see e.g., Eskeland and Finne 1973; Eidesen et al. 1975; Sejr 1977). Outreaching legal aid is therefore an opportunity to supply legal assistance to ex-prisoners with specific and complex problems. 'Outreach' is a strategy employed by legal aid practitioners to assist these 'hard-to-reach' citizens in locations they frequent and feel at home in, and where they can develop an equal dialogue to identify potential problems that should be named, blamed, and claimed, and enter the legal system (Gotfredsen 2004; Lied 2011). However, outreaching legal aid raises yet another challenge because, even though ex-prisoners often have an immediate need for legal and non-legal support post-release (see e.g., Petersilia 2003; Leverenz 2014) we cannot pinpoint a common denominator for these citizens, apart from their former criminal offence. Ex-prisoners are, therefore, a challenging group to reach with legal aid, as once they have left prison they can no longer be located in any particular place or area.

This chapter examines ex-prisoners' need for legal aid and how legal aid could be organised, to fit in with their living conditions and the many hardships they face post-release in Denmark. First, the material based on a larger qualitative study of prison release in Denmark (Olesen 2013a) is outlined. Next, there is an outline of the existing, targeted legal support to ex-prisoners and a discussion of the ex-prisoners' complex and inter-related legal and non-legal problems. This is followed by an examination of the ex-prisoners' struggle to name their interrelated problems as legal issues and a discussion about how these interrelated problems cannot be considered as isolated rules; on the contrary, they must be dealt with as an intertwined web of various regulatory mechanisms that challenge general distinctions between legal domains and disciplines. After this discussion, the focus moves to the naming-blaming-claiming transformation process, and ex-prisoners' difficulties in approaching legal services for assistance are discussed. In relation to the ex-prisoners' struggle to name, blame, and claim their legal needs, the final section draws on observations and evaluations from various projects aiming to meet vulnerable citizens' need for legal support and discusses the challenges and opportunities involved in providing legal aid to ex-prisoners in Denmark.

## Material and Methods

The chapter applies a theoretical and methodological argument combining perceptions from Bourdieusian reflexive sociology (Bourdieu 1977, 1990, 1996; Bourdieu and Wacquant 1992) and law *in* society research (Engel and Yngvesson 1984; Ewick and Silbey 1998; Silbey 1992, 2005). The study is based on face-to-face, in-depth, semi-structured interviews and follow-up interviews with reoffenders from Denmark with former pre-prison, in-prison, and post-prison experience. The participants are all men, aged 18 or older, and able to speak and comprehend Danish. Interviews took place over a 2.5-year period between June 2010 and November 2012, and the final sample includes 77 interviews with 41 reoffenders, a number of unstructured observations and e-mail correspondence, text messages, and telephone conversations with the reoffenders and some of their family members and friends. Of the 41 participants 38 were initially recruited from one open prison and one closed prison in Denmark. The remaining three participants were recruited through staff at a drop-in centre for ex-prisoners. The settings for the follow-up interviews were places where the participants felt most comfortable: their cars, homes, coffee bars, pubs, etc., all over Denmark. The recruitment strategy ensured a range of reoffenders; their ages ranged from 20 to 60 years (median = 34), 25 of them were in a permanent relationship or married, 18 had children, seven had ethnic minority backgrounds, 26 had spent part or all of their childhood in institutions or foster families or had been under special observation, 14 had not completed secondary school, 15 had never been officially employed, and 16 were connected to (semi)organised criminal groups or outlawed motorcycle gangs. The names of the interviewees have been replaced by pseudonyms. First-round interviews ( $n = 41$ ) were concerned with reoffenders' pre-prison, in-prison, and post-prison experiences and living conditions. The initial semi-structured interview guide focused on reoffenders' experiences of, and interaction with, their (former) employers, landlords, teachers, with the police, the Tax Authority, bailiffs, social workers, job centres, family members, and friends, etc., to uncover the legal and non-legal effects of the social, mental, physical, and legal process

of release. Participants who were released from prison within two years were asked after the interview to participate in one or more follow-up interviews during their re-entry into society. Second-round interviews ( $n = 21$ ) were conducted shortly after release to provide first-hand insight into the newly released prisoners' particular experiences of, and approaches to, the many hardships they faced while trying to (re)establish everyday life in their local community. Third-round interviews ( $n = 10$ ), fourth-round interviews ( $n = 4$ ), and one fifth-round interview were conducted between approximately two months and two years post-release. These follow-up interviews elaborated on the previous interviews and covered how the ex-prisoners' plans for their life outside prison regarding housing, education, employment, finances, criminal activity, and social relations were put into action. Ex-prisoners were also encouraged to discuss the legal barriers they met in their criminal or law-abiding life post-prison, and to describe their need for legal aid. This analysis includes data from all parts of the interviews but focuses on direct questions regarding social, mental, and legal problems, and the reoffenders' need for legal support.

## Lack of Legal Support for Ex-prisoners

Before the findings of this study are introduced, the situation of ex-prisoners in need of legal aid in Denmark will be briefly outlined. Scandinavian prison studies have shown that the majority of prisoners have complex legal, financial, social, mental, and addiction problems (Skardhamar 2002; Friestad and Hansen 2004; Kyvsgaard 1989, 1999; Clausen 2013; Nilsson 2002). However, unlike alcohol or drug addiction treatment, legal and financial problem-solving are not given high priority while the prisoners are serving their sentence. Their financial problems are met by a temporary reprieve deferring repayment of their debts, and their legal cases are usually placed on hold during incarceration (Ramsbøl and Rasmussen 2009; Ramsbøl 2003). The lack of action on prisoners' legal and financial problems and need for assistance means that, post-release, they meet a number of legal challenges they were spared from during incarceration but now have to confront in a challenging time period. Generally, the Danish Prison Service does not provide structured,

goal-oriented legal assistance or debt counselling, even though one could argue that prison time seems like an obvious opportunity to help prisoners improve their living standard and obtain an overview of the many legal and financial hardships waiting on the outside: hardships that are often unknown to first-time offenders but considerable for reoffenders (Olesen 2013a). Consequently, newly released prisoners are seriously burdened with cross-legal and non-legal problems while trying to re-enter society.

