Altruism and Professionalism: Boston and the Rise of Organized Legal Aid, 1900-1925

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The Boston Legal Aid Society was founded in 1900. In the years after 1910, led by General Counsel Reginald Heber Smith, the Society assumed leadership of the fledging movement to offer legal services to the urban poor. Under its influence the first organized attack on the legal problems of the impoverished was launched. The effort had its origins in the social and professional crises that beset turn of the century American cities and lawyers. As described in the first installment of this article, the major difficulty facing the movement during this generative era was how to balance the conflicting demands of legal aid's two major constituencies, the bar and the poor. Three facets of the Society's work reveal how it resolved this problem: its relationship with the local bar, its creation of a distinctive type of legal representation, and its campaign for legal reforms.

Uncertain Support

The relationship between legal aid and the organized bar was a crucial element in the movement's formative period. Under Smith's leadership legal aid lawyers sought a place for themselves in the newly emerging professional structure. Proponents of legal assistance for the poor shared the bar's determination to repair its social standing without forfeiting its pivotal social role. Legal aid was both a direct product and a significant contribution to this attempt to reconstruct the bar into a body of modern, competent but independent public servants, trusted by the society to adapt the law to its new surroundings. As a self-proclaimed "Lawyer's Legal Aid Society," the Boston organization readily accommodated itself to the needs of the organized bar.

Securing professional acceptance for legal aid was not a simple proposition. The reaction to Smith's opponents did not devalue legal aid per se, but rather refused to acknowledge his claim that it was necessary because of defects in the legal system. Instead, they saw it mainly as a social palliative. The reaction of New York corporate lawyer William Guthrie, who was a member of the New York Legal Aid Society, was typical. He fumed that "Taken in all, the pamphlet will, I apprehend, do more harm than good in tending to create an entirely erroneous impression as to the administration of justice in this country, in so far as it relates to the poor." Even the New York Times denounced Smith.

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The stridency of this reaction compelled Smith and the Carnegie Foundation to respond. Smith repeatedly defended his study as a determined effort to strengthen popular respect for the law. Reed, who later antagonized the bar with his study of the legal profession, also came to Smith’s defense. He dismissed those like Guthrie who saw any public acknowledgement of failings in the legal structure as a betrayal of upper class solidarity, and argued that more moderate critics of Justice and the Poor did themselves a disservice by failing to heed Smith’s reform call. “They and their organizations,” he contended, “are on trial before the public. If they do not get in line with public opinion, particularly of the younger generation, who will soon assume control, I have no fear of actual ‘Bolshevism,’ but radical legislation may be pushed too far, if the conservative element allows itself to become discredited. In any case, they and their organizations will have lost their opportunity to participate, in an influential way in changes favored by public opinion.” Legal aid overcame this opposition because it demonstrated that assisting the poor also aided the profession.

Legal aid societies like Boston’s exhibited their usefulness to the bar, first of all, by relieving its ethical responsibility to serve the poor. As the Boston Bar Association explained to its members, “the simplest and most economical arrangement is for us to support the Legal Aid Society which is organized for this purpose and which, through experience has become efficient in caring for the problems presented by the poor.” Through legal aid the bar promoted the “general welfare of the community by giving legal services to people too poor to pay for them and at the same time relieved the office of the average attorney from an influx of unprofitable business, which must either be neglected or consume the valuable time of busy men.” And, as Martin Mayer suggests, “psychologically the legal aid bureaus relieved lawyers of their guilt at failing to live up to their codes.”

The rise of organized legal aid in cities like Boston thus allowed the legal profession to deflect persistent criticism of its failure to meet its social responsibilities. Thanks to legal aid, the bar could insist that its self-imposed duties to the poor were being met and at the same time reinforce the public image of the lawyer as a minister of justice and the law as “a profession not a business.” These claims were enhanced by the constant assertion of legal aid advocates like Smith that their service was necessary because of social change, not professional indifference. Legal aid fulfilled this ethical duty by informally bureaucratizing it. No longer was serving the poor a responsibility of every attorney. Instead a separate agency, the legal aid society, assumed the burden.

Legal aid also assisted in the organized bar’s professionalizing efforts by policing urban practitioners. Bar associations dismissed contentions that the bar was socially distrusted because of its growing commercial ties. The real culprits, they claimed, were to be found mainly in the profession’s lower reaches, preying on the unprotected poor and immigrant classes. These were the unethical shysters, ambulance chasers, and other “wolves in sheep’s clothing who are capable of the basest sort of treachery to their clients.” Those practitioners were accused of a double offense: afflicting the poor and undermining the profession. Legal aid societies could directly attack this problem because they dealt with “a class of attorneys who are unknown to the leaders of the bar, and they negotiate with them, try cases against them, and come into contact with them in daily practice, so they are in a position to detect improper and unlawful conduct.” Through its offer of inexpensive legal services, legal aid not only ferreted these out but offered itself as substitute.

The Boston Society’s early commitment to this task surfaced in its acceptance of personal injury cases and claims against lawyers. Several legal aid organizations refused personal injury cases, contending that representation was available to all litigants through the contingent fee system, in which a lawyer either divided awards with his client or received nothing if the case was lost. But Boston’s legal aid lawyers argued...
that it was "well known that the poor plaintiffs by falling into the hands of unscrupulous practitioners often obtain but a small share of their verdict; the lawyer, doctor, and 'runner' dividing most between themselves." Most of the lawyers accepting contingent fees, they asserted, were the very practitioners fouling the bar's image. Legal aid should challenge, not cooperate with them. Claims against lawyers were accepted on the same grounds. While the Society scrupulously avoided competing with most fellow practitioners, it eagerly vied with those labeled by the professional associations as disreputable.

