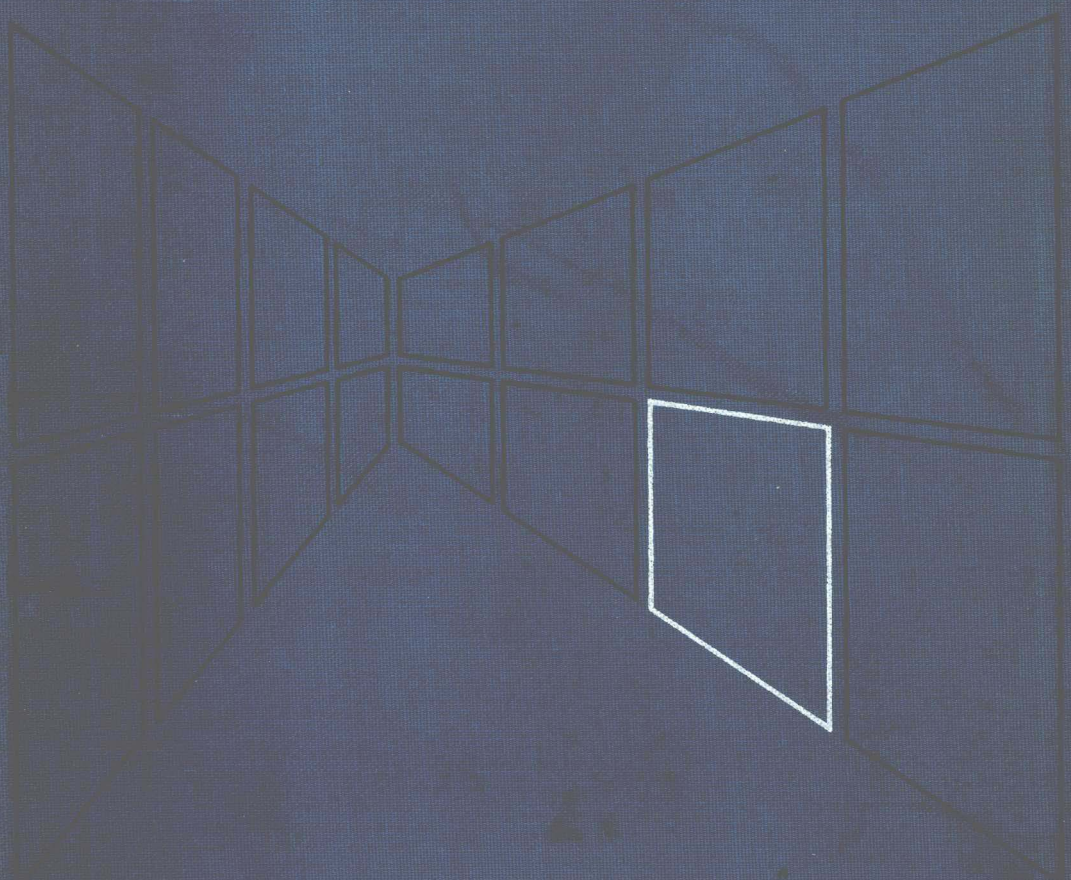
Neighborhood Law Firms for the Poor

Bryant Garth



NEIGHBORHOOD LAW FIRMS FOR THE POOR:

A comparative study of recent developments in legal aid and in the legal profession

by

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Comparative research often is closer in method to detective work than to traditional legal research. There are simply no libraries where one can obtain the various books, articles, and reports, published and unpublished, that are necessary even to keep track of legal aid reforms and how they have worked in practice. I am thus indebted to numerous persons who have helped me to compile the source material on which this study is based. I wish especially to thank: Professor Kees Schuyt of Nijmegen, who invited me to Holland and shared his vast knowledge about Dutch developments; Freek Bruinsma, now a researcher at the European University and another well-informed Dutch observer; Professors Roland Penner (Manitoba) and Larry Taman (Osgoode Hall), who helped tremendously by supplying valuable Canadian materials; Jeremy Cooper, now of the European University and formerly an activist with the Camden Law Centre; and John Goldring (Canberra) and Judd Epstein (Monash), who put me in touch with Australian sources. I also owe a great debt to Kim Economides and Paul Geerts, two researchers at the European University during my stay there. Both took an ongoing interest in my research and in the issues that this study sought to address.

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I would like finally to acknowledge the material support which made this research possible. I was helped by a grant from the Katherine B. Childs Foundation administered by the American Church in Florence, and my scholarship to attend the European University was supplied by the Thyssen Foundation. I am very

impressed with the generosity of a German foundation which gives a scholarship to an American to attend a university in Florence.

