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Legal Aid Developments in the Caribbean

WINSTON McCALLA *

I. HISTORICAL AND IDEOLOGICAL BACKGROUND

The prospects for the growth and expansion of legal aid in the Caribbean appear to be very good.¹ In most countries, the appropriate government officials, as well as the legal profession, seem to be committed to legal aid, a trend which emerged from the socio-economic changes taking place in the Caribbean.²

The 1930's in the Caribbean saw the first challenge to the established ethos—an essentially post-slavery society still ruled by elites with no concern for the poor.³ The main thrust from 1930-1960 was in the field of politics and, to a lesser extent, in shifting the economic power from the elites to the middle class and organized trade unions. By the end of the 1970's, the pressure from the poor had increased in strength, and in places like Jamaica, the survivors of slavery made the first attempt to assert political and economic control over their societies. This process has extended to the whole Caribbean, thus bringing about fundamental socio-economic changes.

The 1970's also saw a fundamental shift in the type of attorneys entering the legal profession. In the early 1930's, most lawyers were from the merchant or planter class with no deep roots in the community. By the 1960's, the middle class provided the majority of lawyers, although the lawyers from the planter/merchant class still exercised control over the legal profession. Thus, in Jamaica, it was not until 1970 that representatives from the middle class and the so-called "lower class" gained control over the legal profession. This trend has continued in most areas of the Caribbean with interesting repercussions.

This new breed of attorney is, at least outwardly, more committed to representing and helping the poor. Further, this type of

* Professor of Law, University of Saskatchewan; Former Director of Law Reform in Jamaica; Director of the Kingston Legal Aid Clinic in Jamaica.

1. See generally *Panel on the Role of Law in Social Change in Latin America and the Caribbean* (unpublished discussion on file at the American Society of International Law).

2. See Valdez, *Developing the Role of Law in Social Change: Past Endeavors and Future Opportunities in Latin America and the Caribbean*, 7 *LAW. AM.* 1 (1975).

3. D. LOWENTHAL, *WEST INDIAN SOCIETIES*, 101-03 (1972).

lawyer is much more susceptible to pressures from such groups as small farmers, tenants, and trade unions. As a result, the climate for legal representation of the poor is strong.⁴

Some attempt has been made at bridging the gap, or at least of providing access to the legal system for individual indigents in essentially small societies with a relatively large number of lawyers in private practice. Guyana, for example, has approximately one lawyer for every 2,500 citizens. This situation has resulted in the creation of several autonomous legal aid clinics in recent years. Three of these clinics are in Jamaica (including a law school-sponsored facility at the University of the West Indies) and receive funds from the government; one is in Guyana and receives no government funds. In addition, the government of Trinidad and Tobago has recently established a "judicare" type of legal aid scheme, and the government of Barbados will soon introduce a similar project. These clinics, however, are of the "neighborhood law center" type introduced into the North American ghetto communities in the wake of civil riots during the late 1960's. As in the centers after which they are modeled, these clinics risk appearing either hopelessly naive or radically conspiratorial and thus invite a repetition of the fall from grace that their North American compatriot clinics suffered from the "law and development" speculators of the 1960's who were convinced that they were engaged in non-political activities.

In the more global sense, of course, "political" is soon translated into "ideological," and the academic world—if not that of the planners, then at least not of those who are employed by their government—is divided into its various camps. The two most prominent academic camps in Latin America and the Caribbean are those occupied by the reformers, who may be conservatives, or moderates, and the revolutionaries, or radicals. This is the legacy of the 1960's, the "development" decade in Latin America, in which two major ideological forces emerged: developmentalism (as propounded by the United States) and socialism or Marxism (as exemplified by Cuba).

David Trubek and Marc Galanter have written a touching and serious epitaph for the brief South American career of developmen-

4. See generally Dias, *Research on Legal Services and Poverty: Its Relevance to the Design of Legal Service Programs in Developing Countries*, 1 WASH. U. L.Q. 148 (1975); [1978] A.I.D. FINAL REP., *The Present Status of Legal Services to the Poor in Latin America and the Caribbean* at 19.

talism as a legal concept.⁵ In an account that is not without its own internal ironies, they argue that it was the product of good intentions misconstrued and misapplied, denuded of substance by the failure to appreciate the limitations of "legal liberalism," even in the United States, and by the failure to consult the supposed beneficiaries—the salaried attorneys, a staff of paralegals, and occasional social workers—and also rely upon members of the profession accepting cases without a fee.