By uniting professionalization with representation, legal aid lawyers visualized themselves as the poor's guardians and the bar's "watchdog." Societies like Boston's saw themselves as in "an impartial position" with "no private interests at stake . . . Just as they have served to extend the administration of justice into the great field at the bottom of society, so they have extended the watchfulness and discipline of the bar association." This was legal aid's contribution to the goal of an integrated, unitary profession, whose members had similar training, ethics, and practices. Legal aid thus allowed for client differentiation without sacrificing these objectives. The Boston Society formalized this role by becoming the official investigative arm of the Boston Bar Association. In that way it threw its cloak of impartiality and neutrality over the profession's attempts to dispel unwanted practitioners.

Perhaps the most significant services of legal aid to the organized bar was the firm resolve of its leaders to protect the profession's independence. After reading Justice and the Poor, Henry Taft, a prominent New York lawyer and brother of the former President, protested that legal aid was either "a philanthropic undertaking by patriotic citizens at private expense for the benefit of the poor litigant and thus is in the nature of a charity; or it is a proper subject to be part of the machinery of the administration of justice." Smith and his colleagues disagreed. Legal aid was neither charity nor government aid, but rather a voluntary service of independent professionals.

There were three types of legal aid organizations during the movement's founding era: independent voluntary societies, divisions of charities, and municipal agencies. Private associations like Boston's led the movement. They were the most prevalent type of organization, and their members held positions of authority in the movement. While never calling for the elimination of the other forms, lawyers from the private societies opposed their diffusion.

They argued that viewing legal aid solely as a philanthropy undermined the basic right of the poor to counsel and threatened to equate justice with charity. Their most strident opposition, though, was directed at the public agencies. Despite the almost complete agreement within the movement that legal aid would eventually become a public responsibility, the private societies resisted immediate municipal assumption of their duties. They claimed that public control would subvert the proper functioning of legal aid because of the danger of inefficiency and bureaucratization, the pericious influence of corrupt urban politics, and the loss of professional independence. Public control was put off to maintain the legal aid lawyers' politically independent position as neutral legal experts. The private societies cited this political independence as one of their main attributes. Behind this opposition was the fear that legal aid could be used as the opening wedge for state control of the profession.

Legal aid lawyers' opposition to public control also reflected a fear of urban politics shared with other "good government" reformers of the period. Like the backers of civil service, city managers, and city commissions, they wanted to take politics out of urban affairs and replace it with rational efficient, businesslike practices. But unlike the other reformers they refused to sanction efforts to include legal aid as one of the components of restructured urban governance. Instead they would entrust the public with legal aid only when its officials met their criteria. The stunted development of municipal legal aid...
through most of the twentieth century testifies to the effectiveness of the movement’s determination to keep legal services a professional—not a public—responsibility.

Despite these contributions, legal aid had an uncertain status in the legal hierarchy. It sparked the active interest only of a small portion of the profession. While the bench and bar applauded the efforts of legal aid societies, few contributed more than their voices. In Boston, even with the Society’s illustrious origins and composition, members of the bar contributed only 31% of its financial support. Laymen actually kept legal aid alive.26

The commitment of legal aid lawyers themselves was strained by the conditions of legal aid work. It was less intellectually demanding, less professionally rewarding, and much less remunerative than private practice. A chief attorney in the New York Society described its tasks as “deadening, routine work, which would kill any sensible, ambitious man in two months.”27 Roscoe Pound echoed this complaint in his evaluation of student legal aid. In a letter to Dean Harlan Stone of Columbia Law School he concluded, “I have observed this legal aid business here pretty carefully, and am still firmly of the opinion that giving advice to and prosecuting petty cases for the type of person who applies to a legal aid society is no legitimate part of the training of the sort of men to whom we appeal and whom we seek to turn out.”28 In spite of this, legal aid enmeshed itself in the profession because it was a hopeful creation for those who believed that the legal difficulties of the poor and the deficiencies of the bar were manifestations of the same problem.29

Legal aid became the poverty arm of the organized bar. It looked to bar associations for funds, leadership, and professional support. Smith and his colleagues had considered legal aid an “orphan” without any “suitable guardian” until 1921, when the A.B.A. formed a legal aid committee to oversee the movement.30 It was then officially merged into the general drive of the legal profession to uplift the administration and practices of the law. Its own mission was readily subsumed into those professional goals. The legal problems of the poor were determined to be solely a craft responsibility, which was readily delegated to the Boston Society and others like it around the nation. This desire to gain and maintain professional recognition set limits on the ability of legal aid to serve its impoverished clientele. It was a critical factor in determining the form of services that the Society dispensed.

