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

Part I

by Michael Grossberg

The origins of the American legal aid movement lie in the first decades of the twentieth century. It was the product of two interrelated crises; one in the nation's cities, the other in its legal system. The impact of industrialization and urbanization on the cities exposed the wide gap between the national commitment to equal justice and the actual lack of legal resources for the poor. The resulting allegations of class bias in the legal order added one more indictment against a professional and institutional apparatus whose legitimacy already was under fierce attack. Legal aid was the answer of a group of reformers within the urban bar to the social and professional dilemmas raised by the relationship between law and poverty. Caught between their pledge to relieve the legal demands of the poor and their professional ties, they were compelled to devise a new mechanism for handling legal disputes. Legal aid was more than a reaction to the dislocations of modern society. It was the end result of the interplay between the commitments to altruism and to professionalism. Out of this process the legal aid movement developed a set of solutions that were less responsive to urban needs than to professional ones.

The Boston Legal Aid Society typified the early years of the legal aid movement. Founded in 1900, it was the fourth such organization to be formed in the nation.1 By the mid-1920's it was acknowledged to be the "most advanced legal aid society in the country."2 Private, voluntary societies like Boston's dominated the legal aid movement until Lyndon Johnson's "War on Poverty." Their outlook was forged in the crisis years before 1925. After that, the societies continued to operate on existing premises and to utilize existing methods.

The Boston Society played a prominent role during the generative period. Its perception of the legal needs of impoverished Bostonians and the methods it fashioned to resolve them had a profound effect on the evolution of modern American legal aid. The Society helped define the movement's social and professional responsibilities and its operating policies. These in turn determined legal aid's professional and institutional status during critical years in the formation of the modern American legal structure. The Society's record demonstrates how the combination of social circumstances and professional allegiances led to the creation of legal aid's particular approach to the legal ramifications of urban poverty. A close examination of the Boston Legal Aid Society's first twenty-five years reveals its links to other progressive reforms, its relationship with the bar, and its distinctive conception of legal services. These were the crucial elements in the creation of legal aid in the United States.

EDITOR'S NOTE:

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When the Society opened its doors, systematic free or low-cost legal services for the poor were almost nonexistent in Boston, as in most nineteenth century American cities. But the rising pressures and conflicts of urban living were rapidly increasing the legal complaints of the impoverished. Poor urbanites faced a bewildering number of difficulties that they could not resolve through the legal system. Their precarious financial status was imperiled by wage claims and assignments, repossession, garnishments, and other creditor devices, as well as landlord-tenant disagreements. Moreover, their homes were wracked by separation proceedings, attempts at divorce, nonsupport trials, and the prosecution of their children for petty offenses. Perhaps most grievous was the specter of permanent disability and loss of livelihood that could result from injuries sustained in factory work or urban travel.

Legal remedies were the only socially approved solutions to the disputes that arose in the working and family life of poor Bostonians. This legal dependency increasingly meant that obtaining the services of a lawyer was a necessary precondition for effectively asserting individual rights within the complex urban legal system. But the structure was ill-equipped theoretically, institutionally, and professionally to cope with the problem of poverty.

By the late nineteenth century this situation compelled a response. The disease, illiteracy, decrepit housing, and other maladies of the urban poor continued to fester. Tensions were exacerbated by the coming of massive immigration from southern and eastern Europe. The period was marked as well by increased worker militancy and rising support for domestic socialism. The social strife engendered by these conditions led many urban leaders to embrace social reform. Boston quickly became a leader in this effort. Legal aid emerged in the midst of this turmoil.

The first legal aid society was established in 1872 by a German immigrant society in New York City. Though initially it served only its ethnic constituency, in 1896 it opened its doors to all indigent New Yorkers. Under the leadership of Arthur von Briesen the New York Society conceived of legal aid mainly as a charity and a method of defusing social discontent and suppressing the growth of revolutionary movements by ushering the poor into the legal process. Von Briesen was also the leading force behind the national legal aid movement. But under his direction it grew very slowly. By 1910 there were only 7 organizations. However, between 1910 and 1921 the number surged to 41. It was during this tumultuous period that the Boston Legal Aid Society asserted its influence over the movement.

In its first decade the Society had been run as an experiment out of the offices of a succession of law firms. Its original directors viewed it solely as the legal arm of local charities and modeled it after the New York agency. But the membership of the Society itself determined that this limited conception of its purpose would not prevail. Legal aid in Boston, and across the nation, became a professional reform effort. It was not just another urban movement bringing together disparate altruistic citizens. As one of the Society’s counsels put it, “The distinguishing characteristic of the Boston Legal Aid Society is that it is preeminently a lawyer’s institution. . . . Only by appreciating the fact that lawyers have been the dominating influence throughout its history can the story of its growth, its present organization, and its strong and weak points be understood.”

