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(Please excuse the horrid state of the footnotes)

Chapter IV: “Pride and Prejudice:” Lawyers, Social Workers, and the Imperial Ambitions of Legal Aid<sup>1</sup> in my manuscript *The Origins and Transformation of Legal Aid to the Poor, 1863-1939*  
Felice Batlan

As this book has demonstrated, women working as lay lawyers had a long history in the founding of legal aid organizations and the provision of legal and other related services to the poor. Likewise legal aid offices often provided a range of services that were not just legal. Rather like the supervisor of the Working Women’s Protective Union, and the women of the Protective Agency for Women and Children, lay lawyers provided advice on a wide-range of topics and to varying degrees were supportive of poor women’s complaints and claims. Moreover, as demonstrated, through at least the first decade of the twentieth century, legal aid was deeply associated with women. Women lay lawyers, along with a small cadre of professionally trained women lawyers, staffed legal aid offices and poor women with a variety of legal complaints flocked to them. Articles in the popular press often highlighted legal aid’s female clients and their claims against husbands and employers.

As an emerging group of male legal aid lawyers came to the fore, they sought to create a national association of legal aid societies, expand legal aid societies across the nation, standardize the provision of legal aid services, widely publicize the importance of legal aid, and gain the support of bar associations. In the process, certain male lawyers emerged as the leaders of legal aid, and women’s visibility as lay lawyers and even professional lawyers declined. Shortly thereafter social work began emerging as a

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<sup>1</sup> Joel Hunter used the term “pride and prejudice” to refer to the relationship between social workers and lawyers. Joel Hunter, *Annals*, 1939.

profession, women lay lawyers were now deemed social workers and at least some leaders of legal aid, the most famous being Reginald Heber Smith, firmly believed that social workers had little or no role in the provision of legal aid.<sup>2</sup> It was such leaders' goals to firmly align legal aid with bar associations while thoroughly professionalizing and masculinizing it. Part of this process involved re-writing the history of legal aid to render women as both lay lawyers and clients invisible.

This project, however, was never complete for social workers asserted their own authority over the provision of legal aid, especially as specialized courts developed, such as juvenile and domestic courts, which were often staffed by social workers and lay lawyers. Social workers and their allies had a vision of the services that a client was entitled to as vastly broader than many legal aid attorneys. Moreover attorneys themselves, in the final throes of professionalization, wanted to assert a monopoly over the provision of legal services which social workers challenged. By the early 1920s, when four out of five social workers were women, the leaders of legal aid exhibited a full-fledged panic over its relationship to social work and this panic mapped onto issues of gender, authority, expertise, and professionalization.<sup>3</sup> This heated controversy raised issues such as the nature of the role of lawyers, what it meant to practice law, whether law was a specialized form of knowledge, whether legal training should be reserved for lawyers, what services legal aid should provide, and what clients legal aid should serve. Although scholars of legal aid have long pointed to legal aid societies' conservative nature, social workers, many who were women, and their critiques of legal aid presented an alternative and potentially more radical version of legal aid. At the same time, this story demonstrates that

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<sup>2</sup> As Daniel Walkowitz writes the term 'social work' entered the "national vocabulary" at the turn of the century. Walkowitz, 27.

<sup>3</sup> For the number of female social workers see Walkowitz, 88.

lawyers never quite had the monopoly over law which they believed that they possessed.

*Becoming National: The Expansion and Professionalization of Legal Aid*

As legal aid societies slowly began to open and expand across the country, male legal aid attorneys began having what can only be described as an identity crisis. They questioned what legal aid was, who should provide it, and what its future held. Legal aid was situated in a feminized world and was more akin to philanthropy and charity than the practice of law. It stood at the margins of the legal profession, ministered by those who were marginalized for the benefit of those who were even more marginal. The legal aid worker was paid poorly, worked in shabby offices, had high case loads, worked with meager budgets, and was often surrounded by women. In the years before 1919, when Reginald Heber Smith's *Justice and the Poor* was published, some self-appointed leaders of legal aid began setting a broad agenda for legal aid and sought to push legal aid from the margins of the legal profession closer to its center. In order to do this, legal aid had to be masculinized and professionalized which meant removing women lay lawyers from legal aid societies, disassociating women clients with domestic relations problems from legal aid, and remaking the legal aid office into something that more closely resembled a lawyer's office.