**Special Services**

While trying to assure itself a place within the legal system, legal aid also had to devise a method of rendering legal services to the poor. The Boston Society’s operations were representative of the private organizations that led the movement. The Society’s model of legal services was the new corporate law firm, which in turn was patterned after the efficient, rational business corporation. This choice reflected Smith’s conviction that “the organization of the best private offices represents the best experience of the bar as to the method best suited to the conduct of a law office. So legal aid should be conducted in the same manner.”31 The only difference was to be the presence of many more clients and the fact that no bills were sent out. All else was to resemble a normal law firm: ethical responsibilities, legal tactics, regard for the client’s interest, and the like. By coming to the “Poor Man’s Lawyer,” as the Society began calling itself, the applicant was to receive the same services as his wealthier neighbors obtained at their own law firms.32

But this model was never fully implemented. In Boston and every other city the press of poor applicants and the professional and ideological commitments of the legal aid movement combined to divert legal aid away from its preferred approach. Though the ideal remained, the move-
ment was compelled to formulate a much broader conception of legal services. This in turn led to recurrent tensions within the movement over the boundaries of its duties. The approach developed in Boston illustrates both the extent and the limits of the complex relationship established between legal aid and its impoverished clientele.

The most obvious features that distinguished the Society from other law offices were precarious finances and tremendous workloads. As a private, voluntary association the Society was almost totally dependent on contributions. Its impoverished clientele, by definition, could ill afford to finance its operations. Yet the size of its staff, the location of its office, and its other resources were determined by this uncertain monetary base. As a result, legal aid had to advertise, plead, and cajole alongside other agencies clamoring for the pocketbooks of philanthropic Bostonians. This dependency obviously limited the Society's effectiveness. And inevitably, there was a reluctance to press claims against prominent Boston businesses who were or might be induced to financially support legal aid as well as a tendency to limit publicity about the Society in order to diminish the workload.¹⁴

Allied with such difficulties was the deadening workload itself. During its first twenty-five years the Society’s caseload rose annually. In this time span it handled approximately 70,000 cases with a legal staff that varied from four to seven lawyers per year. With so many clients trooping through its doors there was little time for the intimate client contact available in the offices of their professional colleagues. Quick solutions and rapid turnover became the Society’s hallmark.

The legal complaints presented to the Society fell into four distinct categories. They show that the poor found themselves enmeshed in the legal system in the two most critical areas of their lives, home and work. Economic problems such as wage claims, small loans, personal injuries, and other money matters led the list. The next major source of difficulty was the family. Problems between husband and wife headed the list, followed by illegitimacy, juvenile matters, and adoption. Landlord-tenant problems, recovery of personal property, and descendants’ estates made up the bulk of property-related cases. Finally, aid was sought in a wide variety of issues stretching from advice to the drawing of legal instruments. This order of priority remained constant through the Society’s first twenty-five years, and paralleled the casework of other organizations.¹⁵ Though these matters were of extreme urgency to their clients, they fell into numbingly routine categories of legal practice.

To meet the problems within the limits imposed by its resources, the Society created a new method of legal representation. First, it decided whom it would represent. Legal aid in Boston offered its services to a particular portion of the city’s poor. They were not, its publications continually pointed out, the dregs of Boston’s wards. Its clients were not “deadbeats, derelicts, fools, and ne’er-do-wells,” but rather impoverished men and women, who through chicanery, malice, or their own ignorance and misfortune had fallen victim to one of the ills of urban life. They were, as Smith phrased it, “self-respecting, self-supporting persons. As nearly as one group can they represent the common people.”¹⁶ The Society was able to select this segment of the poor because it created an elaborate screening process designed to detect the “meritorious poor.”¹⁷

The Society’s screening process had three major elements: eligibility standards, case restrictions, and fees. While the decision to limit its clientele grew out of its staggering caseload, the moral and professional obligations of the legal aid lawyers determined how they would be imposed.

Clients first had to establish that they were eligible for legal assistance. The economic condition of each applicant was ascertained through a detailed examination designed to ensure that the individual could not obtain private counsel without sacrifice and hardship. The object was to accept only those truly in need and to avoid competition with the bar, the latter taking prece-
The final hurdle in the selection process was a fee system. Those too impoverished were exempted from payment. The rest were charged retaining fees of 50¢ to $1 and 10% commission on awards. Fees were supported for a number of reasons: as a sign of the client’s good faith, as a means of eliminating unworthy cases, as a rationale for examining applicants’ financial affairs, and as a supplemental source of income. Most importantly they put the Society’s lawyer-client relationship nearer to its ideal of the self-respecting, businesslike conduct of other law offices. The legal aid lawyers also shared the fears of other urban reformers that failure to charge fees would pauperize their clients by leading them to think that necessary services would always be provided without cost or sacrifice, thus lowering their incentive to raise their economic and social status.

The Society’s fee system, which was followed by most private legal aid organizations, provoked heated disagreement at the 1916 legal aid convention. This dispute exposed the rift within the movement between lawyers and social workers. Opponents of fees charged that they compelled legal aid to follow the conventional practices of private attorneys too closely and risked sacrificing the basic ideal of rendering legal assistance to the poor. Others more pointedly questioned whether fees perpetuated the belief that legal rights should be paid for and protected the bar’s privileged position within the legal system. Maud Boyes of the Chicago Protective Agency for Women and Children voiced this opposition by declaring, “We surely believe that justice should not be a purchasable commodity, but a right.” Smith responded to these complaints with a stout defense of the privately paid attorney in the Anglo-American legal system. He argued that legal aid should not be used to undermine the lawyer’s role. “I think,” he summarized, “that under our present system, the way we are brought-up, the way we act and feel and live and work, we will be compelled to pay as we go, and that too seems to me to be the helpful thing for us all.”