All of the Society’s founders were attorneys. Of fifty-three directors between 1900 and 1925 thirty-five (61%) were lawyers. The others were businessmen (21%) engaged primarily in manufacturing and banking, and a few social workers and others. Most of the Society’s offices were held by members of the bar. While all of the directors were expected to solicit funds, the laymen did little else. It was left to the lawyers to assist the staff in formulating policy, setting guidelines, and resolving problems.

These lawyer-reformers were among the leaders of Boston’s legal establishment. They in-
cluded several judges, law professors, treatise writers, legislators, and leading corporate practitioners. A majority were members of the organized bar at a time when the American Bar Association contained but 1.3% of the profession. Even by 1920 this percentage had risen to only 9%. And according to a contemporary student of the bar, the Boston Bar Association was equally exclusive. Though constituting a fraction of the profession, these men were its most successful practitioners and its self-appointed leaders. At a time when the bar was widely attacked for unethical practices, commercialism, bias in the administration of justice, and the like, these elite lawyers were committed to raising the ethics and professional competency of the bar and eliminating from their ranks those they deemed unworthy. As befitted this role, twenty-nine of the lawyer-directors (82%) were graduates of the Harvard Law School, the era's preeminent center of legal training.

The connection of these elite lawyers with Harvard was especially significant. The Law School defined the professional and intellectual orthodoxies of the day. Its emphasis was on the scientific nature of law. The goal was to push the law out of its political and social quagmire by putting its methods, doctrines, and practitioners on the same neutral level as the sciences. This scientific concentration began in the 1870's with Professor Christopher Columbus Langdell's efforts to raise the caliber of law students (and through them practitioners) by a rigorous, scientific training in the law. He argued that "law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer." Langdell's case method exemplified both his desire and approach.

In the early years of the twentieth century these educational goals were combined at Harvard through Roscoe Pound's determination, proclaimed in his writing on sociological jurisprudence, to place the bar at the forefront of the nation's adjustment to modernity. He viewed the law not just as material for scientific study, but also as an instrument for formulating rational public policies. Pound saw a gap between contemporary needs and the ability of established legal institutions and doctrines to resolve them. He rejected the dominant mode of jurisprudential thinking, calling it mechanical because it ignored social reality and instead reasoned from abstract first principles. He also discounted it because it implicitly linked the law with political conservatism. In its place he called for an apolitical, scientific jurisprudence that would bring law into harmony with society.

Legal aid was one way to blend the call for professionalization and institutional change with demands for legal reform. The effect of this combination on legal aid in Boston was most visible after 1910, during the movement's first sustained period of growth. The Boston Society fully committed itself by opening an independent office staffed by lawyers whose sole responsibility was legal aid. It also took the lead in convincing the bench, bar and laity that both the poor and the rest of society desperately needed organized legal aid.

Smith Takes Over

The Society's effort was led by its eighth general counsel, Reginald Heber Smith. A graduate of Harvard College and Law School, he was deeply influenced by the Harvard perspective on educational and institutional reform and by the American Bar Association's professionalization

Reginald Heber Smith, eighth general counsel of the Boston Legal Aid Society, authored Justice and the Poor in 1919. It established him as the nation's expert on law and poverty. (Courtesy of Hale and Dorr.)

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drive. Smith symbolized the transfer in leadership of the movement that occurred during this period. The limited counterrevolutionary and charitable emphasis of Von Briesen was broadened under Smith's aegis to include a professional and reformist orientation. 19

While working at the Society as an intern, staff member, and then general counsel, Smith developed a comprehensive view of the relationship between legal aid and other reforms in the law and the profession. His ideas so impressed the directors that one of them persuaded the Carnegie Foundation to sponsor a national legal aid survey as part of its investigation of legal education. The product, Justice and the Poor (published in 1919), became the Bible of legal aid. In it Smith forged the movement's initial unarticulated and uncertain premises into a coherent manifesto.

