

## **The Theory and Practice of Public Good Selection: The Case of Legal Aid**

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# The Theory and Practice of Public Good Selection: The Case of Legal Aid

## I. Introduction

We began this research with two overlapping objectives. The first, and of most general academic interest, is to gain insight about the following puzzle: why has there been essentially nil implementation of any of the institutional ideas in the economics literature for improving the efficiency of public goods decisions? These ideas have been proposed and refined in literally hundreds of academic articles over the past 30 years, many of them have undergone extensive laboratory testing, and we have an extensive network of public policy practitioners and academics that might be expected to help bring them into practice. The second objective is more specific and of immediate policy relevance: to understand if there are opportunities to increase the effectiveness of the federal Legal Services Corporation (LSC) by improving its decisions about its own internal public goods, largely the provision of information to attorneys that directly service the eligible low-income population. Providing these public goods requires locating, customizing, synthesizing, and creating documents and templates, doing research, leading training, and answering questions. We hope that our joint consideration of these two objectives might be beneficial to each: identifying practical implications of the public goods literature may benefit the LSC, and a case-study of LSC may identify general challenges that public goods mechanism literature should address.

It is well known that public goods create collective action problems. Most actual institutions, when used for the discussion and purchase of public goods, have incentives for participants to strategically manipulate the process. Beneficiaries underprovide things for which they have to pay (free riding), or demand too much when others pay. Institutions that leave the decision in the hands of central authorities rather than beneficiaries have poor knowledge of consumer demand and often respond to special interest forces.

By contrast, the literature proposes decentralized public goods institutions characterized by rules that directly address these collective action problems and generally involve the intended beneficiaries of public goods as decision-makers. By our focus on institutions, we mean to rule out from our inquiry noninstitutional avenues that might lead to improved public goods decisions, like better benefit-cost analysis or better contingent valuation surveys. The latter may be important sources of improvements, but they cannot be expected to resolve important structural sources of inefficiency in public goods such as those reported by Knight (2004), who estimated that the deadweight loss from Congressional (centralized) decision-making about local transportation projects was \$.96 for every \$1 spent.<sup>1</sup> Thus our focus is upon institutional reform that changes the way public goods decisions are made, following the evolution of proposed decentralized

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<sup>1</sup> The deadweight loss arises because of both overspending in districts well-represented on the relevant Congressional committees, and underspending in other districts. More generally, we were disturbed to find very few empirical estimates in the literature of the magnitude of inefficiency associated with actual public goods decisions – especially because new research suggests that finding methods to make good decisions is easier than once believed. The Knight study is one of the few exceptions, and we consider this an important area for future research.

choice mechanisms in the economics literature beginning roughly around 1970 with the Clarke tax proposal (Clarke 1971) and the Groves-Ledyard mechanism (Groves and Ledyard 1977) and continuing through the present.

While an easy answer to our puzzle about nil implementation might be that the proposed mechanisms are too complex and ignore administrative practicalities like budget balancing, we find this to be too easy an answer. Advances in the basic social science of public goods provision over the years have led to simpler designs, provide some reason for optimism about the feasibility of using decentralized approaches, and create fertile ground onto which to extend the problem-solving public policy literature<sup>2</sup>. It is true that as recently as 1990 the theory offered mechanisms so complex that they floundered in the lab, while the experimental literature reported that free riding was a destructive and unsolved problem, albeit less prevalent and more mysterious than economic theory would suggest. The one bright spot was the provision point mechanism that is simple, has efficient Nash equilibria and works well in experiments. But the basic science gave applied scholars interested in finding fairly efficient solutions to practical problems few hints about how to approach public goods problems<sup>3</sup> and good reason for pessimism.

Theoretical, behavioral, and experimental research since the mid-1990s has substantially changed this picture. On the theory front, Chen and Plott (1996) got the complex Groves-Ledyard mechanism working in the lab; a series of simpler incentive compatible mechanisms emerged in the literature like Varian (1994) and Falkinger (1996), and Falkinger's mechanism works in the lab (Falkinger et. al. 2000). Meanwhile, behavioral experimental scholars have studied the addition of rights or rules to the voluntary contributions mechanism (VCM) that were, in theory, insufficient to control free riding. Some of these modifications allowed participants to reign in or exclude free riders and to strike far more beneficial public goods deals than they can using the unmodified VCM.<sup>4</sup>

To us, the literature suggests that there may well be practical ways to introduce public goods institutions that improve significantly over the status quo—and it certainly gives applied scholars good reason to think about this. The Falkinger mechanism seems ready to try in the field if the right circumstances can be found. The modified VCM literature is a generation of experiments offering lab proven approaches, and its stylized findings offer grist for consideration of potentially effective practical approaches. But why then has so little happened in the field? Perhaps the theoretical presentations and abstract experimental settings have led practitioners to conclude that these procedures cannot be made practical. Or perhaps there has been too little overlap between those that understand the procedures and those that design the practical decision-making mechanisms. Or perhaps the promising experiments with VCM modifications have not come to the attention of applied scholars. Therefore, we hope that our inquiry will clarify the nature

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<sup>2</sup> We refer to the interdisciplinary literature that considers the role of analysis in democratic policy-making, such as Braybrooke and Lindblom (1963), Schultze (1968), Kingdon (1995), and Lindblom (1990) as the problem-solving public policy literature.

<sup>3</sup> Wisner 1998 reviews the basic social science work and describes the limited extent of the practical strategies to somewhat reduce free riding problems.

<sup>4</sup> See, for example, Fehr and Gaechter (2000), Page, Putterman, and Unel (forthcoming), and Ertan, Page and Putterman (in process). Letzler (2005) Sect. II provides a review of this literature.

of any obstacles, offer suggestions for overcoming them, and hopefully encourage actual applications that take advantage of the advances in the public goods literature.

Our interest in the second objective, the internal public goods provided by the LSC, arises in part from concern about the quality of legal aid, and as well from recent history. The LSC used to provide most of its internal public goods through 16 support centers, where each of the centers had expertise in different areas of law of special interest to the low-income client population (e.g. housing, education). In addition to noncontroversial internal public goods like basic research, information, training and consultation, these support centers also brought test cases that sometimes angered members of Congress. As early as 1990, the LSC was concerned about the security of its Congressional funding for the support centers, and initiated inquiry into the possibility of using a decentralized funding mechanism that would both solve its political problem and improve the rationality of its funding decisions about the support centers.

However, as that early political threat seemed to wane, the LSC decided not to investigate further the possibility of a new mechanism. Several years later, Congress returned to this issue with a vengeance and in 1996 completely defunded the support centers and cut by one-third the rest of the LSC budget. Now that a decade has passed, we believe it is appropriate to review whether and how LSC is providing its internal public goods, and whether improvements in this area may be possible. We also note that digital information technology has advanced rapidly throughout this period, and that too may be a source for improving the largely informational public goods of high value to legal aid attorneys.

Our plan for the paper is as follows. In the next section (II), we discuss the design features of a simple incentive system to induce an efficient level of public good contributions, the Falkinger mechanism. Our focus is upon several administrative and political concerns that may be raised, and as a result we offer our own modification to it that we believe at least marginally enhances the practicality of the design. Then we turn to our inquiry about LSC, in which we conduct field research to ascertain how internal public goods are being provided and the degree of receptiveness to possible new procedures like our modified Falkinger mechanism. We report in Section III on the findings from this field research. In section IV we turn to the possibilities for improvements, and attempt to incorporate political and organizational lessons from the field into the design considerations for practical public good selection procedures. A final section (V) summarizes our work and offers several conclusions about our two areas of inquiry.

Perhaps it is useful to state the most general conclusion upfront. Substantial incremental progress can be made by policy analysts who understand both the economic designs and the inevitable political and organizational complexities that limit change to that which can survive the diverse agendas and constraints of multiple groups. The latter creates forces that tilt the design of reform toward messier, imperfect versions of those envisioned in the economic literature. In other words, there is room for a deal (a gain in efficiency worth making, even if it falls short of the elusive optimum) and practical analysts who can identify public goods problems have the necessary tools to identify

these opportunities and design implementable improvements. In the case of legal services, we think it is possible to build upon existing collaborative, voluntary arrangements among agencies and use a public goods mechanism to govern their “in kind” contributions of staff time in a manner that participants would consider a significant improvement.

## II. Designing an Efficient and Equitable Public Good Contribution System

We consider below a common, simple contribution mechanism first suggested by Falkinger.<sup>5</sup> It can be used by any group that can impose rules on its members or any consortium that can exclude nonparticipants from the services provided. Falkinger envisioned primarily governments, but the method could apply to large firms as well as groups that form voluntarily and wish to use it.<sup>6</sup> The main centralized task is the design and enforcement of a specific incentive system to induce the efficient level of contributions from the group. Once the design is specified, participants are asked how many units of the public good they will voluntarily contribute. The answers are equivalent to votes on what the average provision level per participant should be, and the mechanism provides the level implied by the average of the votes. The cost is to be divided in some way among those who contribute. Let us call the cost per unit of the public good  $P_G$  (for simplicity we assume constant marginal cost). Budget balance (total cost equal total revenue) requires that the average contribution per unit from  $n$  total contributors is  $P_G/n$ .

The crux of the incentive system is to reward or penalize contributors by the extent to which they deviate from the average contributions of others in the group. That is, in addition to the purchase cost of units voluntarily contributed, there is a reduction or subsidy for those contributing more than the average, and an extra charge or penalty for those contributing less than the average. The subsidy or penalty per unit deviation is almost but not quite the ordinary price<sup>7</sup>; it is  $\frac{n-1}{n} P_G$ . Mathematically, the incentive plan is that the  $i$ th contributor who volunteers to pay for  $G_i$  units pays a bill  $B_i$  as follows:

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<sup>5</sup> This particular method was first proposed in Falkinger (1996). Falkinger and colleagues provided experimental evidence of the method's effectiveness in Falkinger et al (2000).

<sup>6</sup> The use by voluntarily formed groups immediately raises the problem of free-riding and inefficiency caused by beneficiaries that will not join the group. Rather than dismissing this potential use out of hand because it may not be perfectly efficient, we prefer as a criterion for practicality whether the benefits from using the mechanism in this way outweigh the costs. Our field findings discussed later suggest that, at least in the legal services context, there are many informal voluntary networks in which the participants cooperate in order to provide a public good. We think it important to consider whether networks like them can be improved, perhaps in some cases by use of the mechanism we discuss here.

<sup>7</sup> Falkinger suggests remaining open to use of a subsidy/penalty parameter  $\beta$  where  $0 < \beta < 1$ , because parameter levels other than the one we specify above can increase the efficiency of outcomes. The parameter we use is the only one, however, that provides incentives to choose the Pareto-optimal quantity. We think it preferable to use it unless there are practical reasons that mitigate against it.

$$(1) \quad B_i = P_G G_i - \left(\frac{n-1}{n}\right) P_G [G_i - \sum_{j \neq i} G_j / (n-1)]$$

Or equivalently

$$(1') \quad B_i = (P_G / n) [G_i + \sum_{i \neq j} G_j]$$

That is, the total charge to each person will be the average cost of providing the public good to the population. However, the individual only chooses the first part of the charge; the second part (with the sum sign) depends completely on the behavior of others. It is useful to think of  $P_G G_i$  as the individual's vote for what the average contribution level (and therefore public good level) should be. If everyone agreed then  $nG_i$  units in total would be provided, with each person paying  $1/n$  of the total cost  $nP_G G_i$ . When people disagree (vote for different levels of  $G_i$ ), the mechanism makes the average contribution equal to the average of the votes ( $P_G \bar{G}$ ) and the provision level equal to  $n\bar{G}$ .