Unique Advocates

The Society not only devised ways to limit its clientele, but created a unique way of serving them. While proclaiming the erstwhile advocate as their model, the legal aid lawyers moved away from the professional role assumed by most private practitioners. Instead of viewing their counselor obligations as the duty to press all but the most blatantly illegal claims brought to them, they conceived of themselves as judges weighing
each aspect of a case from all sides before accepting it. Their aim, a movement leader declared, was “to have the right side of a controversy, to eschew the standpoint of the partisan and approach more nearly that of the impartial judge.”

The gulf between this notion of the lawyer’s role and the prevailing one vividly surfaced during the battle over Louis Brandeis’ nomination to the United States Supreme Court. Austen Fox, a leading corporate lawyer, explained his opposition by asserting, “The trouble with Mr. Brandeis is that he never loses his judicial attitude toward his clients. He always acts the part of a judge instead of being his client’s advocate, which is against the practices of the bar.” There were no objections when legal aid attorneys assumed this role.

The Society strayed from client advocacy because it perceived its lawyers not as mere counselors but also as teachers, who explained the functions and merits of the law to the poor. As one of its presidents stated, “It is our ambition not only to try and get justice for our people, but also to try and show our clients where they have been wrong or unreasonable.” If a case was accepted a legal aid lawyer strove to work out an equitable solution for all concerned parties and not drive the hardest bargain for his client. In suits the Society attempted to “bring about a real understanding between people who are in the midst of a controversy with one another and established a lasting peace which is worth as much as all the money involved.” Whether its clients took such a sanguine view of their funds is debatable, but they had little say in the matter. Under the Society the individualistic justice of the common law was minimized, the maintenance of public order was emphasized.

The effect of these preferences was evident in the disposition of cases brought by poor Bostonians to the Society. In one hundred cases drawn from a typical year, 10% were rejected outright because they violated one of the Society’s restrictions; 6% were referred to a private attorney or charity; 30% were terminated because the client had either withdrawn the case or lost interest in it or because he could not advance court costs; 29% were resolved solely through consultations; and 19% were completed without court action through settlements, the drawing of documents, or the like. In the remaining 7% the Society went to court, where it won the vast majority of its litigation. Thus the Society successfully concluded a little over half of the complaints brought to it. These characteristics matched those of other legal aid efforts.

The Society added one final duty to its newly created role of legal aid lawyer: that of the social scientist. It was committed to eliminating defects in the legal machinery by modernizing it to fit contemporary needs, and embarked on a broad reform campaign to achieve this goal. In a 1916 speech Smith singled out the three weapons of the effort: appeals, remedial legislation, and public education.

This reform drive was based on the notion that trained technicians could cure social problems by arriving at solutions whose appropriateness was guaranteed by the neutrality of scientific procedures. The task of legal aid lawyers was to empirically diagnose and then expertly attack the areas where poverty impinged on the legal process. Legal aid was likened to a “laboratory and its files to the test tubes in which our laws are tested.” By parlaying its expertise into an attack on the legal surroundings of poverty, the Society attempted to remove the structural defects that Smith had documented in Justice and the Poor. Its clients spoke only through their cases, which the legal aid attorneys filtered and analyzed.

Appeals were the Society’s first avenue of reform. These were opposed by some of the directors and shunned by several other organizations because of their cost and the inordinate time they took from the already heavy caseload. But such a position would have directly contradicted the Society’s claim of securing equal legal services for the poor. Moreover, through appeals the poor gained entry into the nation’s system of judicial lawmaking. They had been excluded for want of counsel, Smith and others contended, thus stunting proper representative development in the common law. Legal aid removed this omission by opening up the chambers of higher courts to the poor. The mere presence of cases on workmen’s compensation or seamen’s rights, they confidently predicted, would enable the common law to reflect the entire citizenry.

Smith’s comments on the appellate process epitomized the solid belief in the equity of the legal order on which the Society rested. “It is not,” he stated, “of chief interest whether the legal aid organizations win or lose their appeals; the prime consideration is that our common law system should have a fair chance to work itself out by having those issues fairly argued, not from one but from both points of view.”

JUNE, 1978
The Society's refusal to scrap appeals because of their financial cost also reveals the manner in which legal aid lawyers separated the facts of urban poverty from the legal issues they raised. They scrupulously avoided litigation about the daily problems in the lives of the poor that erupted into practical disputes. Their training and social cohesion deterred them from litigating such suits in the lower courts. But appeals were a different matter. They allowed legal aid lawyers a chance to argue about theoretical issues and broader legal affairs. At this level litigation not only established new common law doctrines, but it enhanced the lawyers' standing within the legal community.

Remedial legislation was the second phase of the Society's reform campaign. This was a direct attempt to utilize its expertise to adapt legal institutions to the needs of the urban poor. Legislative reform moved on two fronts. Gaining access to the courts for the poor was the first, a wide variety of particular remedial acts the second. During its first twenty-five years, the Society, independently or in conjunction with various philanthropic groups and legislators, secured passage of a number of state and city measures in both of these areas.