Though he resigned after the survey's release to join the prestigious Boston law firm of Hale and Dorr, Smith retained a lifelong commitment to legal aid. He chaired the A.B.A.'s legal aid committee for its first fifteen years, served as a director of the Society throughout his life, and repeatedly wrote and spoke on the subject. From 1919 until his death in 1966 he was the organized bar's authority on legal aid and thus on the legal needs of the poor. Smith's achievement lay not in the originality of his thought, but in his lucid and systematic presentation of the movement's underlying suppositions and of legal aid's place in the larger effort to reform the urban legal system. 20

Justice and the Poor indicted the urban legal system. "The administration of justice," Smith declared and then documented, "is not impartial, the rich and the poor do not stand on an equal-
the main culprits: delay, court costs and fees, and the availability of counsel. By eliminating each of these deficiencies the urban administration of justice would be opened to the poor. Implementing existing procedural and administrative reforms would remove the first two. Among these he cited simpler procedural law, lower court costs, speedier services, and alternative remedial bodies. Yet even these remedies would only partially remove the obstacles preventing the poor from exercising their rights. In the remaining areas of legal action the services of a lawyer were essential. Only two solutions occurred to Smith; either lawyers may be abolished or lawyers for the poor may be provided. With a fundamentally sound system, he argued, radical changes would be the height of folly. The choice was obvious: "since we cannot eliminate the need for lawyers without overturning our legal institutions, the only possible alternative is to eliminate the expense."

This was legal aid's role. It alleviated the most significant deficiency of the urban legal system by offering low-cost legal services to the poor. Leaving the abolition of poverty to the statesman and the sociologist, Smith declared that the responsibility for adapting legal institutions so that the effects of poverty could be minimized or eliminated fell on the organized bar and legal aid. "Our duty," he urged, "is to do our part in our field." Legal aid, he argued, "was not to be regarded as a thing apart or as a thing unto itself," but as part of the general effort to reorganize the legal structure.

Proponents like Smith did not question the political, social or economic values and ends of the urban legal order. These were "givens." Instead they explained the existence of urban injustice in the politically neutral terms of modernization. Social change had thrown the urban legal system out of balance, the Society and its counterparts would help make the necessary modifications to restore its equilibrium. This problem was defined in ostensibly value-free craft terms; its solution lay in craft responsibility and expertise.

Explicit in *Justice and the Poor* and in Smith's other writings was the contention that failure to act on his proposals would lead to continued social upheaval. Like Von Briesen he recognized the usefulness of legal aid as a means of social control. He pointedly warned that the denial of justice to the poor was a "menace to the state." But Smith's message for the movement was basically optimistic. Legal aid and its allied reforms would end the turmoil created by injustice.

**Progressive Reformers**

The blueprint Smith sketched for organized legal aid had its own coherence and inner logic because of the milieu in which it was nurtured. Its assumptions and strategies came from deep within the progressive mentality as well as from the legal profession. It was a product of the new professional, urban middle class. Its fundamental ambiguities were a direct product of the uncertainties in the progressives' outlook on the city. An optimistic faith in social justice, modernization, and controlled human progress intermixed with incessant fears over lost professional status, cultural heterogeneity, and social fragmentation. Proponents of legal aid accepted the new industrial order and the need to reform it, but applied their specialized knowledge to an effort to preserve continuity with relevant older values and ways of life. They tried to construct a new consensual social foundation based on order and individualism. They shared this complex mix of forward and backward looking goals with other members of the instrumental, social engineering vanguard of urban reform.

Like fellow reformers in education, housing, urban government and social work, legal aid lawyers relied on their professional expertise to deal with specific manifestations of urban poverty. Their efforts were predicated on achieving incremental not fundamental changes in the social structure. Their solutions stressed order and progress through reliance on professional experts.

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to provide the proper remediation whether it was zoning laws, compulsory education, sanitation facilities, or legal counsel. Their objective, scientific methods derived from values that emphasized elitism, stability, rationality, and professionalism. Finally, they combined solicitude for the welfare of the poor with a desire to insulate the rest of the community from their clients.3

These characteristics did not create a monolithic movement. The lawyer reformers perceived themselves as caught in a crossfire. On the left they attempted to diffuse the rising charges of injustice in the legal order; on the right they sought to placate those who would brook no change whatever. The movement sustained itself in this two-front campaign through a dogged belief in the legal order. But in doing so, legal aid lawyers created an urban legal institution whose shape was determined by its two major constituencies: its poor clientele and the bar. The particular demands from each of these quarters determined how Smith’s manifesto was translated into a working organization.

It was in the years after Smith’s tenure began that the Boston Legal Aid Society developed its own particular approach to the problems of law and poverty. The second installment of this article will analyze how the Society actually served its two constituencies. The analysis will concentrate on the relationship between legal aid and the bar, the creation of a new type of legal representation, and the Society’s campaign for legal reforms.