Importantly, the effective price to the individual per unit chosen is  $P_G/n$ . Standard consumer theory predicts that each individual facing this price will voluntarily purchase units until the last unit has marginal benefit (in the person's own judgment) just equal to the price. This means that, at the average vote, the aggregate quantity of the public good will be precisely the efficient quantity—where the sum of marginal benefits from the last unit of the public good provided just equals its marginal cost  $P_G$ :

$$(2) \quad \sum_{i=1}^n P_G / n = nP_G / n = P_G$$

That is, the big advantage of this system over more traditional methods of choosing a public good is that this system will identify, select and finance the most efficient quantity of the public good to provide for the population receiving it.

A simple example can illustrate the mechanics of this type of system. Suppose a public good costs \$10 per unit and there are 50 people who would receive it. Each person will receive a subsidy of 98% [= (50 - 1)/50] for any units purchased above the average that others purchase, or a penalty of 98% for each unit that he or she is below the average of others. This makes the effective price per unit \$.20, whether or not the individual is above or below average.<sup>8</sup> Mr. Smith says that he will purchase 10 units, and the average contributed by all others is 8. This implies that the entire population enjoys 402 units resulting from all of the individual contributions.

What are the individual financial implications? Mr. Smith spends \$100 to buy the units, but receives a subsidy per unit of \$9.80 for units 9 and 10. Thus his net expenditure is \$80.40 (and a one-unit increase or decrease from his voluntary purchase decision would

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<sup>8</sup> It may be obvious that units above the average cost \$.20 each, since the \$10.00 purchase price is offset by the \$9.80 subsidy. The same is true for units below the average: each unit costs \$10.00 to purchase, but the size of the penalty is correspondingly reduced by \$9.80 so the net additional outlay is only \$.20.

change his expenditure level by \$.20). Ms. Jones only buys 4 units voluntarily. For her, the average contributed by all others is 8.122 (this average includes the 10 bought by Smith and excludes the 4 bought by Jones). While she only spends \$40 in the marketplace, she also must make a matching payment per unit of \$9.80 for the 4.122 units that she is below the average of others, or  $\$40.40 = \$9.80 * 4.122$ . Thus her net expenditure is \$80.40 (and again, a one-unit increase or decrease from her voluntary purchase decision would change her expenditure level by \$.20).

This version of the system always results in each individual making the same net expenditure as each other participant, with total subsidies equal to total penalties so the central authority has “budget balance.” Nevertheless it is important to understand that all individuals affect their own expenditure levels by their voluntary choices or votes, and that these voluntary choices or votes are determining the aggregate the level of the good to provide. Holding constant the behavior of others, a one-unit increase by Smith raises his expenditure by \$.20 to \$80.60. The other \$9.80 needed to pay for the unit comes from the slightly higher recalculated “average of others” used for the other 49 people to determine their subsidies or penalties. Jones, for example, would now have an “average of others” that is 8.143, up from 8.122, and her penalty would now be  $\$9.80 * 4.143 = \$40.60$  (and net expenditure of \$80.60).

Is it really this simple? One objection might be that it is not transparent enough: no one knows in advance what the “others” will contribute, although this is a major determinant of the amount any one individual will volunteer as well as the average expenditure level. However, for public choices that will be made at regular intervals (e.g. yearly), this is really more of a start-up or transitional problem. One could say the same thing under status quo arrangements, like a town’s decision to provide police services: until the level is chosen, no one has a clue what average tax rate will be necessary to support it. Once the system is in place, however, there will generally be only incremental changes in the average vote from year to year. In other words, last year’s choice will serve as a suitable anchor for expectations about this year’s choice. For the first use of the mechanism, Falkinger et. al. (2000) reports laboratory experimental results of some relevance. When 20 iterative rounds were allowed to reach equilibrium among groups of 8 and 16 participants, the outcomes were very close to equilibrium from the first round and remained close to it over the successive rounds. This is not to say that transitional problems in actual use will be insignificant, and we shall return to this later.

Another objection is that of equity. Many people will rightly be concerned that individuals will not be charged a “fair share.” Should not a rich individual pay more than a poor one, even though they are receiving the same public services? Fortunately, the system we have described can be modified to handle concerns like this one.<sup>9</sup> Keep in mind that each person’s bill is subdivided into two components. Each participant controls how much he or she pays for the individual vote and incentive component,  $(P_G G_i)/n$ . This component charges the incentive compatible amount to change the group

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<sup>9</sup> Falkinger (1996) describes the equity flexibility and offers one way of achieving it, which we extend somewhat in this analysis.

outcome. The budget balancing component depends entirely on other participants' decisions and therefore has no incentive effects on the individual.

So long as we keep the marginal incentive component at the efficient price, we can redistribute the share of the burden implicit in the budget balancing component to meet any equity or political criterion. Redesigning the budget balancing component can also allow an outside funder – like a foundation or a government -- to contribute toward efficient provision of a valued public good.<sup>10</sup> Debates about the equitable distribution of the burden often become knock-down, drag out fights, but the budget balance component can reach most distributional goals that emerge from a distributional debate, while making an efficient choice. Put simply, the whole group can be subdivided into smaller groups by an equity category like income or the size of an individual's property tax base (i.e. any agreed upon measure of the ability to contribute). It will be important to note as we do this that *the subsidy or penalty rate is calculated at the whole community level and is not affected by the groupings*. This ensures that the incentives for the group as a whole to choose an efficient quantity remain. However, the base point from which any individual's subsidy or penalty is calculated depends heavily on how individuals are grouped.

The formula for an individual's expenditure looks similar to the previous one, except that we now generalize that there are  $k = 1, 2, \dots, m$  income classes, with  $n_k$  individuals in each class (Falkinger 1996):

$$(3) \quad B_i^k = P_G G_i - \frac{n-1}{n} P_G [G_i - \sum_{j \in k, j \neq i} G_j / (n_k - 1)]$$

We can rewrite this to simplify the terms with  $G_i$  as before, but the term with the sum sign does not simplify because the  $(n_k - 1)$  in its denominator does not cancel the  $(n - 1)$  term that after multiplication is in the numerator:

$$(3') \quad B_i^k = \frac{P_G}{n} G_i + \frac{n-1}{n(n_k - 1)} P_G \sum_{j \in k, j \neq i} G_j$$

This says that the individual pays  $1/n$ th the cost of the goods that he or she voluntarily contributes (as before), plus roughly (for large  $n$ ) a proportionate share for the goods contributed by the  $n_k - 1$  others in the same equity grouping (the share is approximately  $\frac{1}{n_k - 1}$ ). To illustrate, let's imagine that the 50 people in our example above are classified

into one of two income categories: low and high. Let's further imagine that there are 20 people in the high group, including Smith, and 30 people in the low group, including Jones. The 19 others in Smith's group contribute an average of 11 units each, which implies Smith's group as a whole provides 219 units (including Smith's 10). To keep the

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<sup>10</sup> This strategy of creating the right marginal incentive to get an efficient outcome, while adjusting other transfers to meet a desired distributional goal is a frequent and successful strategy of policy analysts. See e.g. Friedman (2003).



community total at 402, that means that the 29 others in Jones' group must average 6.172 units. We have chosen these numbers to reflect the common occurrence that wealthier people tend to demand more than the less wealthy, as is the case for normal goods. Substantial variation may still remain among the individuals within each group, based on differing preferences.

How does this income grouping affect the expenditures of Smith and Jones? Now the subsidy or penalty is calculated by deviations only from the "within group" average. Smith still pays \$100 for the voluntary purchase, but this time he is below the average of the others in his group and will pay a penalty. The penalty remains at \$9.80 per unit, and he is precisely one unit below the average of others in his group. Thus Smith pays a total of \$109.80. The penalties paid within the group are exactly balanced by the subsidies, so that the Smith group as a whole pays \$2190 for the 219 units that they voluntarily contribute.

Jones still pays \$40 in the marketplace and is still subject to a penalty because she is below her group average. However, since the others in her group average only 6.172 units, she is only 2.172 units below and is assessed a penalty of \$21.29. Thus her total expenditure is now \$61.29. In total, the Jones group provides 183 units of the public good and pays \$1830.

Table 1 compares the individual bills that arise with and without the equity grouping. Smith in the high-income group pays substantially more than without any equity classification, while Jones in the low-income group pays substantially less. While each equity-classified group fully pays for the public goods that its members voluntarily contribute, the high-income group pays more because they have a relatively greater demand for the public good. Rather than everyone paying for an average of 8.04 units per person, the high-income group pays for its average demand of 10.95 units per person and the low-income group only pays for its average demand of 6.1 units per person. Note that the entire community is still receiving and sharing 402 units of the public good; the equity groupings are only changing how the total cost of these units are shared within the community.<sup>11</sup>

Table 1: The Effect of Equity Grouping on Individual Bills

	Without Equity Groups	With Equity Groups
Smith (high-income)	\$80.40	\$109.80
Jones (low-income)	\$80.40	\$ 61.29

There is no one right way to determine equity groupings. It is a judgment about fairness that will depend on the public good being provided and the community that is sharing it (and the practicality of using any specific equity classification). There are some interesting observations that can inform these judgments. We mentioned before that most public goods, like most ordinary goods, are economically normal—consumption goes up

<sup>11</sup> Equity groupings can affect the level of public good chosen through income effects, and for simplicity the example ignores this possibility.

with income.<sup>12</sup> For a normal good that has income elasticity of exactly one, consumption goes up proportionately with income. In this case, the use of many income groupings (e.g. deciles) will lead to a distributional burden that is roughly the same as a proportional income tax, with the big bonus of providing the efficient level of the public good.

In fact, there may be a number of circumstances in which having continuous equity groupings would be preferable to a finite number of categories. This can avoid squabbling about how and where to draw the grouping boundaries. Since the original literature did not treat this possibility, we extend the methods here in order to be able to handle it. We illustrate with reference to an income measure, although again any agreed upon measure of fair share of the cost can be used.

That is, rather than having specific income categories (or other measure of fair share of the cost), one might prefer defining the “expected” (unsubsidized and unpenalized) contribution as a proportion of income. Then it would be necessary to choose the proportion  $\alpha_i$  as a function of the other participants’ contributions  $G_j$  and incomes  $S_j$  such that:

$$(4) \quad \alpha_i = \frac{\sum_{j \neq i} G_j}{\sum_{j \neq i} S_j}$$

That is,  $\alpha_i$  is the average number of units per dollar income contributed by others and  $\alpha_i S_i$  is the expected contribution of individual  $i$  from which deviations are subsidized or penalized. Then the bill for individual  $i$  would be calculated as follows:

$$(5) \quad B_i = P_G G_i - \frac{n-1}{n} P_G [G_i - \alpha_i S_i]$$

We can rewrite this by replacing  $\alpha_i$  by its definition, and then defining the average size of others as  $\bar{S}_j = \sum_{j \neq i} S_j / n - 1$ . We do this in two steps and then simplify in a third step:

$$B_i = P_G G_i - \frac{n-1}{n} P_G [G_i - (\frac{\sum_{j \neq i} G_j}{\sum_{j \neq i} S_j} S_i)]$$

and

$$B_i = \frac{P_G}{n} G_i + \frac{n-1}{n} P_G [(\frac{\sum_{j \neq i} G_j}{(n-1)\bar{S}_j} S_i)]$$

which becomes:

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<sup>12</sup> Exit from reliance on the public good is also normal: wealthier people are more likely to use private rather than public schools; supplement or replace police protection by living in gated communities and buying monitored burglar alarms.

$$(5') \quad B_i = \frac{P_G}{n} \left[ G_i + \sum_{j \neq i} G_j \frac{S_i}{\bar{S}_j} \right]$$

For the average-sized contributor ( $S_i = \bar{S}_j$ ), the bill will be identical to that of equation (1'). Participants that are below average size will contribute less, and those above average size will contribute more. But as with all the variants, contributions are voluntary and only affect the first part of the bill.<sup>13</sup>

We can illustrate this method using our example of the 50 person community with Smith and Jones. Suppose the average income in this community is \$80,400, with Smith's above-average income at \$120,600 and Jones' below-average income at \$40,200. The community continues to demand 402 units of the public good, with 10 units contributed by Smith and 4 units by Jones. The community as a whole is spending .1% of its income on this public good, and thus each individual who voluntarily contributes the same percentage will neither receive a subsidy nor be penalized.