The Society moved against the three areas Smith had targeted for judicial reform in *Justice and the Poor*: delay, court costs, and antiquated tribunals. Its most conspicuous success was Massachusetts' adoption of the first statewide system of small claims courts. These were the keystones in the Society's plan to create a system of conciliatory dispute settling institutions for resolving the legal complaints of those unable to afford the established process. Its call for other changes such as the elimination of two trials of fact, unification of court organization, and lower court costs gained less immediate results. But Smith, as chairman of the A.B.A.'s legal aid committee, helped draft a model poor litigant's statute designed to promote national adoption of such procedural reforms. Proclaimed at its 1925 unveiling as a total solution to the problems of justice and poverty, the statute was a compendium of the reforms advocated in *Justice and the Poor* and pursued by the Society. It also paralleled attempts by others in the uniform statute movement to impose standardized solutions on national legal problems.

The Society was more successful on its second legislative front. It secured the enactment of a number of statutes designed to relieve specific problems. These included stringent rules to compel delinquent fathers to support their offspring, safeguards for employees under workmen's compensation proceedings, reinforcement of tenants' rights in eviction, and state regulation of small loans. Both areas illustrate the Society's conception of the deficiencies within the legal system it was empowered to eliminate as the city's self-appointed expert on poverty and the law.

The Society's final reform measure was an attempt to win the public over to its views of the poor. It sought to educate Bostonians as to how to manage poverty in a complex society without sacrificing the society's basic assumptions and institutions. In its public appeals for support and funds, the Society publicized the evils it fought, while extolling the system it defended. It pictured its members not as visionary reformers but as dedicated experts solving critical social problems and as frontline troops in the battle to preserve the American way of life. In Boston and other cities, legal aid organizations raised the specter of rampant bolshevism, class warfare, and anarchy if the legal demands of the poor were not placated. Smith underscored the severity of the threat by addressing the general fear of social disorder. He warned, "When a man has been wronged, the only redress allowed him in a civilized society is court action. If for any reason he is denied his day in court - whether it results from delays or court costs or inability to engage counsel - society has made an implacable foe."
A Model Client

A fictional fundraising pamphlet published by the Society in 1923, “Luigi and the Law’s Delay,” presented the city the legal aid lawyer’s notion of the ideal client, case, and resolution. Luigi, an Italian immigrant, was being tormented by a furniture dealer, “none too scrupulous in observing the law,” who demanded payment for a set of furniture within an hour under the threat of repossession. Ignorant of “American habits and customs, let alone American law,” unable to speak English, but convinced that an injustice was being perpetrated, Luigi was “certainly an incipient anarchist.” Taking the hour demand literally, he hurried to the Bureau of Immigra-

tion, while his wife prayed. From there he was sent to a downtown lawyer, who received him with an “irritating calm and lack of interest,” asked some questions, and then sent him to the Society. After a short wait, a staff attorney listened to him sympathetically and told him to wait while he investigated the matter. Watching the clock Luigi realized that his time was up and leaped up in distress: “with the emotional swiftness of his race (apathy) was succeeded by rebellion — open, flaming rebellion. Back in Florence they met the law’s delay in a fashion distinctly their own.” Pacified by the receptionist, he was unaware that the attorney had confronted the dealer, found that a valid contract had not been made, and discovered that many of Luigi’s payments had not been credited. Rectifying the situation, he hastened back to the office, where that emotional facility of Luigi’s quickly swept from the red pit of anarchy to the cooler level of restored confidence. He listened in amazement . . . as the simple solution was unfolded to him . . . The fee? Fifty cents. For Luigi, the literal, as in the nature of things, was reserved for that expansive happiness which the insignificant often provides for their kind; for the staff attorney, philosophic contemplation and the next case."

The story highlighted in dramatic form the features sought by the Society in its work. These were the presence of economic distress but not abject poverty, a clearly defined legal problem, a worthy interest in its solution, and a speedy resolution that not only relieved the immediate difficulty but also educated the client in the proper functioning of the law and thereby won his acceptance of it.

In an era of acute social unrest, legal aid’s approach to the complaints of the poor had obvious appeal. Especially compelling was the Society’s assurance that its services created a “profound respect for the law and an abiding faith in America.” Steadily rising subscriptions and voices of support reflected the Society’s success in convincing Bostonians that it was the only socially palatable legal resource open to the poor, and that it was helping to preserve, as Governor Calvin Coolidge put it, “law and order.”

Freed from the constraints of normal practice, but weighted down by the tremendous demand it unleashed, the Society tackled its caseload with a new type of legal organization. It combined representation with socialization and instru-
mental reform. In the process it laid the foundation for a formal division within the urban legal process. The poor, and the middle classes, were offered legal remedies like legal aid and small claims courts that stressed harmonious legal relations based on peaceful, informal settlements. Wealthy citizens continued to use the combative legal resources of common law advocacy. In this way the Society pressed its own moral, philanthropic, and professional goals of order, rationality, and community on its clients. These were the terms that poor Bostonians wrenched from the legal aid movement in return for counsel and entrance to legal institutions. All they sacrificed was the right to have any and all legal claims argued to the fullest possible extent. To the Society this was not only a fair but a beneficial exchange.