II. INTERNATIONAL LEGAL SERVICES ASSOCIATION (ILSA)

The International Legal Services Association (ILSA) has recently provided "seed money" for the support of the government-sponsored program in Barbados and two additional clinics in Dominica and Grenada. Both of the latter countries' new governments look favorably upon legal aid as a necessary part of their efforts to make the inherited colonial justice system more responsive and available to the ordinary citizen. At the same time, these governments have declared their intention of introducing both constitutional change and legislative reform with the express intention of "democratizing" government and creating more equitable procedures for resource and income distribution.⁶ Legal aid of the traditional type may, therefore, have an increasingly meaningful role to play in these countries. Such a role would involve not only the Bar, but also other professional groups, as well as those members of the community who are to be served. It could also provide an institutional basis for the expansion of social and educational services in general.

5. See Trubek and Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis of Law and Development Studies in the United States*, 4 WIS. L. REV. 1062 (1974).

6. Similar initiatives may soon be forthcoming in Ecuador, Nicaragua, and perhaps also in Bolivia.

In his typology of legal services programs in Latin America, David Trubek divides them into Type A, as above, and Type B, which more closely approximates the "public interest" law center familiar to lawyers and the public in the United States. Noting that most Latin American legal services programs fall into the former category, he argues that the delivery mechanisms they offer are neither suited nor geared to the more essential tasks of providing modes of distributional advocacy and securing means of income redistribution. Perhaps not, but then neither is the system that contains them. He also adds, correctly, that no such "public interest" program will "have any effect on income distribution unless (it is) part of an overall process of political action designed to benefit the disadvantaged groups in Latin American society." See Trubek, *Unequal Protection Thoughts on Legal Services, Social Welfare, and Income Distribution in Latin America*, 13 TEX. INT'L L.J. 262 (1978).

In both countries, however, prior to their changes of government, the introduction of legal services by lawyers in private practice, identified as members of the political opposition and committed to social change, was regarded with suspicion and menaced on occasion by threats of official violence. In the non-socialist Third World, this appears to be a typical response.⁷ Such programs are inevitably seen as fronts for political activity—including various forms of community organization—that oppose governmental and, therefore, national interests. Even quite modest programs of the traditional type are often viewed as subversive when established by non-government (hence, “anti-government”) lawyers.⁸

Thus, in ILSA countries, the provision of legal services by non-government entities poses not only a conceptual problem but a political problem as well. Ultimately, the survival and success of legal aid in the Caribbean will depend on how far governmental and non-governmental legal aid is supported by the Caribbean governments.

III. THE FIRST CLINICS: JAMAICA AND GUYANA

Jamaica

Legal aid clinics in the Caribbean first developed in Jamaica⁹ and Guyana resulting from a firm commitment by members of the Bar to provide legal representation to the poor. Initially, the Jamaican government provided no monetary assistance to the clinics, but later changed this policy when both the Kingston Legal Aid Clinic and the Montego Bay Legal Aid Clinic experienced financial difficulties. The Jamaican government then stepped in and provided direct financial assistance to the clinics. Assistance was also given by sending government-employed lawyers to work in the legal aid clinics. Despite this direct financial assistance, there was no apparent attempt by the Government of Jamaica to dismantle the independent apparatus set up for

7. In countries seeking to adhere to socialist principles of development, however, there is often the attempt to make more fundamental changes in the legal structure, including, for example, the introduction of workers' court systems and rural networks of popular tribunals. For a description of the Cuban model, see Berman, *The Cuban Popular Tribunals*, 69 COLUM. L. REV. 1317 (1969).

8. A good example would be Indonesia, but there have been others.

9. See McCalla, *Legal Aid in Jamaica* (Panel on the Role of Law in Social Change in Latin America and the Caribbean, unpublished paper on file at the American Society of International Law).

the clinics by attaching "strings" to the aid. However, in 1977, when the Government was anxious for legal action to be taken with regard to new landlord and tenant legislation which was aimed against landlords, there was some suggestion that the financial assistance would be granted only if the clinics involved themselves more in representing tenants in landlord and tenant disputes.