Using equation (4) to calculate  $\alpha$ , Smith's expected number of contributed units is 12.12371, and thus he is penalized \$9.80 for each of the 2.12371 units that he is below the expectation (total penalty = \$20.81). Using equation (5'), the bill for Smith is calculated as follows (recognizing that the 49 others contribute 392 units and must have an average income of \$79,579.59):

$$B_{\text{Smith}} = (10/50)[10 + 392(120,600/79,579.59)] = \$120.81$$

Similarly, Jones is expected to contribute 4.02020 units given her income, and thus is penalized \$9.80 for each of the .02020 units that she is below the expectation (total penalty = \$.20). The bill for Jones is:

$$B_{\text{Jones}} = (10/50)[4 + 398(40,200/81,220.41)] = \$40.20$$

This example has Smith paying more than the first two methods shown, and Jones paying less. However, this result follows from the specific income levels that we assumed for each of them. This last method will normally (for large groups) result in expenditures per person that are approximately the same proportion of income for all, and thus those with incomes substantially above average will typically pay more than if they were grouped with people whose average income was lower.

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<sup>13</sup> We can generalize these modifications to the budget balance component further in at least three dimensions: the literature discusses using outside funders; we can combine the size weights with categories (e.g. a community that used the Falkinger mechanism to support its schools might divide into parents and non-parents) and we can generalize the share weights to be any function of multiple characteristics that has a finite mean (we could make the parents' share depend on income and number of children; or McDonalds share of dues for a downtown business association depend on a function of number of restaurants and seating capacity, and potentially nest that within a fast-food category.)

We explained in our introduction that we thought it possible that the Legal Services Corporation might be interested in a system like this. Of course many questions will be raised by anyone considering such a system. Therefore it might be useful to state that the methods that we think have promise have appeal in addition to their efficiency-enhancing aspects. They might be described as democratic decision making that incorporate attractive, intuitive principles, including:

- Users decide how much of the shared services they want, set priorities for provision, oversee the quality of the shared service, and help provide the resources required to provide the service.
- Centralized managers and political overseers should respect democratic choices that effectively amalgamate street level knowledge about the usefulness of the public good. Indeed, efforts to avoid political intervention in allocation choices has driven the only consideration of decentralized public goods mechanisms at real organizations of which we are aware.<sup>14</sup>
- The Falkinger mechanism embodies a principle that people who offer more than the average have helped the group and deserve help from other group members. Simpler mechanisms, like contingent offers of provision if funds are sufficiently matched by others, can embody a weaker form of the same principle.
- Further, the Falkinger mechanism's decision processes are about as transparent as a voting system is likely to be. Each participant's contribution serves as a vote for what the average contribution should be, and the mechanism selects and funds the purchase of the average of these votes.

We turn now to the field research aspects of our investigation.

### **III. The Legal Services Corporation: Background and Field Research**

#### **A. Background**

For almost its entire history until 1996, the federal Legal Services Corporation was composed (roughly) of two parts. The large part provides legal services to low-income clients through approximately 900 neighborhood offices in all 50 states. The small part consisted of 16 national support centers that trained, informed, and advised litigators and provided research in specific areas of poverty law. Congress defunded the centers in 1996 by removing them from the federal budget.

Important, valuable and noncontroversial research and information were defunded along with the more controversial legal reform activities. These information products (e.g. basic information about changes in the law, training, manuals, example documents, journal articles and experts available for consultation) are nonrival goods that are costly to produce, but once produced can be made available to multiple neighborhood offices at little marginal cost. Only the street level programs know how much the support centers' information helps them serve clients, and LSC had the usual public goods problem of not knowing how to reveal the local office preferences in order to establish efficient funding levels for each of the centers. It may well have been the case that some centers were too large and some too small, but it is surely not the case that they had no value at all.

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<sup>14</sup> Legal Services considered decentralizing funding for its Support Centers and the Public Broadcasting System used the Station Program Cooperative to choose programming from the 1970's through the 1990's (Forsythe, Ferejohn, and Noll 1976).

Could the Falkinger mechanism be used today by the neighborhood offices to fund the basic research areas of the former centers and determine their relative sizes in an efficient manner? Because this method relies totally on contributions from the neighborhood law offices, it does not create any line item in the federal budget to fund them. Each neighborhood unit would become a “subscriber” to the information providers, and receive access to their services at only the post-research marginal access cost. In order to receive feedback from field interviews, we need to be able to sketch out at least a rough idea of how such a system would work.

In fiscal 1996 the national support centers were funded (for the last time) at approximately \$11 million, and the basic field programs at \$350 million. In other words, the cost of the centers was approximately 3 percent of the \$361 million total.<sup>15</sup> Our illustrative numbers below will use this percentage, assume 16 research areas, and current LSC grantee budgets. Of course if efficient levels are actually determined, in the aggregate these may differ from the historical 3 percent level.

One question to be faced is the definition of a unit that LSP would use in designing its incentive plan. Two candidates would be either the 900 full-time offices or, alternatively, the 146 grant-receiving LSC programs (many of which operate multiple offices). Both because LSC only collects data at the grantee level, and because the smaller number is more manageable, we’ll assume that the potential contributors are the 146 grant-receiving units. The average grant per grantee in 2004 is about \$2.2 million, and thus one might think of 3% of this or \$66,000 as a mandatory contribution under the old system (an average of \$4125 per grantee per research area). However, the sizes of these grantee units vary enormously (depending upon the size of the poverty population being served). Legal Services for New York City receives \$14 million in LSC funds a year while smaller rural agencies receive under \$200,000 annually. Clearly it would neither be sensible to penalize the \$94,000 South Mississippi Legal Services Corporation for contributing less than the national average per research area of \$4125, nor to subsidize New York City for contributing more than the national average. So how do we handle the equity issue among units of such diverse sizes?

One simple way to do it is to use a proportional definition. That is, if all other grantees collectively contribute .1875 percent of their aggregate budgets to a particular research area, then define the expected contribution of the remaining grantee as .1875 percent of its own budget. It does not have to contribute this amount—it can contribute less or more—but any penalties or subsidies will be calculated by the size of the deviation from the expected amount. The bill that each of the grant recipients will receive is equation (5’) with  $n = 146$ ,  $P_G = \$1$ ,  $S_i = \text{unit } i\text{'s grant amount}$ , and  $\bar{S}_j = \text{the average grant amount to all other units except } i$ . The financial implications are illustrated in Table 2 below for units of various sizes. Note that with 146 contributors, the total payment ends up quite

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<sup>15</sup> Total LSP appropriation for 1996 was \$440,000,000, of which \$364, 471,000 was for basic field programs and \$11,216,000 was for national support. See United States Government, *The Budget for Fiscal Year 1996*, pp. 1008-09. We note that in the Fiscal Year 2003, total LSP appropriation was \$337 million, and it was estimated to remain close to that for Fiscal 2004 and 2005.

close to the expected contribution even for a contributor that deviates pretty substantially from it. Nevertheless, it is the contributions of others that determine the expected contribution of each.

Table 2

Grantee Size (\$000)	Expected Contribution To Center X	Hypothetical Contribution to Center X	Subsidy or Penalty	Total Payment for Center X	
2200	\$4125	\$2500	(\$1614)	\$4114	
2200	\$4125	\$6000	\$1862	\$4138	
5000	\$9375	\$6000	(\$3352)	\$9352	
5000	\$9375	\$12000	\$2607	\$9393	
440	\$825	\$500	(\$323)	\$823	
440	\$825	\$2000	\$1167	\$833	

These illustrations assume that we have reached an equilibrium, but of course an important part of any actual process is the ease with which it achieves an equilibrium. For 16 basic research areas, we might imagine asking each grantee to report their contributions in an online non-binding round. This initial round might define expected contributions for each grantee based on the percentage of the aggregate budget received by each historical center (and once the system is operating, in the prior year). Then a second round would recalculate the percentages and expected contribution amounts based on the first-round responses, and grantees would then be asked to reconsider their contribution amounts based on the new figures. This process would continue for a few rounds until the aggregate percentage contribution for each center stabilized (e.g. no center's percentage and no affiliate's bill changed more than 5% from the prior round), and then a final binding round would be done in which the voluntary contributions (and the subsidies and penalties calculated based upon them) would be finalized.

There remain many practical questions. Who decides the number of research areas, and what information about the proposed work within each should be provided to the contributors? The latter can serve both to inform decisions and to induce the research providers to be as productive as possible. Is it possible to allow nonparticipation of some of the LSC grantees for some of the research areas? If so, a rule must be established that grants all participants (including those who volunteer zero but pay the necessary penalty) access to the provided services at marginal access cost, and either denies access or allows it only at high "external" rates for nonparticipants. But this presupposes genuine interest in using something like the mechanism we have described, and we need first to find out if such interest exists.

## B. Field Research

### 1. Participants and Documents Reveal Obstacles and Opportunities in the Complex Existing Legal Aid Funding System

We interviewed decision makers at support organizations and at local legal aid organizations about their experiences providing, using, and deciding about public goods.<sup>16</sup> We also reviewed documents about legal aid efforts related to public goods provision, such as web development efforts. This information revealed important, policy-relevant, differences between the perceived constraints and outlook of the legal aid community and the stylized assumptions used in much of the basic economic research. These differences suggest taking a different and more incremental path to improving incentives, cooperation, and efficiency than does the basic, stylized research. We summarize below our interpretation of the most salient points made to us.

Section *a* describes overlapping networks that provide excludable non-rival goods to serve specific geographic and professional audiences within Legal Services. Section *b* describes how a complex, entrenched Legal Services budgeting system separates the grant-maker's role funding shared support services from the street level agency's role of using these to serve clients. This creates substantial political and cultural barriers to making a cash-based public goods mechanism the primary source of public goods funding. But a public goods system that governs contributions of staff time would make existing collaborations more formal and might govern them significantly better.

a. Legal Services provides excludable non-rival goods to different subsets of agencies through overlapping networks that vary by states and substantive areas.