A Mixed Legacy

The record of the Boston Legal Aid Society illustrates the three main achievements of the initial phase of American legal aid: (1) recognition that poverty effectively barred large segments of the citizenry from legal institutions, (2) persuasion of significant portions of the legal profession and the laity that the legal system should be open to the indigent, and (3) creation of broad programs that sought to equalize entry into the urban legal system. Through the movement legal services for the poor became an urban fixture and an accepted element of the bar’s modern professional structure. But the movement’s optimistic hope that it could end the effects of poverty on the legal process proved unfounded. Instead of disappearing, the legal ailments of the poor festered and grew.

Legal aid was stymied by the conflicting commitments of its supporters. These led to limited and often inconsistent perceptions of the problems that confronted the poor and the techniques needed to overcome them. Linked to the legal profession, the philanthropies, and the urban legal institutions, the private legal aid organizations occupied an ambiguous middle ground. Legal aid under them was at once a public responsibility, a professional obligation, and a philanthropic concern. These three roles were combined into an uneasy alliance that attempted to satisfy the poor’s swelling legal demands, the bar’s ethical and professionalizing goals, and the charities’ aim of placating and assimilating the native and immigrant lower classes. Such a stance ensured that legal aid would offer inexpensive legal services without challenging the existing social structure.

Also debilitating was organized legal aid’s assertion that the legal problems of poverty were mainly caused by institutional defects which shut the poor out of the legal process. Lacking a comprehensive theory of urban poverty, legal aid lawyers refused to recognize the complex web of political, economic, and social circumstances facing poor urbanites, of which legal problems were only one manifestation. Instead they relied on a procedural definition which equated equal justice with individual access to legal institutions. Legal aid lawyers expanded the counselor role to enable them to use their expertise to open the process to individual complaints not to press for special initiatives for the poor as a class. Accepting as essentially just and equitable both the institutions and methods of the legal order, they saw the need for only procedural reforms, the usual lawyerly proposal for improvement. But access to courts and counsel was a hollow opportunity that could not remove the other effects of poverty impinging on the administration of the law.71

The legal aid lawyer’s conception of legal services for the poor had serious consequences for their clientele. Financial limitations united with restrictive policies to cripple their assistance. Though caseloads rose annually, legal aid in Boston and nationally met but one third to one half of even the recognized need 72 And despite their intention to treat their clients like those of any other law office, legal aid lawyers viewed the poor man as “a welfare client rather than as a citizen capable of having rights and duties and knowing his own best interests.”73 Through the legal aid societies the legal prerogatives of the poor were privileges dependent on professional generosity, not public guarantees.

Like so many other progressive solutions, legal aid lingered on after the excitement of progressivism had died. Once the upheavals of the early
twentieth century faded, the private societies continued to do their work and to maintain a rigid faith in the movement’s concepts, but they lost their reforming zeal and vital social links as the nation moved on to new ideas and causes. In the early 1950’s Raynor Gardiner, general counsel of the Boston Society since 1926, mourned for a movement that had lost its relevance. He lamented that the highly qualified legal aid lawyers were viewed as eccentrics and not taken “very seriously by members of the bar.” He thought that it would be well to “face the fact that legal aid is the poor relation of the bar.”\(^{11}\) The first legal aid lawyers exposed a glaring injustice of industrial society, but securing equal justice for the poor had proven to be a much more complex and elusive task than either their altruistic or professional predilections would allow.

NOTES


2 Undated Memorandum, *Justice and the Poor Correspondence*, 1913-1921, Harvard Law School (unnumbered).

3 William D. Guthrie to Henry S. Pritchett, December 6, 1919, *Justice and the Poor Correspondence*. For other adverse reactions to *Justice and the Poor*, see the letters by Harlan F. Stone and the New York State Bar Association in the same collection.

4 Editorial, December 26, 1919.

5 Memorandum, December 24, 1919, *Justice and the Poor Correspondence*. Several of Smith’s letters defending his study are also preserved in this collection.

6 Draft of Letter, Boston Bar Association, June 1, 1918, Boston Legal Aid Society, 1918 Files.


9 Smith and Bradway, “Legal Aid and the Bar,” 224.

10 Perhaps the most suggestive comment on the relationship between legal aid and the bar during this period was the rueful 1926 suggestion that, “the bar association needs the legal aid bureau as an aristocrat in Russia needs calloused hands.” Quoted from John Alan Hamilton, “Legal Aid Work and the Bar,” *Annals*, 124 (March, 1926), 147. See also Smith, *Justice and the Poor*, 162-163.


12 Smith, *Justice and the Poor*, 227.

13 The Society accepted personal injury cases beginning in 1903. See in general Boston Legal Aid Society, *Annual Report*, 3 (1902-03), 19; Smith, *Justice and the Poor*, 156-158; Smith to U.S. Commission on Industrial Relations, November 24, 1914, 8; Smith and Bradway, *Growth of Legal Aid*, 126.


16 Smith, *Justice and the Poor*, 227-228.

17 Ibid.

18 For a thorough examination of this effort see Auerbach, *Unequal Justice*, chs. IV-V.


21 For a general examination of the different types of legal aid organizations during this period see Smith, *Justice and the Poor*, ch. XIX. A brief history of national legal aid effort, in which members of the Boston Society played a prominent role, was written by John S. Bradway, see “The National Association of Legal Aid Organizations,” *Annals*, 124 (March, 1926), 163-166.