"This is not the first time that the winds of change have been detected: In the thirties legal education underwent a searching reexamination and young lawyers with a mission began to emerge from the law schools. The profession, however, was equal to the challenge. Legal education continues to respond to cases and doctrines, and the new breed of the thirties are the 'super-lawyers' of the sixties and seventies. Will it be different this time?"
S. Scheingold, *The Politics of Rights: Lawyers, Public Policy, and Political Change* 199 (New Haven, Yale University Press, 1974).

INTRODUCTION

Since its origins in 1965 with the "neighborhood law offices" of the "War on Poverty" in the United States, the institution of the neighborhood law firm (NLF)[1]—characterized by (1) activist, social-reform-oriented lawyers for the poor, (2) location in lower-class neighborhoods, and (3) salaries generally paid by a government (or, in a few cases, a charitable organization)—has taken on a steadily increasing importance in modern Western societies. Along with the NLFs in the United States, activist lawyers in a growing number of countries—most particularly in Australia, Belgium, Canada, England, and the Netherlands—have recently created law centers, law shops and the like which challenge the traditional roles of lawyers and the accepted methods of providing legal aid for the poor.[2]

The challenge has shaken the once firm faith (outside the United States) in "judicare" legal aid systems, according to which private attorneys are paid by the state for services to individual clients, and it has forced a debate about the role of salaried attorneys for the poor located directly in underprivileged urban areas. The final outcome of that debate, termed the "Great Debate" in legal aid by one Canadian commentator (Penner, 1977), has not yet been reached; but we can now say that the question in an increasing number of countries is no longer whether to have neighborhood lawyers for the poor but how many to have, where to place them, and what role they should play. One British law center, the South Wales Antipoverty Action Centre, is even funded by the European Economic Community's antipoverty program. The story of this major new turn towards NLFs in legal aid reform adds a vital chapter to the comparative study of legal aid (see generally Cappelletti, Gordley, and Johnson, 1975).

Beyond showing the emergence of new developments in legal aid, I am interested in exploring the "legal aid movement" as a unique case study in the role of lawyers and, more generally, of the reform of legal institutions, in effecting lasting change on behalf of the poor in modern "welfare states." The NLF movement originated in the United States as part of the "War on Poverty," and the idea has

persisted that lawyers should not merely address the everyday legal problems of the poor—the so-called "symptoms of poverty"—but also should address the causes of poverty embedded in the law and the legal system. It is an ambitious objective.

In order to investigate this novel role for lawyers, which has implications much beyond the delivery of legal services to the poor, several unresolved issues and dilemmas of law in the welfare state must be sorted out. I will state some of them briefly here to provide a background for later discussion.

1. The countries studied here can all be characterized as "welfare states" in the sense that their governments are committed, among other things, to ameliorate some of the hardships and inequalities generated by the operation of their economic systems. While the countries vary in their particular programs and in the degree of hardship and inequality experienced by their populations, they are comparable in their general support of the welfare state program. How far to extend that program is of course subject to great debate, but even conservatives in these countries do not (perhaps cannot) challenge the program's general tenets.

The state—the central government—is the focal point of welfare state activity. The welfare state is built on numerous laws, many of which are designed to help the "have-nots" against the "haves." Social reform in the welfare state is advanced by government action, and the action is generally effected by new law. Many of these reform laws, however, have rarely been enforced; they have in an important sense remained merely symbolic. NLFs may be extremely useful in enforcing such laws and, if effective, could have lasting effects on the social structure; the welfare state might be forced to live up to its promises, or abandon them. On the other hand, NLFs may be the perfect form of social control, bringing disenchanted people within the complex legal system, making *some* rights effective *sometimes* (enough to make the symbols somewhat more plausible) and, in general, "disciplining" people not to protest too much or take collective action even though their social position does not really improve.

2. The legal profession, as represented in particular by its professional organizations, may be "conservative," fearing innovation in general and competition from NLFs in particular. Its interests—at least those of its most influential members—are certainly linked closely to persons and organizations that benefit from the status quo. At the same time, however, evidence that the current system of legal aid fails to reach people to make their rights effective must be taken very seriously by the professional organizations, especially those somewhat

removed from the concerns of average practitioners. Their prestige and legitimacy depend on people's perceptions of the legal system (Tushnet, 1977; Trubek, 1972). Also, the profession's emphasis on the *independence* of lawyers serves to insulate activist NLF lawyers from political pressure, but it also tends to make them "unaccountable" to anyone but themselves. Finally, it may be that NLFs generate more business for the private bar than they take away. The bar's own interests in NLFs, therefore, point in several contradictory directions.
3. Lawyers are uniquely situated to see the failings of the legal system, and idealistic lawyers quickly see through the rhetoric of "equal justice." Legal education, in a sense, creates social critics with powers to help change the society. As Trubek notes, "law itself is a form of social criticism" (Trubek, 1977a:555). Legal training, however, also teaches "legalistic" skills which may lead well-intentioned reformers to turn social problems into "legal needs," for which the "solution" is mistakenly believed to be found only in legal strategies (e.g., Campbell, 1974). Again, translated into the NLF movement, this may result only in an advanced form of social control—domination by professionals (Illich et al., 1977).