**While there are public goods at the federal level, there are beneficiaries other than LSC agencies. Furthermore, many public goods are at the state level.** Legal aid providers work on both national and state legal issues – so there is expertise with both national and state-specific audiences. Expertise on issues where federal actions shape policies – like Medicare and Medicaid -- has an audience of 146 large LSC-funded providers plus hundreds of smaller (non-LSC) providers. Knowledge about state-specific laws is a state-level public good that serves a state's LSC funded agencies and pro bono organizations plus many smaller, specialized organizations. State organizations often create guidance documents by adapting templates from national organizations to the peculiarities in their own state laws. Shared documents can help attorneys new to this area of the law with the basics while other information streams can keep veterans abreast of changes in the law and new strategies.

**Participants tell us that it is feasible to exclude non-contributors from access to support services.** Support center staff tell us that they know with whom they are consulting; while websites for attorneys are often satisfactorily password protected. This means that public goods users and suppliers can form coalitions with enforceable expectations about contributions. One can make access to these non-rival goods contingent on agreeing to participate in a resource provision mechanism.

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<sup>16</sup> A list of interviewees is provided in the appendix.

**There are multiple public goods problems being addressed by a diverse group of overlapping state, topic-based, and national networks that emulate each others' smart practices.** Each network has pivotal players -- like the LSC grantees in states with a small number of such grantees -- or umbrella groups -- like LSC, the National Legal Aid and Defender Association, the Legal Aid Association of California, and probono.net -- that could coordinate improvements.

**Legal aid system participants find it natural to think about providing shared services and maintaining institutions with expertise to consult on unusual cases as a collective action problem.** Agencies agree that providing shared services and maintaining expertise are worthy goals but feel that individual agencies can do little about it.

**b. Legal Services' Complex Funding Structure Creates Political and Cultural Barriers to Using Cash Contributions From Street Level Agencies as the Primary Source of Funds for Public Goods Provision.**

**Legal services organizations get needed information through formal means like support centers that are now funded by foundations and state agencies, state consortiums that provide web content, and informal advice networks.** Many of the former LSC national support centers have found alternative sources of funding and provide services much like what they offered before. Many former support centers also get funding to offer free state-specific expertise to legal aid providers in their home states; notably California, Massachusetts, New York, and Washington, DC.

**Constraints on public goods mechanisms: Political and organizational factors make it difficult for legal aid organizations to contribute cash.** Political and organizational factors -- especially a division of labor between funders and service providers -- make it difficult for legal aid organizations to use public goods systems that require service providing organizations to make cash contributions to support the provision of shared knowledge. There was near unanimity among the people we interviewed that a Falkinger-style system that expected local programs to make significant cash contributions to public goods providers is politically infeasible. This was typically the first thing they told us after they understood what we had in mind.

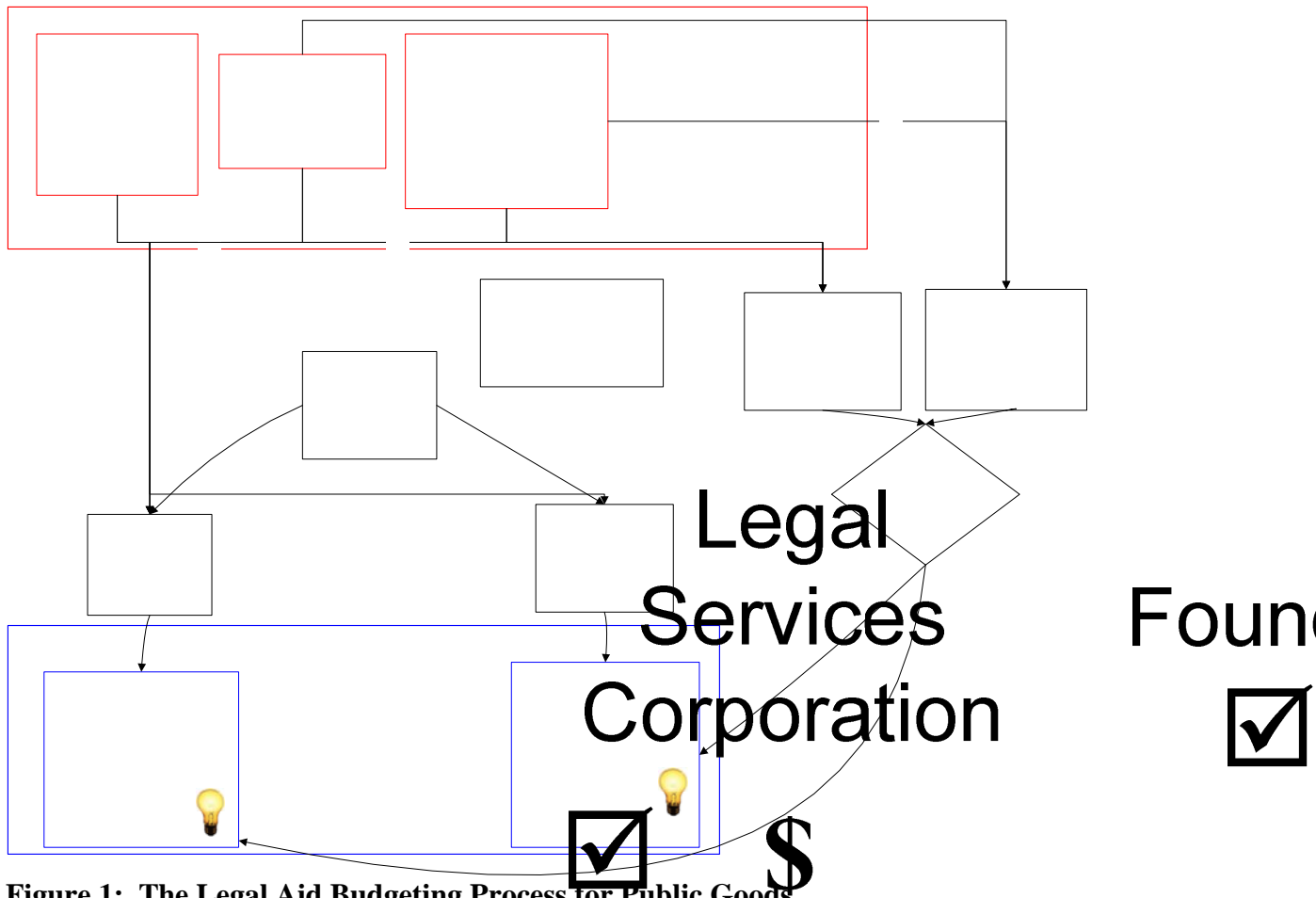
Institutional and cultural constraints limit legal aid agencies' budget flexibility. Legal aid agency boards of directors oversee spending and demand strong justifications to reallocate money from direct service to their local community. Legal aid attorney unions would probably oppose paying for central support if it reduced funds for local attorney salaries. Local legal aid organizations implicitly make difficult budget tradeoffs among compelling causes in the presence of a true scarcity of resources. Their culture often denies that they have flexibility to take money away from pressing front line needs, which makes rational allocation of support resources even more difficult. However, some people we interviewed thought a transition into a cash contribution-based system



might be possible if an intermediate public goods system – that required small cash or in-kind contributions -- convinced participants of the approach's merit.

**There are hints that local legal aid organizations systematically under invest in both private and public goods relative to staff.** That is, the agencies may underinvest in capital, technology, and expertise as well as public goods. They may be under constraints that cause them to buy too much staff time and invest too little in tools and technology to make staff more efficient. Atlanta Legal Aid, an LSC grantee, spends just 2% of its \$7.5 million budget on equipment, training, and consulting and 85% of it on personnel (Atlanta Legal Aid 2005, 24). Many legal aid offices have not invested in the kind of case and information management technology that is pervasive in private law firms.

**There are additional sources of funds for public goods other than LSC agency contributions.** Funders include foundations, LSC, and state programs that capture Interest on Lawyer Trust Accounts (IOLTA) to fund legal aid. The existing funding system generally does not ask legal services organizations to contribute cash to support the provision of shared knowledge, but rather gives this responsibility to funders. This separates grant makers' ability to pay from the street level programs' expertise about the consequences of public goods choices. Funders make grants to both street level legal aid agencies and projects that support them. Funders have lengthy discussions about priorities with local legal aid organizations. Local client-serving programs have neither the flexibility to redirect their budget to support public goods provision nor the expectation that they should do so.



**Figure 1: The Legal Aid Budgeting Process for Public Goods**

This slow, cumbersome system takes years to fund or abandon each proposal. The majority of proposals never receive funding. Local legal services program directors spend an enormous amount of time in meetings working on proposals and decisions about proposals. Participants thought there are opportunities for a public goods system that aggregates group preferences into straw polls that help drop proposals unlikely to get funded and fast track those with the greatest support. **\$**

**The National Economic Development Law Center (NEDLC)’s experience illustrates some difficulties of overcoming the collective action problems and political and cultural barriers to street level agency participation in funding.** It tried to replace lost LSC funding by soliciting retainers from LSC agencies. It offered expertise customized to a particular state and case. While 10-15 agencies initially agreed to do this, it found that individual local organizations were very reluctant to pay retainers to ensure access to help they might or might not need. This is a common pool problem with a shared fixed cost of maintaining NEDLC’s facilities and expertise, but then a real and significant marginal cost of applying that expertise to a specific new case. The retainer system fails to address the crux of the collective action problem to ensure the availability of expertise to the group – a collective action problem that many leaders recognized, and that their solo actions were unlikely to make any difference. The economically natural

way to price this would probably be with a two part tariff (with a smaller retainer as the fixed part), although NEDLC did not attempt this. NEDLC eventually scrapped its retainer experiment. Local programs' desire to support only services they actually use, along with their changing and unpredictable needs, makes it desirable to let them enter and leave specialized coalitions for each support area.

**Certain restricted-use funds may be easier to allocate to shared service provision than unrestricted funds would be.** Congress requires local LSC grantees to spend 12.5% of their budgets to facilitate Private Attorney Involvement (PAI). These funds can be used to hire outside attorneys to support LSC offices or to pay for legal aid resources that support pro bono private attorneys through “training, technical assistance, research, [and] advice” (CFR 45 section 1614.3.b.1-2). It specifically requires that legal aid staff provide “Access by private attorneys to LSC recipient resources, including those of LSC national and state support centers that provide back-up on substantive and procedural issues of the law” (CFR 45 section 1614.3.d.4).

Section 1614 also aspires to “generate the most possible legal services .... from ... limited, resources” –for example by facilitating the involvement of pro bono volunteers—and requires that “recipients should attempt to assure that the market value of PAI activities substantially exceeds the direct and indirect costs” (CFR 45 section 1614.1.c). Georgia’s advocate website’s goal is only to “to facilitate pro bono assistance by the private bar by granting pro bono attorneys with access to legal outlines, forms and pleadings in the areas in which low-income and under-represented clients have needs” (Roberts 2002). Thus there may be a tension between use of these funds to hire local private attorneys versus to contribute to a non-local group for the provision of shared services. But the regulations suggest that creating shared websites, advice networks, and manuals that help outside attorneys handle cases faster and better would definitely fall under section 1614, which could reduce attorney case loads at local legal aid organizations (the cost of materials produced in house to be shared between private and staff attorneys might have to be split between regular budget funds and PAI funds); and section 1614 seems to allow local legal aid organizations to contract out the development of these shared research materials.

The admitted arbitrariness of some funding streams may open the way for the implementation of decentralized mechanisms. For example, California’s IOLTA program sends \$10,000 to each support center within the state to buy a subscription for free advice and support for all local legal aid organizations within the state. It is conceivable that this kind of funding stream, though only a drop in the larger funding bucket, could be governed by a decentralized mechanism that could increase provision of the most useful services.