Despite these complications, however, there has been a healthy growth of "independent" legal aid clinics which primarily focus their attention on non-criminal cases, while the Government legal aid scheme under the Poor Prisoners Defence Act has been directed toward representation in the criminal field.

Proposals were drafted by the Jamaican Law Reform Division of the Ministry of Justice in 1976 for a national legal aid plan. The objective of this plan was to fuse the administration of civil and criminal legal aid as well as to widen the scope of available legal aid representation. This plan was reviewed and supported by the Bar and Government, but has not yet been implemented due to financial difficulties faced by the Government.

There has also been a modest growth in the field of public interest law in Jamaica, e.g., representation of large groups of sugar cane workers and representation of consumer groups in public utility hearings. It is expected that this area will expand over the succeeding years, especially in light of the growing environmental issues arising out of the mining of bauxite.

Overall, the prospects for the continuance and expansion of legal aid in Jamaica appear to be very strong. This evaluation rests on the existence of the following factors: a stable legal system; recognition by Bar and Bench of the need for legal aid; the growth of legal aid institutions on the island; and the strong commitment of many young members of the Bar to legal aid. There are, however, certain areas where expansion is necessary. These include: poverty law publications, e.g., landlord and tenant law; development of paralegals; and the growth of rural legal aid in such areas as Portland, Manchester, Clarendon, and Hanover.

Finally, there are two matters which appear to be critical at this juncture: (1) an evaluation as to the role, scope, and effect of legal aid in Jamaica; and (2) the implementation of a national legal aid plan with Government financing. The objective of legal aid in Jamaica should be to make legal services available in the same manner in which medical services are available.

Guyana

In Guyana,¹⁰ the legal aid clinic has developed very well under strong leadership. The Guyana clinic does very little criminal work, and attention is focused primarily on civil legal aid. In Guyana, the Government is not significantly involved with legal aid.¹¹ While legal aid in Guyana does not rest on the same strong foundation as legal aid in Jamaica, the prospects for legal aid, at least in its present restricted form, nevertheless appear to be very good.

There are, however, four areas in which legal aid should progress in Guyana: (a) further government involvement (this is a difficult area but could be achieved with the correct presentation to the Government); (b) expansion of criminal legal aid; (c) rural legal aid clinics; and (d) development of public interest law, e.g., small farmers, sugar cane workers, etc.

IV. COUNTRIES HAVING DEVELOPMENT POTENTIAL

The discussion turns now from the areas in which legal aid has already developed in the Caribbean to those countries in which ILSA anticipates future development.

The focal point of any legal aid development in the Eastern Caribbean will be Barbados, a country with strong legal institutions and a commitment to legal aid.¹² This interest in legal aid is the result of the combined effort of the Bar, the Bench, and the Government. The Bench, however, has shown a concern for legal aid which is unprecedented elsewhere in the Caribbean. The legal aid project in Barbados has also been fully supported by the Attorney General. If legal

10. See Dodd & Parris, *Final Evaluation Report on The Guyana Legal Aid Centre* 35-37 (1978); R. G. Thwaiks, *Some Notes on Legal Aid in the Commonwealth Caribbean* (unpublished).

11. The Guyana Legal Aid Clinic receives no funds from Government. This appears to be a deliberate attempt to insulate itself from Government intervention in the administration of legal aid. In September 1979, the Guyana Legal Aid Clinic was in severe financial difficulties as a result of the inability to secure outside funding. It subsequently (December 1979) received funding from the Caribbean Human Rights and Legal Aid Company.

12. Barbados received a grant from ILSA in 1979 to commence the delivery of legal services on the Island. This funding was done on the basis that the Government of Barbados would also contribute toward the establishment of legal aid on the Island. As of December 1979, the Government was in the process of passing a Legal Aid Act designed to set up a Legal Aid Commission to regulate legal services on the Island. The Act is based on the Saskatchewan Legal Services Act and envisages that actual control of legal aid would repose in the private bar.

aid is established in Barbados, there is a good chance of similar operations being established in such places as St. Lucia, St. Kitts, and St. Vincent.