Samuel Scoville, Jr., “The Practical Working of the Legal Aid Society,” Ibid., 7. This initial conception of legal aid was refuted, especially by Smith, see for example Smith to U.S. Commission on Industrial Relations, 8-9; Ibid., Justice and the Poor, 178; Ibid., “The Relationship Between Legal Aid Work and the Administration of Justice,” 278. For a discussion of the limits of the new perspective see Report of the Proceedings of the Fifth Conference of Legal Aid Bureaus and Societies (1922), 73.


23 Smith, Justice and the Poor, 234-239.


25 Quoted in Auerbach, Unequal Justice, 58.

26 Roscoe Pound MSS., General Correspondence 1917. Paige Box 8, July 13, 1917, Harvard Law School. For an expression of similar feelings by Stone to Henry S. Pritchett, see letter of March 27, 1918, Justice and the Poor Correspondence, 5-6.

27 One result of the role legal aid acquired within the bar was that its offices became an approved haven for reformers and outsiders. Socially concerned lawyers like Smith were attracted to legal aid by the opportunity to engage in professionally-related social service before beginning their careers. Others joined for lack of other professional opportunities. This latter function was underscored by the role of women and students in legal aid. Smith, for example, opposed the presence of women in private law offices, except as secretaries, but contended that the “legal aid office is different. It is much easier for women to practice in such an office and they seem to get along alright.” (Smith to Dean Theodore W. Swan, Yale Law School, June 12, 1924, Boston Legal Aid Society, 1924 Files; see also Magazine Lancer of Justice, 193). Students too were encouraged to participate in legal aid through internships and law school legal aid clinics. The Boston Society, for example, supervised the Harvard Legal Aid Bureau, the first such organization in the nation. Student legal aid not only eased heavy caseloads, but through on the job preprofessional training, it helped produce better trained attorneys. Legal aid, thus offered, reformers, women, ethnics, and students one of the few professionally sanctioned outlets for their services. For discussions of student legal aid, see Report of the Proceedings of the Fourth Conference of Legal Aid Societies (1916), 11-14, 17; John R. Wigmore, “Legal Aid Clinics, The Student’s Point of View,” Case and Comment, 23 (1917), 973-976; Ibid., “The Legal Aid Clinic and What It Does for the Law Student,” Annals, 124 (March, 1926), 130; John S. Bradway, “Legal Clinics and the Bar,” Southern California Law Review, 3 (1929-30), 386-394; Lillian Brown, Lawyers and the Promotion of Justice (New York, 1936), 99-101.

28 Reginald Heber Smith, “The Bar Adopts Legal Aid,” Survey, 42 (1921-22), 81; “Report of the Special Legal Aid Committee of the American Bar Associa-
For an example of the Society’s financial plight, see Bigelow, Twenty-Five Years of Legal Aid, 8-10. Jerome Carlin and Jan Howard discuss the ramifications of this financial dependency in “Legal Representation and Class Justice,” UCLA Law Review, 12 (1964-65), 415.

For summary statistics of these years, see Bigelow, Twenty-Five Years of Legal Aid, 28-29.

Smith, Justice and the Poor, 54. For explanations of these categories, see Boston Legal Aid Society, Annual Report, 14 (1913-14), 16-17, 15 (1914-15), 23-24.


During its first twenty-five years the Society’s applicants came mainly from social service agencies (18%) or from legal officials, such as judges, police officers, and attorneys. The rest were either former clients (20%) or those who had heard of the Society through the newspapers, by word of mouth, or some similar means (38%). Significantly, in one six year span employers sent 408 applicants to the Society, while labor unions sent only 31. The Society’s Reports also give clues about the individual characteristics of its clientele. The sex of the applicants was recorded until 1911. Women outnumbered men almost two to one during that time span. There is no indication that this imbalance changed significantly after 1911. It probably reflected the Society’s family law position on preserving the home as well as a propensity to view females as more defenseless and deserving (See, for example, William L. O’Neill, Divorce in the Progressive Era New Haven, 1967, 25, for the social status of women in litigation). To illustrate its participation in the Americanization drive during and after World War I, the Society also divided its applicants into nationalities. Three fourths were native born (there was no breakdown for second generation immigrants). The rest reflected the last tides of immigration. Most were from eastern and southern Europe (mainly Italy). Over one half of the Northern Europeans were Irish. These statistics were drawn from those listed in the Society’s yearly reports.

Boston Legal Aid Society Statement of Purpose, April 24, 1900; Smith, Justice and the Poor, 162-173. Smith defined the financial qualifications of those eligible for legal aid in the following manner, “It is safe to say that single persons earning less than $500 yearly and that married persons, with dependent families, earning less than $800 each year are never in a financial position where they can afford any substantial sum for attorney’s services.”

Quoted from Justice and the Poor, 33. These criteria eliminated much of the urban lower and middle classes, see Hurst, Growth of American Law, 154.

Smith, Justice and the Poor, 162.

For the Society’s position on indigent criminal defendants, see William Sabine, “Character of Litigation to be Undertaken,” 45; Hill, “The Boston Legal Aid Society,” 3; Smith, Justice and the Poor, 111. There was no organized source of attorneys for these individuals in Boston until a voluntary defender organization was formed in 1938.

Smith, Justice and the Poor, 155.

Ibid.