Prisoners who serve their full time have neither demands nor support from the Supervision Authority, and they have to navigate the legal system on their own. Parolees, on the other hand, have to participate in regular meetings with the Supervision Authority, which has a dual role of control and support. However, in a qualitative study of the Danish Supervision Authority, Rönneberg et al. (2011) found that probation officers felt their work was very time-consuming, with many conflicting deadlines. Because of this, the probation officers explained, they prioritised and allocated resources to the parolees, who they found to have the best potential to live a law-abiding life. This strategy ensured a certain success rate, which gave probation officers work motivation (Rönneberg et al. 2011). If a Supervision Authority is short on financial and human resources, this challenges the important role of probation officers as ‘problem noticers’ that could help the parolee to name, blame, and claim some of their problems to the relevant legal institution. The importance of, and challenges to, the cross-sectoral collaboration between the Prison Service, Supervision Authority, and the Social Services in Denmark has resulted in a project called the ‘Schedule of the Good Release’, launched in 2010 and implemented nationwide (Ramsbøl and Rasmussen 2009; Ramsbøl 2003). The ambition to improve release is novel but the project consists exclusively of guidelines, without any codified obligations binding the authorities to comply with them (see also Olesen and Storgaard 2017 [forthcoming]). Therefore, neither prisoners released on parole, nor prisoners released after serving their full sentence are met with any ‘legal readiness’ or ‘pre-release kit’ to deal with the legal barriers they face while rejoining the society.

The Danish state has done nothing about offering legal aid to such specific groups as prisoners and ex-prisoners, and, consequently, a few non-profit organisations have launched various projects offering legal aid to prisoners and ex-prisoners. These private initiatives thus undertake the responsibility for rehabilitation that the state renounces, making criminal justice rely on the ability of private and community organisations to meet the legal needs of prisoners and ex-prisoners. However, the few legal aid organisations working with this group are dependent on private funds and funds from a special funding pool for the charitable social services, which makes their resources, and projects for their clients limited and discontinuous.

## Ex-prisoners' Multifaceted Problems

This section reports findings on the ex-prisoners' perceptions and reactions to their living standards and post-prison experiences of re-entering society in a 'legal aid vacuum', highlighting the complex and interrelated problems they face. Findings identified the ex-prisoners' main concerns to be their need for income and housing while re-entering society. Furthermore, the findings showed how the ex-prisoners' lives were mostly characterised by multifaceted problems which were complex and interconnected. The problems most often raised by the interviewees concerned financial distress, debt, lack of education, few, if any, connections to the labour market, few, if any, pro-social relations, mental turmoil, health problems, and violent behaviour, together with drug and alcohol addiction. None of them faced only one, or a few, of these legal and non-legal problems—they all struggled with numerous problems (see also Friestad and Hansen 2004; Lid 1981, pp. 35–39). Their everyday difficulties were seldom pinpointed directly in our conversations but mostly discussed in connection with the local authorities' involvement in their problems. The ex-prisoners' unvoiced and indirect approach to their problems underlined their inability to name-blame-claim the problem and translate the social issue into a legal case. This section identifies how the two main legal concerns relating to income and housing were affected and problematised by the ex-prisoners' complex lives.

## Need for an Income Combined with Complex Legal and Non-legal Problems Post-prison

A large body of criminological research has suggested employment to be one of the key factors for a successful re-entry into society (see e.g., Skardhamar and Telle 2012; Uggen 2000). However, conviction and serving prison sentences entailed many informal punishments (see e.g., Travis 2002, pp. 15–36; 2005, p. 64), which made it difficult for the ex-prisoners to meet the demands of the employment market. Every interviewee who had experience with official job-seeking described how they were challenged by their criminal records and gaps in their employment history, or by their history of no, or weak, employment and education. James, a middle-aged reoffender, voiced the general experience of job-seeking ex-prisoners: *'I kinda stopped believing in it... when you look at the job advertisements that all want students with long educations and no criminal records, which I can't compete with. I got some giant gaps in my CV.'*<sup>2</sup> Existing studies confirm these collateral consequences that have been shown to decrease even low-skilled employment opportunities for ex-prisoners (Pager 2003; Holzer et al. 2006; Raphael 2011; Visher et al. 2008; Holzer 1996, 2009).

The findings demonstrated that another common barrier post-prison that challenged the ex-prisoners' employment status was their lack of financial incentives to obtain official employment and receive a reported income, because of the threat of debt recovery by the Tax Authority. However, existing studies have argued that a relatively high income level decreased the risk of criminal relapse (Grogger 1998; Bernstein and Houston 2000), while indebtedness post-prison was considered a criminal risk factor (Harris et al. 2010; Olesen 2013a; Bannon et al. 2010; Pogrebin et al. 2014). Nevertheless, the Danish state has a right to recourse against criminal offenders to recover the necessary legal costs of their trial (Act no. 1308/2014, part 91).<sup>3</sup> This left the interviewees and the majority of released prisoners in Denmark heavily indebted to the state (Olesen 2013a, b, 2014; Recommendation no. 1547/2014). The ex-prisoners were supposed to repay their legal costs regardless of their income level, and without any actual opportunity for debt relief (Olesen 2013b). If the Tax Authority found that the ex-prisoners had no economic