**Legal services organizations have significantly more flexibility to make in-kind contributions to the public goods provision than to make cash contributions.** They already do have formal and informal systems for dedicating staff time to provide public goods like advice and articles; but few incorporate formal features to elicit preferences and control free riding.

Many legal aid organizations have been developing websites and other knowledge sharing that rely on in kind contributions of content and smart lay strategies to address public goods problems. In an appendix, we present detailed case studies of two such efforts. ProBono.net creates shared websites for clients and attorneys involving 30 states and relies upon foundation support and in-kind contributions from the legal aid offices for its support. All fifty states have websites, which rely on contributions of staff time and range from slightly to severely under-resourced. The Maryland Legal Assistance Network also develops shared websites for use by legal aid agencies within Maryland, and as well contracts for Lexis legal information services for all Maryland legal aid, and runs an intake center to route clients to the most appropriate legal aid group. It used a participatory decision-making system to try and reach consensus on website contents. The two case studies identify successes, important opportunities in legal aid institutions, and open challenges – both recognized and unrecognized by program staff. Here we simply note that many LSC agencies within these networks do select and provide significant in-kind contributions in the form of time from their own staff attorneys. There are general frustrations with website provision and a sense that improving the decentralized governance of these contributions is far more feasible and perhaps more desirable than decentralized cash based approaches.

The Legal Services public goods networks and funding systems provide public goods and do a reasonable job of listening to staff needs. But their staffs acknowledge that they face many of the challenges that the common pool resource and behavioral public goods literature tries to address. There is reason to think that a more systematic approach could provide more and better chosen benefits while spreading the provision burden in a more equitable way.

## **2. Observations based on the field research**

**The current system may provide too few public goods. A more formal system may be able to prioritize better** among topics and among activities (too many phone consultations; too little development of manuals; or vice versa).

**Informal advice networks may leave out small, young and non-specialist organizations.**

**An informal system could evolve serious inequities from either deliberate free riding or inadvertent differences in skills and visibility in the network.** Some organizations may develop cultures that ask for outside assistance but rarely provide assistance. Other organizations – like business law firms that handle a few pro bono cases -- may be able to share little poverty law expertise, but be able to reciprocate in other ways. An informal

system might not reach these deals to exchange a legal aid agency's expertise for the commercial firm taking a case or providing a conference room for a large meeting. The inability to handle inequities may lead to crude, destructive responses like organizations refusing to help or only helping organizations they trust.<sup>17</sup> A few organizations' withdrawal can lead to cascading collapses – where a few expert organizations stop helping a group of agencies some of which have not been reciprocating, concentrating that group's requests on the remaining willing experts, overloading these experts and causing them to withdraw, and eventually leaving the group of organizations without anyone to call for advice. *Clearinghouse Review* experienced a cascading collapse: its loss of federal support led it to raise subscription rates, which decreased readership, which decreased willingness to contribute, and this loss of quality further decreased willingness to subscribe and contribute articles. For example, we were told that the case reports section of *Clearinghouse Review* lost its luster as a collaborative forum where staff attorneys shared new approaches. The journal lost readership, contributorship, and much of its value to LSC attorneys.

The process of formalizing systems to share knowledge may solve problems beyond assigning the right quantity of resources to the right priorities. A more formal system may be able to reduce duplicated efforts and increase distribution of valuable information – by, for example, offering in house checklists or manuals from a legal aid organization to pro bono attorneys. Something as simple as an advice e-mail list with password protected, webified archives can avoid duplication and spread knowledge farther. Illinois has found that a web-based advice board has unexpectedly become a good source of content for its online guidance library. Illinois finds that experts will answer specific questions by posting documents – like sample briefs -- of very general interest that the website had already tried and failed to collect. A directory of experts might help staff find answers to esoteric questions regardless of their personal knowledge of who to ask. A web archive of requests for advice might make visible useful clusters of related questions that a checklist, article, or research project could then address.

In sum, information age technologies have significantly reduced the cost of sharing information, making it more of a non-rival good and easier to collect preferences and coordinate decentralized production. Indeed, the legal aid community has developed informal, largely unmanaged advice networks and formally governed websites. The resources for these public goods are provided in part by foundation support that has increased in the wake of the congressional defunding, and by in-kind support volunteered by legal aid organizations. However, it is unclear whether these public goods are adequate or well prioritized. There is reason to think that better management systems could help legal aid organizations allocate more resources to the provision of shared expertise and align this provision more closely with their needs.

Rigidities like budget inflexibility and awkward divisions of labor are likely to be common across a wide variety of non-profit and local government organizations.

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<sup>17</sup> Some recent research in behavioral economics suggests this may not be uncommon. See Charness and Rabin (2002).

Complex for-profit organizations may also suffer budget rigidities. These constraints suggest that there is every reason to work for incremental improvement over the status quo, even if we are unlikely to reach the (theoretical) optimum. Strategies to improve public goods provision by working around or exploiting restrictions are thus valuable.

Participatory<sup>18</sup> public goods systems could fill gaps left by the loss of federal funding and help manage information technology better. Participatory decision making has the potential 1) to make better decisions by putting authority in the hands of the people who are best informed and feel the consequences most directly; 2) to better inform funders about which support services would be most valuable; and 3) to make decisions through a democratic process with which it is difficult for outsiders to interfere.

At the same time, the easiest places to do initial tests of public goods mechanisms, especially the Falkinger mechanism, are probably in simpler settings – where the actors that would use the shared services are able to and expect to pay for the services they use; where the decision making process within one organization is fairly simple; where the coalition membership is clearly defined, homogenous, and stable, and where there is no entrenched public good funding system – either because the public goods mechanism is the first attempt to organize such a system; because of frustration with the existing system; or because the biggest stakeholders in the existing system support the new system.<sup>19</sup> Let us now turn to our attempt to try and synthesize what we have learned into a general design strategy for policy analysts who wish to improve the provision of public goods.

#### **IV. Policy Analysis and Social Science Should Guide Incremental Change toward Better Public Goods Provision**

##### **A. Any public goods mechanism will have to make changes that account for the existing selection system.**

Feasible improvements are generally incremental changes that leave in place some or all of the existing selection system. Political and organizational forces often limit change to Lindblom-like incremental, serially adaptive, piecemeal approaches that are tuned to the specifics of the challenge at hand. This certainly seems to be the case for legal services, as numerous participants have struggled to form networks, funding arrangements, and coalitions that provide some public goods.

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<sup>18</sup> We choose the terminology *participatory* to reflect the fact that these mechanisms are decentralized in the preferences sense; but not in the sense that they can operate through bilateral deals or coexist well with other bilateral funding arrangements. These institutions are decentralized in the sense that they take individual agency preferences into account but some do require a common understanding from the get go about the consortium's rules, the membership of the consortium (which can be decentralized in the sense that it is opt in, but typically not in the sense that post or mid-decision exit is allowed), the creation of a minimal central information system, and perhaps more importantly, many make the most sense when there is a consensus among participants to centralize all funding for the public good in this mechanism.

<sup>19</sup>Perhaps downtown merchants' associations, parents' associations working to help their schools, or units within a larger organization might provide a better test bed than Legal Services organizations do.

There is considerable room for experimental and theoretical public goods literature to inform incremental change. These institutional design efforts can build on or adapt smart existing institutional components. Incremental changes should be judged not only by the quality of their decisions but also by their effectiveness in helping the group make future transitions to even better systems. Small changes, for example, may convince participants of the value of seeing the problem as one of public goods governance, and of the effectiveness of decentralized approaches to it. Some scholars -- including Lindblom (1965) and Wildavsky (1966) argue that the practical necessity of making incremental change is also the best way to change an operational system that is fulfilling various needs (even if very imperfectly), perhaps as does the legal aid system that keeps services flowing to a diverse constituency under a complex set of constraints.

**An incremental way to govern a significant shared effort with a public goods mechanism is to use a labor denominated mechanism to make decisions about contributions to existing web projects and advice networks.** Public goods mechanisms can choose provision levels in terms of any quantifiable resource.<sup>20</sup> Implementing a public goods system that governs contributions of staff time is often more feasible than using a public goods system to govern contributions of dollars in legal services contexts.<sup>21</sup>

Legal services organizations already make significant decentralized labor but not cash contributions to formal and informal public goods provision networks. Their well-informed line managers and front line staffers have significant flexibility to reallocate staff time. By contrast, local agencies have rigid budget processes that limit their abilities to contribute cash and have not historically made significant cash contributions to public goods provision.

A public goods mechanism would change both how the group makes decisions about public goods resources and the allocation itself. Moving from the status quo to a dollar based public goods system requires a significant set of changes, namely 1) creating a completely new category of outlays -- public goods -- at local agencies that have never before paid for them 2) funding this area with significant resources redirected from other areas and 3) moving some budget decisions from the board to a combination of staff and the public goods vote. This combination of changes is extremely difficult to make simultaneously for large projects in the absence of significant external pressure, but may

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<sup>20</sup> The public goods literature assumes that actors have the flexibility to optimize spending toward and staff time in which case making a decision in terms of dollars would also achieve the optimal allocation of staff time.

<sup>21</sup> A cash based approach is far more feasible than it is in Legal Services when the organizations that will use the goods have the ability and latitude to pay for these goods. A field trial of the Falkinger mechanism would be valuable in such an organization, like downtown merchants' associations or parents' organizations to fund schools. Policy analysts seeking a good place to prove that public goods mechanisms can have significant benefits might do well to look for a situation that shares some key economic and political elements of the pioneering Title IV SO<sub>2</sub> trading program: SO<sub>2</sub> is a regional pollutant so the challenge of controlling the total quantity emitted was fairly straightforward, while the regulatory system was inefficient and under pressure to significantly reduce emissions. Even so, it is good to recognize that the movement to introduce market-based environmental mechanisms was highly incremental; see Blas Luis Pérez Henríquez (2002).

be feasible incrementally. It may be fruitful to encourage local agencies to make small cash contributions or participate in a grant-making process, demonstrate the benefits of their involvement and incrementally increase local agencies' control over spending.

By contrast, a labor denominated system would 1) continue well established contributions of staff time to large shared service projects-- like websites, advice networks, and *Clearinghouse Review*; 2) require a much more marginal adjustment in contributions, and 3) let the managers who currently oversee labor contributions participate in the public goods mechanism with only a small loss of control to a voting process that should improve the allocation.

In interviews, legal services staff members bluntly told us that cash-driven voting systems are incompatible with the current legal services funding structure and that asking legal services organizations to contribute cash was difficult. They were receptive to systems that would ask legal services organizations to contribute staff time to provide shared goods and observed that this sounded to them like the projects that are already happening informally.