There are two other areas where legal aid clinics are about to be established, i.e., *Dominica*¹³ and *Grenada*. *Grenada's* legal aid scheme envisages the expansion of legal aid into rural areas, and it is likely that the same will occur in *Dominica*. *Antigua* and *St. Lucia* have also expressed a growing interest in legal aid, but more work will have to be done to develop legal aid proposals in these two areas.

It should be noted that there is a well-established system in *Puerto Rico* for the delivery of legal aid services. This program is funded from U.S. sources, primarily the Legal Services Corporation.

In *September 1979*, a legal aid clinic was also established in *Haiti*. The funding for this clinic, which is being administered by the *Haitian private bar*, includes U.S. sources.

As far as the *Dominican Republic* is concerned, *ILSA* has recently funded a study concerning the methods by which legal services are to be expanded. There are also some existing legal aid centers operating under the umbrella of the Universities.

In *Surinam*, there is a legal aid clinic now operating under the Faculty of Law of the University of *Surinam*. This clinic is primarily aimed at providing clinical legal education for law students.

V. PROSPECTS FOR THE FUTURE

In the long run, legal aid clinics stand a very good chance of success in the Caribbean area. This is because of universal government support, the keen interest of the Bar, and Caribbean organizations, such as the Organization of Caribbean Bar Associations (OCBA) and the Caribbean Human Rights and Legal Aid Company (Churlac).¹⁴ Much needs to be done for the future, however, and several areas of special need can be identified as follows: (1) the development of rural legal aid clinics, especially in *Guyana*, *Surinam*, and *Belize*; (2) paralegal training; (3) the evaluation of legal aid schemes; (4) research into the need for legal aid and the effect of the provision of

13. The *Dominica Legal Aid* scheme has been funded by *ILSA*, but plans to take this project off the ground were aborted by the 1979 hurricane in *Dominica* which destroyed most services on the Island.

14. The Caribbean Human Rights and Legal Aid Company has its Secretariat in *Surinam*.

legal aid in the Caribbean countries; (5) the expansion of communication and the exchange of information between the Caribbean and Latin America; (6) the involvement of legal aid lawyers in law reform; and (7) an evaluation of the type of legal aid system best designed to meet the needs of the Caribbean.

Some of the problems in relation to the existing legal aid systems include the fact that the caseload and financial pressures often deter the existing legal aid clinics from publicizing themselves or conducting community education. Accordingly, the poor do not know what rights they have, that lawyers can help them, or even that free legal services might be available. Moreover, many legal aid clinics, in an effort to keep the caseload down, frequently do not take certain types of cases, or take them only under emergency circumstances.

In addition, there are regional disparities in the provision of legal services, thus resulting in an unequal application of the law among different geographic regions and, accordingly, an unequal access to and protection of the laws for the poor in different parts of the Caribbean. For example, the absence of legal aid clinics in many parts of rural Jamaica means that people in Kingston have greater access to law than do Jamaicans in the countryside. Further, conventional legal aid frequently leads to a mass processing of cases and mass production techniques, resulting in routinized and perfunctory service. The situation is further aggravated by low salaries, high turnover of personnel, and inadequate direction. Consequently, there is little time or incentive for the development of poverty law lawyers.

The conventional legal aid system, predicated on the traditional solicitor-client relationship, has ignored the process of "law reform for the poor" and no attempt is made to remake or alter the law, or to combat institutionalized sources of injustice. Certain structural characteristics of the legal profession and the traditional orientation of lawyers to clients and their problems prevent and preempt the legal profession from extending and enlarging its services to the poor. For example, the reluctance of lawyers to serve the poor stems from the legal system's commitment to the concept of party initiative, a notion which requires the lawyer to wait upon the presentation of a case or claim before taking action. The concept's basic assumption is that parties are competent to initiate claims, a situation not ordinarily true of the poor.