latitude the Tax Authority would give them a temporary reprieve. If, however, the Tax Authority, reckoned that the ex-prisoners had economic latitude, then they faced 'voluntary compulsion' to enter an instalment agreement, or the Tax Authority would withhold a portion of the ex-prisoners' monthly income before it was paid. Thus, the imposition of legal costs helped undermine the ex-prisoners' incentive to work (Olesen 2013a). Seeing no, or poor, opportunities to enter the labour market, and no immediate financial gain from obtaining a job, the vast majority of the newly released prisoners began their lives on the outside by going to the Social Services to seek social security benefit (see also Tranæs et al. 2008).<sup>4</sup> However, to avoid losing welfare entitlements, they came up against unemployment legislation that obligated them to perform verifiable individual job searches, job training, work-related activities, frequent meetings with caseworkers, etc.—legal obligations the ex-prisoners often struggled to satisfy because of anger management challenges and their various kinds of post-prison social phobia (see also Hochstetler et al. 2004).

### **Housing Need Combined with Complex Post-prison Legal and Non-legal Problems**

Permanent housing has been identified as a factor protecting against criminal behaviour, like the abovementioned factors of income and employment (Williams et al. 2012; Gowan 2002; Bradley et al. 2001). The importance of housing was also reflected in the anxiety of most of the interviewees to secure accommodation pre-release. In Denmark, prisoners are generally released on parole after serving two thirds of their sentence, if they fulfil the requirements of having an address or temporary place to stay. In situations where the ex-prisoners had to rely on addresses of friends or families to meet the requirement of a temporary residence, they often faced the hidden challenge of legislation regarding housing benefit. The problem arose when the pre-parolee's release address was in receipt of housing benefit, because the extra tenant at the address would invalidate the original tenant's eligibility for housing benefit. A large number of the prisoners' acquaintances received housing

benefit, which further complicated the prisoners' housing situation pre-release. Many of the interviewees, therefore, had to seek accommodation pre-release, and many said that they needed help and support to deal with this issue. However, according to the interviewees, the informal understanding between them and their contact person in prison was that there was an 'one-offer-policy' that made the prisoners feel they could not turn a housing offer down without risking their chance to secure the required address pre-parole. Applying for housing as a prisoner is challenging because they are often unable to apply through private agencies; on some occasions they also have to hand over responsibility for the negotiation on a house offer to their contact person in prison; they cannot always get permission to view a house, and have to decide without having full information. Existing studies support this finding, arguing that disadvantaged citizens that have named, blamed, and claimed their problem and entered the legal system often find they are excluded from the decision-making relating to their legal case, and that they are also ignorant of exactly what legal consequences the case handlers' choices will have on their living situation (see e.g., Newman 2013; Newman and Ugwudike 2014). Moreover, housing legislation reduces vulnerable prisoners' chances of getting housing because only a limited amount of council housing is offered to ex-prisoners because council housing policy aims to ensure multi-tenancy across heterogeneous resources. Complicating the prisoners' housing situation even further was the fact that the property on offer in the rental market seldom matched their expected financial situation post-release. The findings showed that, to become eligible for release on parole, many prisoners made compromises when seeking housing: that is, they faced a rent they could not afford post-release, or they had to move into tough neighbourhoods they did not wish to live in, or the move-in date did not remotely match their release date. These problems arose very often because the prisoners felt insecure due to lack of legal support, and this added to their fear of being homeless or losing their opportunity to be released on parole. Simon, a former drug addict, who had become clean in prison and might now get release on parole if he managed to meet the

accommodation requirements, described some general considerations about the housing situation pre-release:

*'They're throwing me in the ghetto every time, even though they know that's where the drugs are, that's where all the troubles are ... I mean crime. They place you there cos that's where there's a flat available. It's not like they'll think "well, we better be careful, we better place him where it's a bit more quiet." They don't ... They just have to offer me one flat then they're off the hook. "If that's not good enough for you, sort it out yourself."*

Like many of the other prisoners, Simon was worried about missing an opportunity for getting released on parole; at the same time, he also worried about ending up in the same environment that had driven him to drug use and criminal activities several times, and caused him to wind up in prison. Legal support for prisoners is important because prisoners without support mostly chose to accept housing offers in disadvantaged neighbourhoods, thinking they had no other choice. Nevertheless, they all expected their stay to be temporary and were surprised when they experienced how difficult it was to give their landlords notice, because their creditors levied distress on their deposit.<sup>5</sup> Once distress had been levied, the indebted ex-prisoners had no, or very few, options to secure a deposit for a new home because their financial vulnerability made it more or less impossible to take out a bank loan or make savings plans. Neither could the ex-prisoners apply to their local authority for a new residence deposit loan because they had generally already taken out such a loan without paying it back, and public loans for residence deposits are restricted to a maximum of one per citizen. Likewise, lack of economic latitude made it extremely challenging for most ex-prisoners to cover moving expenses and relocation costs, and the feeling of being 'chained' to an undesired home was common among the ex-prisoners. At first sight these challenges could be seen as personal and social problems but they all emerged from interrelated legal barriers developed before or during incarceration, and lack of legal support in prison made legal problems faced post-release appear even more widespread and central to the ex-prisoners' everyday lives (Olesen 2013a).