Staff-time contributions are inflexible compared to cash contributions (using dollars to procure a web-designer's time is easy; it is less clear how to procure web-development using attorney-hours) and this creates the potential for wasteful rigidity. A good system should be as flexible as possible within a staff time based system. It should allow agencies to contribute cash and allow the system to make a transition toward being more cash based. Dollars' fungibility is potentially a political liability as well as an economic asset: line managers and union leaders are more likely to divert a monetary contribution intended for a public good than a staff time contribution. Any part of the organization can use the dollars, while only the family law unit and the divorce website need the veteran divorce lawyer's time.<sup>22</sup>

## **B. Three Approaches to Public Goods Provision**

We consider three different approaches to the design of an improved method of public good selection: global incentive systems, incremental incentive systems, and communication approaches. Each of these approaches could potentially help legal services affiliates provide public goods better. A **global incentive** approach would use a formal public goods mechanism – denominated in dollars, staff time, or outputs like articles – as the primary decision making tool for some public good. It would modify the

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<sup>22</sup> Although a further exploration of the politics of cash and human resource allocation is beyond the scope of this paper, it is well worth further exploration by policy-oriented economists since it is possible that improving optimal allocations of dollars will be costly and politically difficult – perhaps so costly as to offset their advantages in fungibility, at least until budgeting processes can be significantly streamlined -- while it may be straightforward to apply economic ideas about getting incentives right for decentralized decision making by the best informed people to the line managers who already have significant latitude to allocate people. One of the central questions for this line of inquiry would be to understand whether dollars' fungibility and visibility will necessarily make them political hot potatoes that are costly to allocate.



existing (potentially informal) decision making structure.<sup>23</sup> A global approach can be feasible as an incremental change that implements a new set of rules but makes only modest changes to the participants, funding flows, and agenda. Alternatively, a consensus that the existing structure is inadequate can open a policy window for an implementation that requires a more significant change.

**Incremental approaches** leave existing decision making structures in place but improve incentives for direct beneficiaries to contribute to public goods provisions. They create venues that consider users preferences about resource allocation and involve users in improving the quality and relevance of public goods. Global and incremental incentive systems would use hard, enforceable rules or commitments to change incentives on the (roughly neo-classical) assumption that participants are primarily motivated by resource-based incentives; are best able to optimize when prices are right; and fear that people may go back on their word. Communication-only approaches take softer approaches like facilitating communication; soliciting verbal commitments; trying to make contribution more attractive; trying to start and maintain patterns of collaboration and trust; or recognizing generosity.

Global, incremental, and communication approaches can be combined with behavioral approaches that improve performance. Some economic models of human behavior make strong assumptions about rationality and self-interestedness that have been found to be at odds with actual behavior, and we refer to models of the latter as behavioral. To the extent that people are like the behavioral models—more trustworthy, more broadly motivated, more enmeshed in ongoing relationships with reputations, more caring about the public good and about helping others in their geographic or professional community, and perhaps more biased toward getting quick results—behavioral insights can help them build more successful institutions.

## **C. Design Issues for a Staff Time Denominated Global Mechanism**

### **1. A Sketch of an In-Kind Mechanism**

An in-kind Falkinger mechanism would look strikingly like a cash-denominated Falkinger mechanism. Consider a hypothetical decision about providing support for family law in a state where 6 large LSC-grantees have formed a consortium with four other major organizations. A steering committee or preliminary vote would lay the groundwork by coming up with a rough agenda for what kinds of family law support services the group would try to provide given each level of resources – prioritizing topics for research articles and training sessions. The Falkinger mechanism could be

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<sup>23</sup> There will be an existing decision making structure governing every public goods provision effort unless either the good is not provided at all or members provide the good without communications. Neither of these is likely. Our observations of the field show that there are existing, complex structures that fund support centers and appear to have a great deal of staying power while informal advice networks have subtle, easy-to-miss but perhaps quite effective governance structures. Ostrom (1990) warns that social science models have repeatedly justified disastrous, poorly implemented nationalizations of forests and fisheries that replaced subtle, effective self-governance.

denominated in terms of training sessions and articles, so an agency that thought the group should provide five articles and ten training sessions would offer its share of the number it wanted to vote for— half an article ( $q/N = 5/10$ ) and one training session. Its contribution obligation would then be adjusted with matching transfers toward the average. The steering committee might make minor adjustments to its priorities once it understands the resources likely to be available to it – for example, using an offer of a leading domestic violence lawyer’s services to update the domestic violence law manual rather than the slightly more dated divorce manual.

This would require carefully choosing the legal topics and contribution categories for Falkinger voting categories. Having one Falkinger vote per issue-contribution category need not create an overwhelming number of decisions because so much of legal aid work is concentrated in a few areas: in 2004, 85% of Atlanta Legal Aid Society’s 22,625 cases involved 5 categories of law: family, housing, consumer finance, health, and income maintenance. (Atlanta Legal Aid 2005 6-7). For example, family law might have contribution categories of articles for veteran practitioners, checklists with basic guidance, and leading training sessions. Thus a system could take formal votes on a small number of important areas and a broad “other” category<sup>24</sup>.

Alternatively, the system could be denominated in staff hours – which a family law support steering committee could then allocate among priorities like training sessions, writing articles, and tracking developments, reporting on them in newsletters, and updating guidance. One challenge with staff hour-denominated contributions is that it is unclear how to verify compliance or how much productivity to expect from an hour. Perhaps one organization would fulfill its 40 hour training manual obligation with ten Friday afternoons of an attorney who spends much of them at the water cooler, and has his focus repeatedly broken by client calls and produces only an outline in his 40 hours; while another agency has a focused attorney dedicate a week to updating and improving good existing materials and delivers a whole manual that is a significant improvement over the status quo. Did both meet their staff time obligations? Which did we vote for?

Dealing effectively with in-kind contributions may require the addition of a flexible venue in which participants can exchange obligations. For example, an organization that is good at writing divorce articles, but loathes to lead training sessions on areas in which they have little expertise or work on projects that require participation in planning meetings far from their office, could swap with organizations that have the opposite attributes. This will also let organizations swap fractional obligations because it is probably easier for an organization to deliver one whole article than to coauthor one-third of an article in each of three topic areas. There may also be a need for a system that will let organizations store credits from an extra article for a future year or borrow against future work.

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<sup>24</sup> This “other” category may in fact catch areas of law that are different in-kind from the high-volume areas because they have impact disproportionate to the number of cases filed. These may include legal aid involvement in economic development projects or, as Atlanta was in 2005, involvement in fighting the placement of trash transfer stations in a neighborhoods. So determining the right way to handle the broad and potentially controversial contents of this category deserves careful thought.

These swaps can increase the flexibility and efficiency of provision and reintroduces some of the flexibility lost by moving away from a dollar denominated system. It should be designed to allow swaps of obligations for cash – and thus open a transition path to a flexible, cash-based system. It should allow the direct participation of funders or private law firms -- which could, for example, vote for services that their staff could not provide in house knowing that they can swap cash for these services. Although cash may be explicitly allowed, the real currency of these markets will be staff hours at least in the short term.

## **2. Design Challenges to the Global, In-kind Mechanism**

A staff-time-based Falkinger system may be a politically feasible way to use good global incentives to make significant decisions for legal services, but the policy designers need to resolve design issues common to all public goods mechanisms and to all practical Falkinger implementations, as well as some issues particular to time-based contribution systems. This section reviews these challenges.

**A system has to be able to reach a solution that seems attractive and fair to a diverse group of legal services providers – probably by allowing organizations to enter and exit provision coalitions.** Any given provider may want to acquire expertise in only a few topics and may want to enter the provision consortium only for the duration of a specific project (for example, Atlanta Legal Aid might want to support the noxious facility siting project for the duration of its garbage transfer station case; while Nevada Legal Aid might only want to support an environmental research effort for the duration of its noxious facilities siting project). MLAN explicitly describes the diversity that many of our interviewees have mentioned. “The providers differ in a number of ways.... Service areas ; Constituency served– Of the [28] providers, only 2 provide ... a broad range of civil poverty law ... Others [specialize.]” The organizations involved vary from those where, “legal services is a small adjunct to ... social services to advocacy groups and pro bono organizations to public interest law firms. Only 10 of the 28 organizations provide legal services as 100% of their budgeted work.” Thus MLAN writes that its “task became creating a ‘network’ ...with shared goals and a shared sense of what a statewide integrated delivery system should look like.”

All of the global and incremental incentive approaches we consider 1) are potentially entirely opt in, 2) could provide some or all of its services to participants only (to prevent non-contributors from free-riding on the members’ good faith contributions); and 3) could operate with minimal central administration—perhaps only a web site on which to vote or exchange proposals.

**The system needs to determine whether non-members of the coalition could access the shared goods and under what terms.** Economics posits that the choice of these terms will be crucial to convince organizations to join the coalition and to produce the knowledge up front so it is available when tough cases arise or pro bono attorneys offer to help.

**A system needs to inform participants about options.**<sup>25</sup> The system needs to strike a compromise between the benefits of getting diverse, considered opinions and the costs of informing everyone about the details of the choice and having them consider the tradeoffs. The existing, grant driven funding system holds discussions that inform participants and deliver proposals that are roughly tuned to meet needs within each category. A public goods system that coexists with the grant proposal process could rely on the grant proposal’s decisions about the details and use the public goods system only to get input on broad priorities.

**Strategies to work out the details:**

	<b>High information</b>	<b>Low information</b>
<b>Large number of participants</b>	Everyone votes on the details after learning in detail about the choices. Best decision; most costly.	Have everyone vote on everything; with only very limited background.
<b>Small number of participants</b>	Delegate to a (staff level) steering committee charged with carefully preparing the groundwork for the final group votes on the big picture.	A quick steering committee decision, perhaps involving program directors, before a final big picture vote.

**An in-kind Falkinger mechanism would have to work out the implementation details.** The group would need to determine an end point to the voting iterations, like a fixed number of rounds in which the last is final, or an adjournment between initial nonbinding votes and a final binding vote so that participants could consult with their staffs and boards. This is an issue upon which lab experiments could offer useful insight, but that no lab experiment has yet addressed. Designers and participants need to determine a procedure for adding or dropping research areas – and to decide whether to set bounds up front on the possible outcomes and contribution levels. Participants need to agree on a fair division of shares of resource contribution (which is equivalent to voting power) among a diverse group of organizations.

**The system needs to be able to deal with quality problems.** One way to do this would be to create separate quality and value voting channels so that participants can distinguish a signal that “we see little value in divorce law information” from “we see significant potential value in divorce law information, but the recent quality is unacceptable.” Quality is sometimes more important than quantity in public goods. A few concise,

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<sup>25</sup> Existing grant processes inform participants about the options and negotiate agreements on program details. Existing grant proposal processes generate significant discussions of how support organizations can provide value to local affiliates and documentation about what the proposals would do. A mechanism that complements the existing process might be able to use these services. A new participatory public goods decision making process that lived alongside the grant-making process could adapt grant proposals to inform public goods mechanism participants about what shared services each proposed project would provide. Existing discussions early in the process of developing grant proposals may make features in a new supplemental funding process to select the exact priorities of a new program duplicative and unnecessary.

focused, synthetic articles are far better than many mediocre attempts to convey the same information to the same audience.

**Using in-kind contributions complicates quality control.** Using in kind contributions makes quality control even harder because contributions become harder to verify, and because decentralized production leaves public goods production staff primarily accountable to legal services agency managers rather than support provision managers.

**The system needs to verify contributions.** Verifying monetary contributions requires merely checking whether the check arrives in the right amount. Determining whether an organization met its in-kind obligations forces more subjective questions like whether giving vague, surly advice or unenthusiastically reading dated training session slides meets the obligation. Did agreeing to contribute an article mean sending in a messy rough draft or a polished, well organized, sixth revision reflecting significant new research? There is room for discussions about what obligations mean before they start work, and when they are determining whether to call a draft final, and for an end of cycle review to verify that obligations have been met. Quality is often hard to specify in a contract, but users are likely to know it when they see it so there may be room for a participatory feedback system. For example, recommendations of an article by eight of ten family law line managers to their staff attorneys may be a much better quality signal than simply verifying that it met the page limit and cited the authoritative cases.