NOTES

1 The others were in New York, Chicago, and Newark. The most recent examination of the rise of legal aid is contained in Jerold S. Auerbach, Unequal Justice: Lawyers and Social Change in Modern America (New York, 1976), 53-62. Auerbach argues that legal aid was essentially an anomaly within the profession during this period. This study, however, contends that it was inextricably interwoven with the professional outlook of the era and is representative of both the thought and acts of the early twentieth century. For other studies of the development of legal services for the poor, see John H. Wigmore, "Additional History of Legal Aid Work," Massachusetts Law Quarterly, 1 (1915-1916), 288-290; Reginald Heber Smith, Justice and the Poor (New York, 1919); John M. Maguire, "Poverty and Civil Litigation," Harvard Law Review, 36 (1923), 361-404; William R. Vance, "The Historical Background of the Legal Aid Movement," Annals of the Academy of Political and Social Science, 124 (March, 1926), 6-15; Sidney B. Jacoby, "Legal Aid for the Poor," Harvard Law Review, 53 (1939-40), 940-976; Emery Brownell, Legal Aid in the United States (Rochester, 1951); Mauro Cappelletti, "Legal Aid: The Emergence of a Modern Theme," Stanford Law Review, 2 (1972), 357-386.

2 Joseph D. Taylor to Board of Directors, Boston Legal Aid Society, January 1, 1921, Boston Legal Aid Society 1921 Files. For histories of the Society during this period, see Arthur D. Hill, "The Boston Legal Aid Society," The Legal Aid Review, 4 (1905), 1-4; Albert F. Bigelow, Twenty-Five Years of Legal Aid In Boston, 1900-1925 (Boston, 1925); Reginald Heber Smith, "A Lawyer’s Legal Aid Society," Case and Comment, 23 (1917), 1008-1015.
create a legal aid service, "Getting Justice for the Poor," discovered an attempt to create a legal aid service in Boston's Charities, 1st ed. (Cambridge, Ma., 1976), 345; and Richard A. Posner, Economic Analysis of Law (Boston, 1972), 348-349.

For analyses of other reform movements in Boston, see Nathan Huggins, Protestants Against Poverty, Boston's Charities, 1870-1900 (Westport, Conn., 1971); Arthur Mann, Yankee Reformers in the Urban Age (Cambridge, Ma., 1954). Boston's reformist urges were so developed that the mugwumpish Boston Transcript greeted the birth of the Society by mistakenly declaring: "Another charity has been mistakened: "Another charity has been established." The birth of the Society was greeted with a similar enthusiasm, see David Wigdor, "The Administration of Justice in the Modern City," Harvard Law Review, 26 (1912-13), 302-328. For a recent discussion of Pound's reformist ideas, see G. Edward White, "From Sociological Jurisprudence to Realism: Jurisprudence and Social Change in Early Twentieth Century America," Virginia Law Review, 58 (1972), 999.

For historians of the New York Society, see Maguire, The Lance of Justice; Harrison Tweed, The Legal Aid Society, New York City 1876-1951 (New York, 1954). In addition, Howard C. Westwood had discovered an attempt by the Freedmen's Bureau to create a legal aid service, "Getting Justice for the Poor," Howard Law Journal, 16 (1971), 492-537.

For a recent examination of Pound and his influence, see David Wigdor, Roscoe Pound, Philosopher of Legal Reform (Boston, 1972), 348-349.


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of Law (Westport, Conn., 1974), esp. chs. 6-9.

19 Von Briesen left the movement in 1917 as a result of his outspoken pro-German sympathies. For a discussion of his departure, see Maguire, Lance of Justice, 50-53; Tweed, Legal Aid Society, 7-8.

20 Smith's efforts were memorialized by the Office of Economic Opportunity with the creation of a fellowship in his name for legal services attorneys.

21 Justice and the Poor, 8, 228.

22 Ibid., 6-7, 244.

21 Ibid., 13-14, 15.


25 Justice and the Poor, 16, 17-30.

26 Smith to the United States Commission on Industrial Relations, January 24, 1914, Boston Legal Aid Society 1914 Files, 4-5


28 Smith, "An Introduction to Legal Aid Work, Annals, 124 (March, 1926), 2


10 Justice and the Poor, 149.

11 Boston Legal Aid Society, Annual Report, (1915-16), 8.


11 He went so far as to declare "I have faith that we can solve that problem (equal justice for the poor); I believe we have in our power to answer that cry. We understand the nature of the problem confronting us as fully as it is ever permitted us to understand any problem of human life." Quoted from Smith, "The Relationship Between Legal Aid Work and the Administration of Justice," 378. For a different analysis of Justice and the Poor, see Auerbach, Unequal Justice, 59-61. Unlike this study which contends that the tract was an inhouse critique of the profession, Auerbach argues that it was an attack on the legal order itself.