## Debt and Criminal History Challenge Income and Housing

Previous findings have shown how pre-released and newly released prisoners' concerns about their income and housing were exacerbated by their multifaceted problems, which included a sanctioning unemployment policy practice and constrained housing policy practices that did not take into account this group's complicated lives and vulnerability. The lack of legal support for prisoners and ex-prisoners contributed to a feeling that they were facing these problems on their own, which led to their decisions determined by ignorance and distress. Furthermore, the findings suggested that the ex-prisoners' attempt to prioritise income and housing was made even more difficult when encounters with the police and bailiffs were taken into account. The ex-prisoners described how debt recovery made it detrimental to earn a reported wage. Liam (28), who had recently been released from prison, had never held official employment due to his debt for legal costs. He says he '*... mostly had unreported work and earned unreported money cos I just thought they [the creditors] could go to hell for all I care ... it doesn't pay to work.*' The sum to be paid by indebted ex-prisoners is calculated by the Tax Authority based on a fixed disposable amount. The difference between the pay received and the fixed disposable amount is taken directly to cover the debt, which leaves the officially employed ex-prisoner with approximately the same income as a social security recipient. The vast majority of the interviewees, therefore, preferred to be paid informally or 'make' unofficial money (by committing crime) to avoid the Tax Authority's debt collection. However, an unreported income made any consumption or expenditure open to question, which triggered yet more problems. The ex-prisoners' spending patterns, criminal history, and public debt stemming from criminal matters aroused the police's suspicion about criminal activity, and the bailiffs' suspicion about default on debt payments. This suspicion meant that the ex-prisoners frequently faced home, car, and body searches by the police as well as visits from bailiffs (Olesen 2013a).

Whether or not the ex-prisoners were willing to meet the payment deadlines, the Tax Authority could always enforce such debt strategy actions as levying the debtor's bank account and registering an interest on the debtor's land or assets to secure (extra) debt payment (The Danish Guidance and Directions for Recovery 2010). Thus, ex-prisoners' everyday life was deeply affected by debt collection law and tax law, and their families were included in this tangled web of legal regulations that controlled even very private aspects of the lives of ex-prisoners and their families: household, savings, future investment plans, etc. The 'threat' of police searches and bailiff visits as part of debt collection actions challenged the ex-prisoners' rights to private property, ownership, and privacy in general, and contributed to the use of counterfeit ownership documents, fictive households, and unofficial addresses, which further complicated their everyday lives.

Many of the ex-prisoners said they felt alone and unsure how to tackle the debt recovery initiatives from the Tax Authority. The usual reaction was to call the Tax Authority; they would then be put on hold for hours before they finally got through to one of the Tax Authority's employees who '*... is careful not to say anything more than you can read on the web [recalled in a sarcastic tone]. She can't even give me a fucking answer? It's my life she's dealing with and I've been waiting for hours. But they don't care. As long as they can't be held to account for anything it's ok by them ...*' As regards their debt recovery problems, ex-prisoners often mentioned that they could not get in contact with decision-making authorities within the Tax Authority and therefore felt unable to take control over their own lives. If, however, they did manage to transform their problems into a legal issue and present it to the right relevant people in the Tax Authority, lacking professional experience with debt negotiations, they often failed to negotiate a favourable instalment agreement before the Tax Authority had withheld a portion of their income, calculated on the basis of a (low) fixed disposable amount.<sup>6</sup> In situations such as these, the ex-prisoners needed legal assistance but seldom knew who to turn to or who to trust.

## Intertwined Legal Aid Approach

The abovementioned examples of the ex-prisoners' multifaceted legal and non-legal challenges illustrate a need for targeted legal aid based on knowledge of their situation, social world view, and living standards. Based on this observation it is argued that to successfully deal with the problems of ex-prisoners (and those of many other social groups) necessitates an intertwined legal aid approach.<sup>7</sup> Looking at each of the ex-prisoners' legal problems in isolation would unquestionably draw a picture of a disadvantaged group: social workers specialising in social security legislation would, for example, advise the ex-prisoners on their social security issues and help them file for social security benefit and other subsidies; legal debt advisors would advise them to ask creditors for a reprieve, or help them seek debt relief; social workers specialising in social housing legislation would look for temporary accommodation and put the ex-prisoner's name down for a council flat or the like.<sup>8</sup> If we stick to this 'traditional' approach, where legal workers primarily pursue objective facts, it may give rise to a case within their legal domain (Mather et al. 1995, p. 289; Mather et al. 2001; Eekelaar et al. 2000; Melville and Laing 2008). However, if the cross-legal and non-legal problems and subjective experiential realities of the ex-prisoners' lives are ignored, potential solutions may come up short in bettering the ex-prisoners' living situation in the long term.

One example of the intertwined legal cluster of problems some of the interviewees faced post-prison challenged the traditional approach to legal case handling: Jayden, a 33-year-old with an impressively long criminal record, had just been released after serving his full prison sentence of 3.5 years. He was released to homelessness; he stayed temporarily at a friend's place and applied for social security benefits at the job centre to get money for an apartment deposit. He was told that he qualified for social security benefit but had to contact a bank to set up a particular bank account (Easy Account) because all payments from the public sector were paid into Easy Accounts. On visiting a number of banks, however, Jayden found that setting up an Easy Account required an address listed in the Danish National Register (DNR), which Jayden did not

have. Therefore, he qualified for social security benefits but could not get them without an Easy Account and a DNR-address. Putting down a deposit for a home (DNR-address) became a great challenge for Jayden, and all ex-prisoners in a similar situation. Applying for a loan for a residence deposit in these situations could be a way to secure a DNR-address, but, as mentioned above, the data suggested that the interviewees' loan applications were usually turned down because they had already taken out such a loan without repaying it. Jayden's housing and income situation therefore remained unresolved. This example highlights two important points; first, it illustrates how a legal case cannot be adequately framed and proceeded in the absence of a thorough understanding of the history of the individual involved and of their overall living situation, which may contribute to their current difficulties or affect the way the case should be handled. Second, the example illuminates how distinctions between legal domains and disciplines are artificial, because laws are interrelated and cannot (in cases like Jayden's) be isolated from one another without serious consequences. Intertwined laws can, in fact, sometimes set off a sort of 'domino effect' in which a legal issue builds momentum for other issues (see also Pleasence et al. 2004). Such 'trigger' problems can put individuals at risk of social exclusion (Pleasence et al. 2006). Tailoring legal aid services and legal assistance to vulnerable clients by comparing the client's case with a contextually close-knit patchwork of cross-disciplinary intertwined laws, financial issues, social relations, and mental issues would contribute to a more holistic legal approach that would make the clients' difficulties less likely to resurface and produce similar recurring difficulties in the future (see also Olesen 2016b).