**The system needs to discourage or limit damage from perverse selection of organizations inclined to do the least possible with their obligations. The system should encourage propitious selection of organizations that are excited about providing quality services.** Organizations may offer to write articles because, propitiously, they are excited about doing something they are highly qualified to do. They may take on a project perversely, because they have the least qualms about writing a slap-dash article. One possibility would be to review obligation swaps either universally, to create boundaries that either allow organizations with good track records to take on more such obligations while scrutinizing offers to take on projects from organizations with troubled quality track records.

**Staff time is probably more available than money precisely because staff time is harder to manage and track.** Monitoring the allocation and quality of staff efforts is a general problem in any task – including legal tasks -- that involves hiring experts. In particular, we are likely to face several problems in implementing a staff time contribution model, namely:

- **Incommensurability.** Everyone's dollars are the appropriate kind, but people's skills and reliability differ. Two senior attorneys with similar resumes may have quite different enthusiasm and expertise.
- **Mismatch between abilities and the commitments from the system.** In-kind Falkinger assigns each organization obligations to produce specific services. These in-kind commitments are new to both the legal services system (which appears to operate without obligations) and to the incentive compatible mechanism literature (which assumes participants will write checks; and then

could potentially bid to have their staff to provide services). A web developer is of little use when there is a real need for a housing law expert and vice versa. The responsibility swapping website can arrange skill swaps, but is weaker for dealing with intangible differences among people who claim they are willing and qualified, like differences in ability to design good training sessions or penchant for polishing articles.

- **Unpredictable costs and availability:** There is a significant risk that an expert attorney, who was most qualified to write the article, will get distracted with an unexpected appeal. This is a significantly greater risk than that a multimillion dollar organization has an unexpected contingency and is unable to contribute its \$10,000. This high variance of availability and opportunity cost problem is typical of all kinds of resource allocation problems in the small. Ostrom (1990) reports that small farmers and fishermen who faced unexpected obligations sometimes violated rules, overburdening their community's common pool resource. The communities dealt with violations through monitoring, discussions, and graduated sanctions. The sanctions were soft on rate violators whose transgressions were consistent with extraordinary circumstances while coming down harder on chronic offenders.

**Creating a system that uses in-kind contributions to decentralize provision complicates coordination and quality control, but facilitates learning and feedback by making the system more flexible.** An in-kind public goods system aspires to increase the provision of the right kind of public goods, but to have staff scattered around the legal services network do much of the provision rather than increasing production at specialized support centers. Coordinating in-kind contributions among geographically separated collaborators will be harder than having a single team in one place produce the goods.<sup>26</sup> But, existing expert institutions could coordinate and provide quality control during high interest periods and engage in direct production of expertise when the group needs less production and coordination. At the same time, decentralized production creates flexibility to change public goods production levels frequently while keeping skilled attorneys in secure jobs, albeit with an emphasis that may shift between knowledge provision and litigation. This allows frequent (perhaps once every six months to a year) public goods allocation decisions that facilitate feedback, learning, and incremental improvements while providing services that would require a minimum efficient size and a multi-year commitment to provide through centralized institutions (i.e. centers).<sup>27</sup>

**Manage the Advice Network as a Common Pool.** Economic ideas could contribute to a formal global incentive approach to improve the governance of expert advice networks.

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<sup>26</sup> Georgia's state website plan calls coordination failures among geographically separated teams a high risk. The group may need to dedicate significant amounts of a few staff members' time to planning. For example, ProBono.Net's sample state website budget call for two full time coordinators.

<sup>27</sup> Indeed, centralized institutions think of discrete programs perhaps because the funding system's proposal process is so costly and because staff members often come in full-time increments. It would be hard for the continuous Falkinger mechanism to choose among discrete options. Other incentive compatible mechanisms can choose among discrete options, but none – except the provision point -- has been fielded or performed well in the lab to the best of our knowledge.

Providing advice is a common pool problem because the network of expertise is shared but the experts' time is rival in consumption. There is a significant literature that documents experiences governing common pool resources -- like a forest, fishery, irrigation system, or aquifer -- that produce a rival stream of benefits (e.g. Ostrom 1990). Many of the communities Ostrom studied implemented property rights and usage monitoring for the rival benefits. For example, creating limited, tradable rights to ask experts questions seems pragmatic (due to nontrivial marginal costs), but limiting the number of times one organization can visit the non-rival website makes little sense (due to negligible marginal costs). A system could track who was asking for expertise and who was answering. A formalized system might spread the load evenly among experts and facilitate exchanges between organizations that generate a disproportionate number of questions and those that answer a disproportionate number. For example, a commercial law firm that often asks for expertise in areas of poverty law novel to its tax lawyers might reciprocate by taking routine pro bono cases from a legal aid agency that provided advice.

#### **D. Incremental Incentive Systems**

Incremental incentive systems implement incentives to increase individual participation in collective action in ways that work alongside existing funding and decision making structures. They aspire to improve the total quantity and prioritization of public goods. There is a wide variety of incremental incentive systems and the recent experimental behavioral literature contains strong hints that many of them will be sufficient to let groups initiate and sustain cooperation and strike good deals. We mention briefly two mechanisms from this family: Falkinger-like mechanisms with outside funders; and contingent offer mechanisms.

##### **1. Matching foundation grants to improve incentives for legal service agency contributions**

The Falkinger mechanism evolved from a family of mechanisms where a government central funder provided matching payments to offer the public good at the incentive compatible price.<sup>28</sup> A criticism of these plans was that participants, if rational, would recognize that the financing of the government subsidies cannot be done for free (and would thus affect their own tax payments and distort the intended incentives). However, this literature did not consider the possibility that a foundation might be providing the subsidies, as is the case for many legal aid services. Not only is this more cumbersome subsidy arrangement closer to the reality of legal services supplementary funding, but it meshes better with the split in ability to pay between relatively inflexible service providers and less restricted grant makers. Thus it may be possible to devise a plan that would be attractive both to foundations and to the legal aid service providers.

##### **2. Contingent Offer as an Incremental Approach**

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<sup>28</sup> See Boadway (1989), Roberts (1992), and Andreoni and Bergstrom (1995).

Contingent offer mechanisms allow participants to offer cash or in-kind contributions (or to match others' contributions) contingent on others meeting some contribution threshold level. Contingent offers allow organizations to express a meaningful, binding interest in collective action without committing to move alone. A participation threshold that requires public good users to contribute at least a minimum amount – which would limit the ability to free ride – would complement a contingent offer system. Contingent offer mechanisms can serve either as the primary source of funding for a project or as a way for street level programs to send strong, meaningful signals to grant makers about which programs they value enough to pay for. These are closely related to provision point and pre-play contracting mechanisms.<sup>29</sup> Carefully designed contingent offers can be incentive compatible– although real implementations are likely to reduce but not eliminate incentives to undercontribute. There is experimental evidence about the likely performance of some contingent offer mechanisms. The provision point mechanism works well in the lab and the field, but the Varian mechanism did not work well in the lab when there was a tradeoff between fairness and efficiency (Andreoni and Varian 1999). Experimentally, some people seem to keep contributing so long as coalition membership is profitable relative to universal defection (Davis and Holt 1993). Contingent offer lets participants make this conditional willingness to contribute explicit.

Contingent offer's flexibility and individual control make it feasible in a variety of situations. Contingent offer gives participants up front certainty about the maximum size of their spending commitment. Contingent offer requires no up front agreement on each organization's fair share of budget responsibilities (meaning that disagreements over fair shares could cause individual projects to deadlock or shrink but an agreement on fair shares would not be a prerequisite). Contingent offer can handle both efforts that can have their scale fine tuned and could add contingencies to buy exactly a discrete step of a discrete project.

Public goods dilemmas in the state of nature offer so little structure that it is difficult to form consortiums or reach agreements and participants know that contributing leaves them open to being exploited by non-contributors. Global incentive solutions impose structures that make every decision interdependent and impose obligations to pay. These rigid, intrusive structures are often not feasible. Contingent offer approaches aspire to provide enough structure to improve public goods agreements (basically the ability to make and respond to public, binding commitments) while being feasible to implement because their structure is small and can coexist with other decision making approaches.

### **E. Communication only systems**

Communication only systems coordinate contributions to public goods and increase willingness to donate. Information only approaches do not explicitly create obligations or transfer power and are thus the least difficult to implement. They generally require no negotiation about rules. Many of them can be unilaterally implemented by one participant (like MLAN's efforts to demonstrate quick benefits and to present their plans to street level staff members discussed in the appendix). Communication only

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<sup>29</sup> See Varian (1994 ) and Andreoni and Varian (1999).



approaches can take the existing decision-making framework as fixed. Here are four ways that these might work:

- Discussing pledges at formal meetings may give people a very good sense that their contributions will be part of effective collective action. This may be a softer, less formal version of a contingent offer approach.

- Recognizing contributors. Recognizing generosity may have real benefits in a world with strong professional networks, ongoing professional relationships, and a belief in a shared cause. It may be able to create norms of contribution.

- Teaching people about the benefits of the public goods provision effort and justifying further investments by demonstrating beneficial program implementations.

- Reframing the public goods project can result in people valuing it more, due to inconsistencies in people's preferences and because some people value helping members of their own group (e.g. their professional community).

Communication only strategies like coordination, recognizing contributions, demonstrating benefits, and behavioral marketing strategies can all be part of incentive systems. Communication only systems differ from incentive systems in that they lack a central role for formal, interlocking commitments to contribute. The current systems that we see in the field use communication features in what may be a fairly sophisticated way and there may be openings to use social science to guide improvements in communications (see Wisner 1998).

## **V. Conclusions**

This paper began as an exploration of two different but related objectives: to understand better why there has been so little practical implementation of the institutional ideas for public goods, and to see if any of those ideas could be of use in providing public goods to the legal aid agencies of the Legal Services Corporation.

We first explored at a limited level one of the most promising designs in the public goods literature of economics, the Falkinger mechanism. This mechanism, at least compared to those offered 30 years earlier, offers much greater transparency and administrative practicality: it is incentive-compatible to induce the efficient level of the public good, it promises budget balance, it is flexible enough to handle a variety of equity concerns about who will bear distributional burdens of financing, and it works in the laboratory. We devised and presented a modification that further extends the equity flexibility of this mechanism.

It was necessary for us to undertake this initial exploration in order to enter the next phase of our exploration: to see if a mechanism like this could be used to assist the Legal Services Corporation in choosing the levels of its internal public goods—largely research, training, and other informational goods of high value to the attorneys providing service to the qualifying low-income client population. The 1996 Congressional defunding of its support centers removed the resources that had been used to provide these goods, and LSC had at one time shown interest in using a public goods mechanism for its centers.

As we conducted research and field interviews on the current status of public goods within LSC, it quickly became apparent that there was little interest in a total revamping of the existing public good procedures along the lines of the Falkinger mechanism. The two most important reasons for this are that: (1) an extensive series of informal, independent, and overlapping networks involving both LSC agencies and other agencies (like foundations, professional associations, and non-LSC legal aid organizations) have developed to provide with at least partial success some public goods; and (2) the LSC agencies assert strong beliefs that a mechanism relying upon monetary payments from them for public goods clashes with both formal funding procedures and organizational culture that focus street level agency funds on direct service to their communities.