My exploration of these dilemmas, in conjunction with a comparative history and description of the NLF movement, will be in four parts, corresponding to an idealized evolution of NLFs in a number of countries—particularly the USA, England, Canada, Australia, and the Netherlands.

Part One will examine the sociological justification for NLFs—the "unmet need" for legal services for the poor, which has been discovered in the last ten or fifteen years. One purpose will be to show the relationship of studies of unmet need to the NLF movement, suggesting that the study and the remedy cannot be separated. The limitations of these studies must therefore be traced in the history of NLFs and their approaches to legal and social reform.

Part Two will examine the establishment and development of NLFs, describing their basic organization and orientation. Beyond that, it will focus on the political history of NLFs, showing the interaction of professional legal organizations, activist lawyers and law students, and welfare state governments. This interaction has tended in the countries studied to promote the survival of publicity-funded lawyers who are at least ideologically committed to effecting social change on behalf of "have-not" groups. The chapters in this part will see what happens to the NLF "solution" when it is implemented. The method here will be to trace the history in individual countries before reaching a general comparative conclusion.

Part Three begins to explore more carefully what the tactics and strategies of NLFs are in the various settings, drawing particularly on the contrast between the United States and England. This part can begin to analyze how law centers meet the "unmet need" or seek to make rights effective, and what some of the problems and trade-offs are with the various strategies involved. The concluding chapter will contrast the types of NLFs that can be found, and outline their aims and assumptions.

Part Four then concludes the study. It asks how we ought to evaluate this movement of social change and social control, given the dilemmas I have raised. The accomplishments and limitations are discussed, along with the contribution NLFs can realistically make to a movement for change. Finally, a few general themes can be addressed, particularly the relationship of the goals of NLFs to "combined models," including institutions for vindicating rights without lawyers (see Cappelletti and Garth, 1978).

It should be noted that this study will focus mainly on developments in the United States, England, Canada, and the Netherlands, since these are the countries with the greatest experience of the type of NLF with which this study is concerned. Developments in Australia will be considered mainly because of the contrasting historical pattern, and some developments in Belgium and Norway will also be described. Brief comparative assessments of the legal aid system in Sweden as well as of the judicare systems in effect in France and Germany will also be necessary.

My own perspective, finally, should also be made clear. As an American with some experience in one U.S. NLF, my research and approach is bound to reflect my concern about what the U.S. systems can learn from other countries. To that extent, I may sometimes be guilty of being overly critical of U.S. developments.

Notes

1. This term will be used when I refer to the institution in general with the attributes noted in the text. It is also the U.S. term and it is close to the English "neighbourhood law centre." For particular countries I will use the national term or a literal translation of it.

It should be noted that my definition does not exclusively focus on whether or not lawyers are paid a *salary* by the state. It seems clear that publicly-salaried attorneys have tended to be more socially-oriented, neighborhood-oriented, and proactive (in the sense of seeking to bring certain problems to *them*) than private attorneys under

judicare systems; and the debate about which method is preferable often relies on this presumed characteristic of publicly-salaried lawyers. But publicly-salaried legal aid lawyers may not fit the other requirements of my definition. Furthermore, judicare lawyers may serve as NLFs, as they do in the "law collectives" in Holland discussed in Chapter 6.

2. I will not attempt to explain systematically why NLFs developed in these modern countries and not, for example, in the Federal Republic of Germany and Italy. Obviously the matter is complicated. It can be noted, however, that the development of NLFs is made easier where there is a tradition of legal reformism, particularly one relating empirical research to such reforms. Also, the availability of substitutes will naturally affect the development of NLFs. The existence of trade union legal services, for example, has made legal aid reform seem less compelling in Germany (see, e.g., Pfennigsdorf, 1975).

Given the general similarity of Western welfare states, however, and the peculiar attractiveness of the NLF idea in those settings, it may only be a question of time before institutions analogous to NLFs develop to serve the lower classes of the population, whether they be simply the poor, national or racial minorities, or foreign workers. It may be significant that the NLF movement began in English language countries, spread to Holland, where English-language materials are accessible to the educated public, and then moved through the Flemish part of Belgium, the French-speaking area of Belgium, and most recently to France. Belgian *boutiques de droit* inspired French *boutiques de droit* set up by young lawyers and apprentice lawyers (*stagiaires*). The French *boutiques*, which may begin to have an impact on national legal aid policy in France, are discussed in only a few available works (see, e.g., *Boutiques de droit*, 1978; Dumas, 1977:243–45; Hartman, 1978).

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