## **Difficulties in Transforming Multifaceted Needs into Legal Issues, and Applying for Help**

The previous section included examples of how ex-prisoners with multifaceted problems struggled to name their wide-ranging needs for legal support. In this section, I will elaborate on the ex-prisoners' struggles to transform

social problems into legal issues and will discuss the challenges and opportunities involved in providing legal aid to ex-prisoners in Denmark.

In two larger surveys of attitudes to the legal systems in England and Wales, and in Scotland, Genn (1999) and Genn and Paterson (2001) have shown that: 60% and 65% of the respondents who had experienced a non-trivial justiciable problem had obtained advice about resolving the problem; 32% and 36% had tried to handle the problem on their own, and 3% and 5% had failed to take any kind of action to deal with the problem (Genn 1999, pp. 67–68; Genn and Paterson 2001, pp. 85–87).<sup>9</sup> These studies showed that the legal institutions managed to reach out to a wider ‘audience’ in society, and that most of the citizens who had asked for advice had been met positively by the legal representatives. The population groups that preferred to deal with their non-trivial justiciable problem(s) on their own were, like the ‘advice-seekers’, a very diverse group and they therefore also developed many different self-help strategies. By contrast, Genn categorised the respondents failing to respond to any problem-solving methods as the ‘lumpers’, and she illustrated how this group was rather homogeneous and could be characterised as having a relatively low income and education level, while not differing significantly in sex or age (Genn 1999, p. 69). Furthermore, the ‘lumpers’ had more often experienced financial problems and met with unfair actions by the police. By comparing Genn’s (1999) and Genn and Paterson’s (2001) results with this study’s findings, ex-prisoners can be identified as a very complex population group with a particular attitude to the legal system. Several of the interviewees had exhibited deviant behaviour from an early age, and thus encountered the police and the local authorities’ psychological or educational rehabilitation programmes, etc. Frequent contact with the authorities had often continued during the interviewees’ teenage years and increased in their adult life because of their appearances in court, prison sentences, periods of post-release supervision, visits to job centres, and involvement in local rehousing programmes, etc. These many experiences of being ‘inside’ the legal system had provided the interviewees with considerable insider-knowledge or quasi-legal awareness of how public legal institutions work and how to interact, and sometimes ‘perform’, to achieve conditions they considered to be the optimum (see also Olesen 2013a, pp. 50–54; Sandberg 2009). Lucas demonstrates this insider-knowledge when describing his different approaches to avoiding job activation:



Interviewee: *I've never joined any activation programmes, but if I had to I would wear my bullet-proof vest.'*

Interviewer: *'You've never been activated?'*

Interviewee: *'No I haven't ... I always just cracked a lot of bullshit about being sick and so ... Jah, well, I do look rather sick (laughs). I've come up with a lot of evasive explanations ... My woman left me, which was crap and then someone from Social Services sat patting me on my back saying "he's had a tough life" (laughs). Stuff like that. Everything like that I could come up with.'*

Lucas stressed how the local authority's records attested to the many bad things he had experienced throughout his childhood, which may have affected his behaviour and way of thinking. However, Lucas takes advantage of his insider-knowledge of how the system works and seeks the social worker's sympathy and understanding to avoid the job activation requirement. The quote also illustrates how Lucas, like many of the other ex-prisoners, was capable of switching from being a victim to becoming a sly, threatening client showing latent violent behaviour by wearing a bullet-proof vest. Several of the interviewees recalled how their local authority records have supported and legitimised their 'performance' both as a victim and as an angry, threatening client. From this perspective, ex-prisoners could be studied as subjects who seek advice, but enter the legal system with a kind of embodied knowledge of how to perform and navigate within the system. However, the data showed that the ex-prisoners mainly asked for legal advice, or took legal action, in two particular situations: first, in crises where they had to act to obtain or sustain their rights to basic needs. They often ignored their problems and failed to name them or apply for help until they faced imminent eviction, welfare cuts, etc. In such crises they tended to approach their problems by frequently contacting their social worker, generally preferring to involve as many parties as possible (social workers from different departments, probation officers, organisations, etc.) in their case. The adoption of this 'aggressive tactic' is caused, among other things, by the ex-prisoners' lack of time (time is money) to wait for the case proceeding (see also Olesen 2013a, pp. 114–115)<sup>10</sup> and their mistrust of legal representatives, doubt about the fair handling of the case, and the outcome assessment. Like some of the ex-prisoners in this study, the 'lumpers' in Genn's studies also

voiced their fear, powerlessness, and previous negative experiences of, and present destructive beliefs towards, the legal system (Genn 1999, pp. 70–71).<sup>11</sup> The second type of situation in which ex-prisoners would approach the legal system was when they had identified a legal loophole and, by taking legal action, could outsmart the system (see also Gustafson 2011). In these situations the ex-prisoners often used their insider-knowledge and quasi-legal awareness to target soft spots in the legal system. A reoffender called Tom, who owed approximately 2 million DKK [268,000 €] in public debt, demonstrated this approach when referring to his relationship with his defence lawyer during his time in detention:

Interviewee: *‘...I had a defence lawyer who I told just to put everything on the bill. He came from Aarhus and he visited me on Zealand [about three hours away by car]. Last time I was detained for two years and he came once a week ...’*

Interviewer: *‘Why did you decide that this [the legal case] should be so costly?’*

Interviewee: *‘... basically, I don’t care. I don’t have any plans to repay any of the money.’<sup>12</sup> When I have served my sentence I have paid society back for my wrongdoing and I don’t intend paying back more than that.’*

Another interviewee, who was also heavily indebted due to legal costs, spoke as follows about his attitude to the Danish state and the legal system post-prison: *‘When I signed the divorce decree I wrote that we had not lived together for eight months even though it was a lie. But this way she [the ex-wife] got eight months of child support. I just did it to get as much money out of the public purse as possible. And afterwards we split the amount fifty-fifty ... I still pay child support to my ex-wife even though the kids live with me. She might as well get the money because it doesn’t affect my financial situation.’* [Actually, the Danish State pays child support to the ex-prisoner’s ex-wife and the state therefore has the right to seek recourse from the ex-prisoner].

The findings suggest that ex-prisoners not only expect to achieve social or financial gain from their legal actions but also seek some sort of ‘revenge’ on the Danish state by increasing their public debt which they

have no intention of repaying.<sup>13</sup> The two very different situations that mainly triggered requests for advice or legal action further highlight the ex-prisoner's complex, equivocal position of being both a victim and a sly, threatening client in the legal system.

Without neglecting the interviewees' different approaches to the legal system, their quasi-legal awareness, and insider-knowledge, I would, in the following, like to elaborate on those interviewees who wanted to get control over their lives and needed legal advice to find concrete solutions to their multifaceted problems. These ex-prisoners, despite their many previous experiences of the legal system, did not give an impression of being privileged when it came to naming, blaming, and claiming their problems to potential legal advisors in their quest for a sustainable improvement of their living standards. On the contrary, the findings suggested that, in more than one sense, it was a major challenge for the ex-prisoners first to identify and name-blame-claim a problem that was immense and intertwined with other problems, and second to ask for help, which conflicted with their self-understanding, and voice their need for help to local authority practitioners they often considered untrustworthy. Being more or less 'brought up' in the legal system or the Social Services, therefore, did not seem to improve the ex-prisoners' legal position in long-lasting ways.<sup>14</sup>

One problem that was generally difficult to grasp and therefore difficult to name, was the ex-prisoners' debt: '*When you're released you'll receive a pile of bills. For each month you've been in prison the amount of bills just increases and you then receive them all at once—there you go.*' Such debt was mostly a combination of public debt, private debt, and so-called 'street debt' (from illegal moneylenders) and ex-prisoners with an official address typically face an endless number of bills, demands, and reminders from their creditors post-prison. Despite the significant impact the debt had on the ex-prisoners' lives the interviews were full of remarks such as '*I've no idea how much I owe ... actually I don't really remember how much money I owe, I lost track [of the debt], I gave up counting them [the creditors].*' Debt had often become immense and incalculable. The ex-prisoners, who at some point had tried to face up to their debt problem, explained that it seemed incredibly difficult to take control of the problem and get an overview of their new bills, old bills, reminders, and

reminders about reminders, etc. They were, moreover, challenged when it came to knowing the exact loan amount, because of the mounting interest. Debt consolidation was, however, related to yet another challenge regarding creditors' sale of unpaid debts to collection agencies. Instead of waiving the claim, the ex-prisoners' original creditors may sell their debt to debt-collection agencies (which may resell the debt to another debt-collection agency, and so on). In such cases, the debt became a commodity and the debt-collection agencies had the right to proceed against the ex-prisoners for the loan. Information about the assigned claim that should have been sent to debtor may have got lost because of the debtor's incarceration, or lack of attention, or desire to open letters from debt-collection agencies. Thus, ex-prisoners' debt problems generally involved an unknown amount, and nameless, and sometime countless, creditors—amounts and creditors they could not check. The fact that they did not know who their creditors were increased the complexity of the ex-prisoners' debt position and made it harder for them to transform their specific problem into a legal issue and present it to legal advisors. Ex-prisoners were therefore often in need of legal aid to help them in the naming-blaming-claiming transformation process, and with addressing their legal issues relating to debt remission, debt relief, etc.

## Trust and Seeking Comfort Amid Distrust and Discomfort

A 25-year-old reoffender called Jackson voiced his feelings about being referred to the local authority to ask for help:

Interviewee: *'Like everybody else I feel like a number in the system. You're just the next in the row ... that's how I feel. I don't think they help you in any way. If you wanna get help you need to contact them and more or less beg for it.'*

Interviewer: *'And that's not your style?'*

Interviewee: *'No, not really ... I'm not the type who asks for help. If people wanna talk to me they'll have to contact me. And if people wanna help me they have to contact ... I can't do it myself ... I mean I don't ask for anything.'*