Nevertheless our interviewees often expressed considerable desires to improve their public goods, and willingness to engage in discussion about contributions of their staffs time to do so. We concluded that such improvements can be made based in good part upon the ideas in the economics literature, but only when juxtaposed with political and organizational realities that in this case seem to limit most feasible improvements to incremental ones. We then turned to more multidisciplinary design considerations, and described three broad approaches to improving the selection of public goods: global incentive systems, incremental incentive systems, and communication reforms only. We believe that each of these approaches can be useful depending upon the exact circumstances. Drawing upon them, we proposed several different ideas that could be of use in the legal services context. The most novel of these is an incremental, in-kind Falkinger mechanism, a participatory method by which a collaborative network of agencies can define desired public goods and come to agreement about how many of them (or about how much staff time) each will contribute.

Finally, we note that we did not dwell or focus upon differences in perspectives that come from different strands of academic literature relevant to public goods. Obviously a central one is the difference between the Lindblom-like political and organizational forces that serve to constrain the feasibility of reform ideas, and the relatively unconstrained “agent-maximizing” assumptions of the economic literature. Similarly, there are tensions between the behavioral decision-making literature that allows for people to make systematic decision-errors and to have various degrees of community-mindedness, and the mainline strand of economic theory that relies upon models in which people are smarter and more self-interested. These different perspectives will lead at times to recommendations that are inconsistent with one another, and it may not be easy for the disinterested policy analyst to know which one to build upon. However, untangling those issues is a story for a future paper.

## **List of Interviewees**

1. Ed King (Executive Director) and Gerald McIntyre, National Senior Citizen Law Center, June 28, 2005
2. Stephanie Choy, Executive Director of the Public Interest Clearinghouse, June 30, 2005
3. James Head, San Francisco Foundation; formerly at the National Economic Development and Law Center, July 1, 2005
4. Brad Caftel, National Economic Development and Law Center, July 29, 2005
5. Dave Kirkpatrick, former Executive Director, National Economic Development and Law Center, July 29, 2005
6. John “Chip” Gray, Executive Director South Brooklyn Legal Services, August 2, 2005
7. Gerry McIntyre, National Senior Citizen Law Center, followup, August 2, 2005
8. IV Ashton, PS Technologies, Former staff member at Illinois Technology Center for Law in the Public Interest, September 13, 2005
9. Lisa Colpoys, Executive Director Illinois Legal Aid Online (Formerly Illinois Technology Center for Law in the Public Interest), September 16, 2005.

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## Appendix: Two Detailed Case Studies of Efforts to Provide Public Goods

### Case Study: ProBono.Net

Legal aid programs in more than 30 states are building shared websites for clients and attorneys using ProBono.net's tools and guidance. These combine outside grant funding with significant in-kind contributions from participants (ProBono.Net 2004). ProBono.Net's sample budget suggests getting forty percent of the required quarter-million dollars of resources through in-kind contributions of staff time and other resources. They suggests that 30% of the budget come from IOLTA and LSC cash grants and 30% come in cash from the combined contributions of local bar and law firms, foundations, and courts. They request no cash from the general budgets of local legal services organizations<sup>30</sup>. (ProBono.Net 2005) This budget understates the value of the in-kind contributions because these websites largely collect and adapt valuable non-rival materials without paying for them that agencies in their states and national organizations have already created. South Carolina divides the task between a "Content Collection Team" that will start the process by "gathering" materials and an expert "Review Team" that will ensure the quality of the content (Nolen 2002B). This kind of collection and reuse both increases the value of quality national templates and of developing software that notifies people about updates. The budget calls for two full time coordinators who would in part solicit and oversee in-kind contributions. (ProBono.Net 2005)

ProBono.Net state websites run on a behaviorally astute version of the garbage can decision model (Kingdon 1997, Cohen and March 1974). Georgia website coordinator Tracey Roberts echoes the scholars' words and adds an interesting, public goods twist, writing that, "the final decision-making group will be largely self-selecting. The folks who are interested will attend, want input on the decision-making and will help you get resources to do what you've decided to do. The folks who are not interested won't show up" (Nolen 2002A).

State websites actively recruit members for a stakeholder's committee that includes organizations that can contribute staff, content, ideas, feedback and professional connections to help get and tune content on the website and market the website to its intended audiences (National Technology Assistance Project 2002). This committee – and typically a smaller, more involved executive committee, write a formal plan and solicit input about the project's goals. Even if these groups implemented a formalized public goods mechanism for final, big picture decisions about allocating contributions between competing approaches, a small executive committee might fruitfully solicit input about what to vote on and work out proposal details. Delegating the details to a committee could potentially increase efficiency by reducing the number of resources dedicated to details, while having a few people invest in a detailed understanding of these issues, options, and tradeoffs. While there are no formal rules requiring reciprocity, the ability to commit at steering committee meetings after other potential contributors

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<sup>30</sup> The example website plan from Georgia observes that "Project participants could be solicited for [a] small donation" to pay the \$5,000 annual costs of keeping the website online after the initial grant runs out (Roberts 2002), so the community does not rule out the possibility of cash contributions.

express interest may – like formal reciprocity arrangements – assure contributors that their efforts are being reciprocated and that they are not becoming suckers surrounded by free riders. Similarly, general beliefs that a proposal would misallocate resources are likely to come out during discussions. This participatory decision making and provision system should compare favorably to under-informed, fully centralized decision making and to uncoordinated or internal provision.

The project plans certainly recognize the essence of the public goods problem – that more contributors and more users are better but that free riding or of differing preferences can lead to problems. “The more people at the table, the more resources and ideas that you will have. ...the more people and organizations involved, the easier it will be to make sure that the entire state knows about your new web site and assist in funding any marketing you need to do.” (Nolen 2002B) The Georgia Plan that Probono.net posts as a national model identifies specific public goods aspects of the problem, including:

- The project could provide too little of the good: The example Georgia plan identifies “Gaps in Content” as a high risk item and suggests combating it by searching for more resources in the form of cash and in-kind donors.
- Incentives that emphasize benefits to individual agencies may lead to free riding and under investment. The Georgia plan identifies “Conflicts with Existing Work Load” as a high risk and lack of engagement by project sponsor employees and steering committee members as medium risks.
- They recognize that having “Members of Content Development Teams in Different Locations” lead to high risks of unwillingness to work together; gaps in content, and uneven distributions of workload but it is unclear to what extent they thought of these challenges as coming from public goods causes like different needs, preferences, and understandings of the problem at different organizations and offices.

The Georgia site identifies several pragmatic strategies to deal with these problems, including:

- project coordinators made presentations to the whole staff of major stakeholder agencies because they rely on convincing line attorneys to voluntarily prioritize contribution. They told line staff and program managers that working on the website now would eventually reduce local agencies’ workloads by letting clients and pro bono attorneys answer their own questions.
- having much of the work contributed in-kind by the state’s two LSC grantees which have the most to gain and which received an LSC Technology Initiative Grant to develop the sites. Staff members of the two LSC grantees – the Atlanta Legal Aid Society and the Georgia Legal Services Project are on 16 of 21 content development teams (the Georgia Legal Services contributors came from offices around the state).
- Content team leaders make biweekly progress reports to the project coordinator, which presumably opens the way for praise, criticism, problem solving, the enlistment of managers to change incentives, or the substitution of other staff members who may be more responsive.
- “Cull[ing] teams/legal areas without sufficient support”.



## Case Study: Maryland Legal Assistance Network (MLAN)

The Maryland Legal Assistance Network (MLAN) was a roughly \$2 million effort that made broad, significant changes to legal assistance in Maryland. It has drawn significant attention; getting \$1 million in additional grants beyond the initial Soros Grant and making 66 presentations to other interested programs. It developed five shared systems for its legal aid community, including:

- Client and advocate websites similar to those developed by ProBono.Net, but not using ProBono.net's tools. Their advocate site allows legal aid agencies to contribute to a repository of expertise for the benefit of other legal aid / pro bono attorneys.
- Contracts for Lexis legal information services and phone translation services for all providers in the state.
- A distributed statewide intake program that refers clients to the most appropriate provider regardless of which legal service provider they call. For example, a client who had church ties to Associated Catholic Charities of Baltimore – which has a legal group that specializes in immigration problems – would be referred, if appropriate, to the Domestic Violence Center of Howard County. This, unlike the websites, was a significant change that displaced existing systems, that clients experience and that affects the referral of clients to legal service organizations. The central intake system use was mandatory, unlike support websites which exist as a resource to attorneys who find them helpful. Legal aid providers found some central intake system designs threatening.

MLAN aims to create a sustainable process and infrastructure that can provide shared services after it exhausts its start up grants. MLAN had the backing of a state funding agency, the Maryland Legal Services Corporation, that was, “unlike some IOLTA funders, ... active in the design and development of the overall [legal services] delivery system.”

**MLAN had to allocate resources between public and private goods and between competing priorities within their projects, despite differing preferences among participants – as the economics would tell us to expect.** MLAN coordinated “5 discrete and very different projects - each with a different ... users and stakeholders.” It reports that, “Field demands to enhance or expand one area must be constantly and critically balanced with the need to work on other projects.” Two stakeholders had “serious reservations about the goals of the project. The former felt that the funds should be used to support strategic advocacy (perhaps supporting an annual conference or staffing working groups on cross-organizations issues) [i.e. a different kind of public good]. The latter felt that the funds should be directly distributed to [provide largely private goods at] the legal services providers....”

**MLAN used participatory decision making that aspired to reach consensus whenever possible and decentralized the coordination of contributions of content to their websites.** MLAN “distributed ownership” of website topics to organizations like the Housing Task Force and the Child in Need Task Force that provided the content while MLAN provided the central site infrastructure. The project leadership coordinated the

collection of content and publication of a few example websites “as models for what could be achieved in other areas.”

MLAN reports that its experience proved the concept that a project can get members of a group to contribute to provide shared services, while recognizing the need for a carefully designed social system of incentives to make the collaboration work. They write, “Projects with responsibility but not authority or funding to distribute can succeed through collaboration but it takes more time.” “If project outcomes may rely upon the contributions or compliance of outside staff, an analysis of the existing structure needs to be made first. In the absence of designated responsibilities, collaborative projects rely upon the goodwill, interest, enthusiasm and skill of volunteers. Some formal incentive structure is essential, even if work is done with the blessing of the organization. Whether that comes from the funder ... or whether it comes as part of the supervisory oversight within each organization, there needs to be a viable plan for supporting the collaboration. Incentives of all types should be considered.”

Only a tiny minority of stakeholders – notably the state IOLTA funder (Maryland LSC); the statewide (federal) LSC grantee – the Maryland Legal Aid Bureau; and the courts -- cared about the success of the MLAN project infrastructure as a whole as opposed to the subset of the projects most relevant to their areas. The MLAN lessons learned document echoes Gerry McIntyre and Dave Kirkpatrick in observing that many providers are very much focused on their own internal priorities. “The overall strategic goal of fostering collaboration, system efficiencies through the development of shared portals tends to be viewed by many providers as ‘nice’ but less than central to their daily work.” The lessons learned document is very clear that the overall system’s effectiveness suffers from a public goods problem, but does have a dominant player: “While all legal services have providers in the state have a stake in the effectiveness of the overall system, most providers are primarily committed to the particular constituency or service area and therefore, have significantly less focused concern about cross-organizational initiatives (like the shared websites) or the enhancement of the overall delivery system in Maryland. In this area, the Legal Aid Bureau is a notable exception. Indeed, ... this shared interest [in] ... the ... health of the overall delivery system ... contributed to the initial tension between MLSC and Legal Aid” over the central intake system design.