Also, lawyers are trained to view persons and events according to certain standards of legal relevance. In order to perform his job well,

the lawyer must be able to translate facts, issues, and problems into legal facts, legal issues, and legal problems. The poor ordinarily do not speak the same language as lawyers, and their problems are the least likely to fit into convenient legal categories. Accordingly, problems with landlords, local merchants, and public officials often do not appear to the lawyer as constituting a clear cause of action for the poor client. The legal aid societies, then, might rule a potential client ineligible because the problem he or she has or the issue raised did not appear to be a "legal one."

Conventional legal aid systems tend to restrict their attention to the case at hand and to the particular parties to the controversy or action. However, the legal problems of the poor characteristically arise from systematic abuses imbedded in the institutionalized operation of various public and private organizations affecting large numbers of similarly situated individuals. It is necessary, therefore, to supplement or replace individual representation with other forms of advocacy that would serve to aggregate the demands of the poor. Such a turn of events would allow for a more planned presentation of claims and give the poor a more meaningful view of the legal process and greater leverage in the promotion and protection of their interests.

Conventional legal aid systems do not sufficiently appreciate four generic characteristics of the poor and poverty:

- (1) the "narrow world" of the poor outside of which the poor feel disparaged, uncertain, and distrustful;
- (2) powerlessness in the sense of the absence of resources, knowledge, control, and vulnerability to exploitation;
- (3) lack of organizational participation and a failure to have developed and participated in issue-oriented organizations; and
- (4) the complete inexperience of the poor with the legal system itself. Usually, the indigent's experience with the law has predisposed him to a negative, if not openly antagonistic, attitude toward the legal system and to a conception of the law as a vehicle of deprivation and abuse to be feared, rather than as a viable and effective resource for vindicating rights.

The need for a rural legal services system having regard to the particular deficiencies and discrepancies of conventional legal aid schemes requires a new concept predicated on physical decentralization and demographic equilibrium. This is more than just a question of physical

access. The psychological identification—the fact of the lawyer being perceived as the “advocate for the poor”—is a countervailing response to many of the deficiencies of the conventional legal aid systems. Such a system would assert legal rights which, although recognized in law, remain unimplemented in fact. That is, claims and defenses available to the poor often remain unasserted because of the lack of available counsel, if not the simple absence of awareness that one could assert such rights. This system would facilitate the development of legal rights in areas where the law is now vague or biased and would perform “law reform advocacy” on behalf of the poor. This aspect of representation is presently ignored in “specific case or controversy” services by the conventional legal aid schemes.

The kind of representation offered by this type of legal aid clinic could be of vital significance to the poor by helping to provide them with an organizational base for more effective participation in, and use of, the legal order. The power to create legal relationships is in itself a form of political power. This system may also work to develop poverty law as a “legal specialty” involving both a service and representative function, as well as a “law reform function.” It would not predicate itself on the concept of party initiative and would not focus only on the particular case or controversy, but rather would relate and understand the “world of the poor” and enable the poor to understand that they possess rights which must be actively asserted by them on their own behalf. The poor then would obtain “legal competence.” The legally competent person has a sense of himself as a possessor of rights, and he sees the legal system as a source of validation of these rights.

VI. CONCLUSION

The goals of a rural legal services program may thus be defined as follows:

- (1) to establish rural legal offices that would make legal services more accessible to the poor;
- (2) to set up a system to provide lawyers to every poor person with a legal problem meriting the attention of a lawyer;
- (3) to develop a true attorney-client relationship whereby indigents would be helped by attorneys to whom they could return for subsequent legal problems;

- (4) to develop specialists in housing law, real estate, wills and estates, criminal law, and other substantive areas commonly affecting the poor;
- (5) to develop non-technical, educational programs designed to teach the poor about their legal rights;
- (6) to represent groups and organizations of poor people who have common economic and social problems; and
- (7) to reform the law in order to make the legal system responsive to the poor and to make the law serve, rather than oppress, the poor.

In an attempt to widen the scope of rural legal aid services in Latin America and the Caribbean, ILSA has begun the process of examining the possibilities for funding rural legal aid clinics in Colombia, Jamaica, Belize, and Guyana. ILSA also proposes to hold a workshop in Costa Rica in May 1980 dealing with the delivery of legal aid in rural areas in Latin America and the Caribbean.