Jackson's experiences with the local authorities is similar in many ways to the stories a lot of the interviewees told about prison: their feelings of impersonalisation; the unequal balance of power between them and the prison officers; the unwritten rules about minding their own business and avoiding situations where they could be turned down (see also Minke 2012; Ugelvik 2011). Jackson's statement could also be compared to one of Carlin and Howard's findings: they argued that lower-income individuals in particular are less likely to take legal action if they have been in contact with the courts (Carlin and Howard 1965, p. 425; see also Goudriaan et al. 2006). Genn has suggested that the experience of problem-solving in court or of tribunal adjudication is more stressful, more out of control, and less complete than resolving problems through agreement (Genn 1999). Distrust and discomfort could therefore also derive from the ex-prisoners' previous stressful experiences of the criminal court, bailiff's court, and/or of meetings with, and final settlements from, e.g., the State Administration. If we consider the feelings of discomfort and distrust voiced by Jackson when we look at how ex-prisoners try to transform their multifaceted problems into legal cases, it contributes to an understanding of ex-prisoners' negatively quasi-legal experiences from previous encounters with local authorities and their feeling of being left to their own devices (see also Ricciardelli et al. 2015). The reoffender called Caden summed up the approach to and difficulties with problem-solving and searching for legal assistance of many ex-prisoners: *'I like to handle my own problems you know but I can't really cope with the situation anymore.'* Logan, who struggled to qualify as an early retirement pensioner and was on a small budget, had the familiar 'hostility towards the system approach': *'They're so fucking annoying. I'm just sick of all this authority and government shit. I just wanna get it out of my system.'* What the ex-prisoners said about their relations with local authorities was generally two-faced because they would prefer to be financially, legally, and mentally independent of the system but, at the same time, they experienced the law and legal system as '... a web-like enclosure in which they are "caught"' (Sarat 1990, p. 345). Linking these findings to Genn's (1999) and Genn and Paterson's (2001) studies, the ex-prisoners must be considered a complex group with previous legal experiences that have provided them with insider-knowledge and quasi-legal awareness.

Their attitude to the legal system puts them in limbo: they will approach the legal system in situations that challenge them on their basic needs or give them an opportunity to take advantage of the system's loopholes. However, when it came to non-trivial justiciable problems and case handling with a more interrelated, long-term perspective, the ex-prisoners 'lumped', as they struggled to transform their multifaceted problems into legal issues and to ask local authority practitioners for help, because the ex-prisoners often found them untrustworthy. Taken together, the findings indicate that the ex-prisoners managed to ask for advice and to play the system when it came to 'performing' as a victim or as a sly, threatening client but failed to secure long-lasting stability in their turbulent lives.

## **New Legal Aid Initiative: Cross-functional Mentors Pre- and Post-release**

The ex-prisoners' strained relationships with local authorities and legal institutions in general, and their difficulties in approaching legal services for assistance, could be a 'chicken and egg situation' because it is impossible to identify whether the ex-prisoners' distrust of these institutions has arisen from bad experiences with case work handling; whether it is a result of social, cultural, and language barriers to effective communication, or whether it is a mixture of the two. However, this study shows that the ex-prisoners need legal aid assistance to cope with their time-consuming multiplicity of legal and non-legal problems. Now, the question to be discussed is how the full amount of legal assistance they need can be provided to some of the most vulnerable and distrustful ex-prisoners.

If we accept that the appropriate provision of legal assistance for disadvantaged clients requires detailed knowledge of the legal issues, the clients' experience, their responses to these issues, and the outcome of these issues, this calls for a multi-agency approach. This subsection therefore moves on to a discussion about the challenges and possibilities of providing legal support to ex-prisoners with a cluster of legal and non-legal problems. The discussion draws on experiences and evaluations from

different initiatives aiming to resolve a disparate client group's multiple problems when approaching inter-professional and multi-agency collaboration. One approach would be to identify the most appropriate gatekeeper that could refer clients to the most appropriate legal and non-legal systems. Melville and Laing (2010) have shown how family lawyers, despite their awareness of the clients' cross-legal and non-legal problems, and their specific training in directing clients to other legal or non-legal assistance, still avoided referring them to other services and generally found it difficult to place non-legal issues within a legal framework. Without abandoning the multi-agency approach Melville and Laing, however, concluded that lawyers may not be the most suitable gatekeeper of different legal and non-legal support services. On the basis of their findings, they addressed some important considerations about the gatekeepers' qualifications and professional background, and questioned whether there was a need for not just one gatekeeper but for multiple pathways (Melville and Laing 2010, p. 186; see also Melville and Laing 2008; Courmaerlos et al. 2006). These considerations were (unknowingly) challenged in the EXODUS (ex-offenders discharged under supervision) programme introducing inter-agency collaboration of core agencies catering for ex-prisoners at the same location in Southeast England (Wood et al. 2009). The programme provides a way to develop holistic post-prison services by putting the released prisoners at the centre of their support, and offering services around their needs. The EXODUS inter-agency collaboration was accompanied by a decreased reoffending rate, and the ex-prisoners involved were more satisfied with the support they received (Wood et al. 2009; see also Cinamon and Hoskins 2006; Robinson and Raynor 2006; Salmon 2004). Furthermore, Noone (2007) has shown how a similar 'Legal Aid Centre' (Banyule Community Health Centre) run in the socially disadvantaged neighbourhood of West Heidelberg, Australia, meet potential clients with a multi-disciplinary approach offering legal and non-legal services. The 'Legal Aid Centre' staff found that:

'Many people who contact the Legal Service are unsure whether their problem is a legal one and a major proportion of staff time is spent with people at this initial stage ... The process of clarifying the actual problem,

identifying courses of action for the individual to choose from and other agencies for the person to contact for assistance takes up a lot of staff time. Many who contact the Legal Service are upset or distressed and do not know exactly what their problem is or where they should go for help.' (Noone 2007, pp. 98–99).