For the significance of legal aid’s opposition to divorce in relation to the general progressive antipathy to divorce, see O’Neill, “Divorce in the Progressive Era,” 58. See Ibid., 22-23, and Smith, “The Relation Between Legal Aid Work and the Administration of Justice,” 177, for the class nature of divorce in the period. The persistence of the Society’s anti-divorce attitudes is evident in the 1946 statement of its general counsel: “A left-wing minority (of the legal profession) believed that divorce is a legal remedy open to all, that anyone who has good legal case and no money is entitled to a divorce as much as they are entitled to relief for collection wages.” Quoted in Carlin and Howard, “Legal Representation and Class Justice,” 414. They also offer their own critique of legal aid’s domestic relations policy, Ibid., 413-415. For the national movement’s similar position, see Smith, Justice and the Poor, 74, 76-77, 190, 272.


For an explanation of reformer’s fears over pauperization, see Huggins, Protestants Against Poverty, 16.

Report of the Proceedings of the Fourth Conference of Legal Aid Societies, 89-104.

Ibid., 92.

Ibid., 98-99.

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23 (1917), 1007.

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cy also enlarged its counselor role

Poor,

For comparative statistics, see Smith,

in the Society's annual reports from

Quoted in

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who Knows, "The Legal Aid Societies,"

Annals, 124 (March, 1926), 175-189.

Boston Legal Aid Society, Annual Report, 20

(1919-20), 14.

Smith, Justice and the Poor, 206-209.

Ibid.

by examples of the Society's appellate work,

see Holland v. Zeuner, 228 Mass. 142, (1916); Mass.

Board of Insurance v. Peoloquin, 225 Mass. 30, (1915); Holmes v. Schooner Meelacomet,


Smith, Justice and the Poor, 207.

Boston Legal Aid Society, Annual Report, 16

(1915-16), 3, 4; John S. Bradway, "The Function of

A Modern Legal Aid Society," Annals 124 (March,

1926), 19.

Reginald Heber Smith, "Massachusetts Small

Claims Court," American Bar Association Journal,

6 (1920), 199-200; "Report of the Commission to


Ibid.

For statements by members of the Society on the

role of conciliation, see Boston Legal Aid Society,

Annual Report, 2 (1901-02), 8, 14 (1913-14), 17;

Robert P. Goldman, quoted in Report of the Proceed-

ings of the Third Conference of Legal Aid Societies,

25; Smith, Justice and the Poor, 164-65; Ibid., "The

Place of Conciliation in the Administration of Just-

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746-747; Ibid., "Conciliation and Legal Aid, an Op-

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gant's Statute," Annals, 124 (March, 1926), 84-89; Ameri-

can Bar Association Legal Aid Committee, "Report," American Bar Association Reports, 47 (1924), 451-464.

Bigelow, Twenty-Five Years of Legal Aid, 17;

Boston Legal Aid Society, Annual Report, 19

(1918-1919), 7-8; Smith, Justice and the Poor, 210-211; Boston Legal Aid, Annual Report, 16 (1915-16), 10-

11, 29 (1919-20), 14; Smith, "Massachusetts Small

Claims Court," 199; Raynor Gardiner, "Monthly Re-

port," March 4, 1928, Boston Legal Aid Society, 1928

Files; Donaghy, "Benefits of Regulating the Small

Loan Business," 30-34; Smith, Justice and the Poor,

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Bigelow, Report of the Proceedings of the Fourth

Conference of Legal Aid Societies, 121; Smith,

Justice and the Poor, 217-218; Promotional Folder, Bos-

ton Legal Aid Society, 1920 Files (undated); Boston

Legal Aid Society, Annual Report, 20 (1919-1920),

13, 20, 24.

Smith, "Denial of Justice," 126. For similar state-

ments by other members of the movement, see One

Who Knows, "The Legal Aid Societies," Case and

Comment, 23 (1917), 981; Allen Wardwell, "Bolshev-

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(1919), 1-3; Charles Evans Hughes, "Legal Aid So-

cieties, Their Functions and Necessity," American Bar

Association Reports, 45 (1920), 227-235.

Boston Legal Aid Society, Luigi and the Law's De-

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Promotional Folder, Boston Legal Aid Society,

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Ibid., in "Defects in Present Legal Aid Service and the


566. See also, Brownell, Legal Aid in the United

States, 246-248.
Essay Contest

The Boston Bar Council
announces the
Reginald Heber Smith Essay Competition

TOPIC: Judicial Involvement in Local Government Operations:
   Is an active role for the Courts necessary or appropriate?

The competition will award a prize of $500 for the best 2500 word essay submitted on the above topic. The competition is open to all third year law students in Massachusetts law schools and to members of the bar for five years or less. Chief Justice Edward F. Hennessey, Dean David B. Sargent of Suffolk University Law School, and Edward I. Masterman, President of the Association, will serve as judges. The monetary prize award is made possible through a gift of Hale and Dorr.

Participants will not be expected to write on all aspects of the topic chosen, but will be free and encouraged to choose a particular aspect of the topic for consideration. Entries must be submitted on or before September 20, 1978.

An entry form is included within this Journal. Entry forms may also be obtained from the Boston Bar Association, 16 Beacon Street, Boston, Massachusetts 02108, 617-742-0615.
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College/University ___________________________________________________
Expected Date of Graduation ___________________________________________

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Guidelines
The essay is limited to 2,500 words. All entries must be typed, double-spaced, 8½ x 11 sized page, submitted in quadruple, along with a copy of this application form.

__________________________________________
Written signature

__________________________________________
Date of submission