The 'Legal Aid Centre's' gatekeeper-function has shown to be beneficial in the clients' naming-blaming-claiming process, as more clients use the Centre as source of referral, follow through on the referral, and also take up the relevant referral (compared to community centres that do not have a multi-disciplinary approach) (Noone 2007, pp. 99–100). The different multi-agency and inter-agency collaborations are all novel,<sup>15</sup> but do not take the ex-prisoners' known distrust of, and unease with, the legal system into consideration. These mental barriers call for a mentor-mentee relationship that not only works as a gatekeeper to other legal and non-legal services but, actually, (1) identifies the client's underlying concerns ('problem noticer') and helps the ex-prisoners to address their long-term needs by supporting them through the naming-blaming-claiming transformation of the problem, and (2) provides a platform of cross-legal aid offers, based on an understanding of the ex-prisoners' history and living situation (Aarvold and Solvang 2008; Walsh 2004). One can further argue that the mentor-mentee relationship may provide a sense of community when translating legal language and challenging the lawyers' reification of the social problem in legal reasoning (Cain 1983; Travers 1997; Felstiner and Sarat 1997; Newman, 2013), while at the same time leaving space for client responsibility, independence, and empowerment.<sup>16</sup> This study's findings of ex-prisoners' multifaceted problems strengthen the case for a new legal aid initiative in Denmark. The ex-prisoners' need for extended legal aid support could, with advantage, begin in the form of outreach legal aid work in the prisons and during the high-risk period of release, while post-release it might continue as, or develop into, an organised (outreach) legal aid offer matching the ex-prisoners' social and practical need and everyday activities. To accommodate the ex-prisoners' multifaceted problems this flexible organisation of follow-up legal aid services could be provided by a cross-functional team of long-term mentors familiar with intertwined legal and non-legal



post-prison problems. However, an important question as yet unanswered (and a question that goes beyond this study's findings and the aim of this chapter) is whether legal aid to ex-prisoners should be organised and offered by the Danish state or outsourced to legal aid offices, companies, charitable contributors, and/or non-profit organisations in the voluntary and private sectors.

## Concluding Remarks

This article has shown that newly released prisoners faced multifaceted problems and urgently needed an income and stable housing post-prison. Furthermore, they had significant problems with naming-blaming-claiming their cross-legal and non-legal problems, and their precarious position called for more than guidance and referral to the legal system's various services. Thus, the most vulnerable ex-prisoners needed to get access to flexible legal aid services in order to (re)establish a crime-free life on the outside. The findings showed that to successfully provide ex-prisoners with legal support required an ability to consider their legal and non-legal problems as interrelated and closely related to their living situations. Moreover, the findings supported the view that the various legal areas that affected the lives of the ex-prisoners could not be considered as isolated rules; on the contrary, they must be dealt with as an intertwined web of various regulatory mechanisms challenging the usual distinctions between legal domains and disciplines.

This study's findings, and the very few Danish legal aid initiatives targeting ex-prisoners, point towards a need to develop a new kind of follow-up legal aid support through cross-functional mentoring teams that begins as outreach legal aid offers pre-release, and continues as organised (outreach) legal aid as long as needed post-release. Creating the right circumstances for trusting relationships to be built between ex-prisoners and mentoring teams with cross-functional qualifications and in-depth knowledge of the multiple barriers faced post-prison would support the ex-prisoners' naming-blaming-claiming processes and give rise to tailored casework meeting their specific needs. Developing the mentor-mentee relationship would prepare the pre-released to face their intertwined

challenges in the high-risk period post-prison. However, if we fail as society to prepare a reasonable release, fail to meet the newly released prisoner with something other than informal punishment, and do not provide the necessary legal aid through the resettlement transition into society, we all contribute to recidivism and weakening community safety.

## Notes

1. For an outline of legal aid research see Hammerslev 2016.
2. All quotes have been loosely translated into English.
3. The necessary costs include the expenses of their appointed defence lawyer, technical investigations such as DNA-tests and investigations to do with accounting data, etc.
4. For a discussion of the Danish state's contradictory legal approaches towards ex-prisoners see Olesen 2016a [forthcoming].
5. The data suggest that reoffenders' expectations, based on years of prison and post-prison experiences meant that they were aware of the challenging housing situation they faced post-release but, as first-time offenders, they had limited knowledge about the legal problems they were about to deal with.
6. Genn (1999) has shown that the majority of the 'self-helpers' who do not get legal advice do not successfully resolve their problems/achieve a resolution by agreement (Genn 1999, pp. 145-50).
7. See also the American Bar Association's task force on holistic lawyering (Moss 1992; Johnston 1994).
8. See also how Eekelaar et al. (2000) found that lawyers divided the legal issues of their clients to avoid the issues becoming too entangled (Eekelaar et al. 2000, pp. 112-113).
9. Genn's (1999) and Genn and Paterson's (2001) respondents who were dealing with money problems, consumer problems, benefit, or schooling problems were most likely to attempt to resolve their problems without obtaining advice, whereas respondents facing divorce or separation, or claiming compensation for an injury were more likely to seek advice.
10. Sarat has discussed welfare recipients' experiences of powerlessness and frustrations regarding red tape and waiting time (Sarat 1990).
11. The general negativity about legal processes is discussed in Genn and Paterson (2001, p. 93).

12. The Danish state pays the defendants' costs for, for example., defence lawyers, but the state has the right to seek recourse from defendants if they are found guilty (and have a disposable income to repay the debt).
13. This chapter does not report the results of analyses of client-lawyer interaction during detention or the clients' strategies for spending or saving money here but they are included in a larger work (Olesen 2013a).
14. For a discussion of empowerment and clientisation see e.g., Järvinen and Gubrium (2013); Bengtsson (2003).
15. For a discussion of the policy and law reform work regarding multi-disciplinary legal work and lawyers as professionals as well as collaborators see Trubek and Farnham (2000).
16. See also Moorhead et al. (2003) for a discussion of the difficulties and possibilities relating to including the client's perspective in legal work.

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