This issue of legal aid's identity permeated the first national convention of legal aid societies which was held in 1911, and we can already begin to see how women lay lawyers and those few professionally trained women lawyers were being dislocated from legal aid. For example, despite women's long involvement in legal aid as lay and professional lawyers, and their crucial role in creating and founding legal aid, not one woman spoke at the conference. As we will see, the more national and established legal aid became, the

more women's local work was obscured. Repeatedly, at the 1911 conference, speakers deemed Arthur v. Briesen to be the "father of legal aid." Already legal aid was being constructed, by its new leaders, as having sprung forth full grown from the male lawyer's mind.

The conference's first speaker was Samuel Scoville, the head attorney from the Philadelphia Legal Aid Society. Although, as we saw in previous chapters, PLAS arose from the Committee for the Protection of Women and Children, and PLAS' first staff attorney was a woman, this was not mentioned by Scoville when discussing the organization's history. Likewise, although PLAS' early clientele were also primarily women, Scoville neglected this history and set up a general model of those whom the Society aided as primarily men. Separating legal aid from charity, Scoville explained that "The Legal Aid Society of Philadelphia does not give its services free to the poor, believing that a poor man does not wish to be pauperized, but simply to be able to retain an attorney for the same proportion of his income as that paid by his wealthier neighbor."<sup>4</sup> Scoville thus sought to establish the vision of the legal aid client as an independent man. Like any client of a lawyer, he paid for legal services and established an appropriately professional and manly relationship by maintaining his independence.

Although legal aid's past was elided by Scoville and other speakers, the material reality of the actual work of a legal aid office could not be entirely ignored. As soon as the topic of what types of cases legal aid offices actually handled (as opposed to should handle) was addressed, wage claims and women's domestic relations cases resurfaced. Moreover, speakers, when discussing the day to day work of legal aid offices, also

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<sup>4</sup> Samuel Scoville, "The Practical Working of the Legal Aid Society," First Convention of Legal Aid Societies of the United States, (Pittsburg, 1911), 7.

commented on how they seldom actually filed court cases, but rather quickly settled cases. If, in part, appearing in court was what separated the manly practice of law from what women lay lawyers did, legal aid lawyers admitted that actual court cases were only filed in a small fraction of cases. Distinctions thus had to rest elsewhere. Moreover Louis Stoiber, chief attorney of the New York Legal Aid Society, described legal aid work as “[D]eadening, routine work, which would kill any sensible, ambitious man in two months.”<sup>5</sup> Legal aid work was simply not sufficiently manly and robust for an ambitious male lawyer.

Legal aid was thus situated on the margins of the legal profession. Male lawyers in charge of various legal aid societies, however, had high hopes, fantasies of power, and imperial ambitions. Arthur v. Briesen spoke of opening a Washington D.C. office. As he stated, “Just imagine that we should succeed in finding the right man . . . . The man I would imagine for that place would be one who would have high social position; he should be gladly seen in the White House; he should gladly be seen by the justices of the Supreme Court; he should be gladly seen by senators and members of congress.”<sup>6</sup> Here Briesen, specifically masculinized the image of the legal aid provider, and imagined that legal aid work could be removed from the powerlessness and poverty of legal aid clients, and the everyday and deeply local grind of domestic relations cases arising from complaints of women against husbands who beat their wives, were bigamous, or failed to support their families. Instead legal aid could be enshrined into the corridors of male elite power – a place where truly legal and weighty issues might be addressed. Even more ambitiously,

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<sup>5</sup> Louis Stoiber to Professor Racca, Dec. 25, 1912, Box 7, v. Briesen manuscript collection, cited in, Jerold Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America*. New York: Oxford Press, 1976, at 58.

<sup>6</sup> Arthur v. Briesen, “Necessity for National Committee of Legal Aid Societies,” *First Convention of Legal Aid Societies of the United States*, (Pittsburg, 1911), 35-36.

Briesen imagined that legal aid could be removed from the purely domestic context of the United States and become international.

Part of the process of the masculinization of legal aid involved lawyers puzzling over what to do with the women who day after day brought domestic relations cases to legal aid offices. These cases were one of the factors that served to mark legal aid societies as feminine and many male lawyers in legal aid societies looked suspiciously upon and dreaded such cases. In part, some legal aid societies viewed domestic relations claims as not involving the practice of real law and as swamping their offices with women clients who took time and energy away from more pressing cases. At the first national convention, William Sabine of the Boston Legal Aid Society discussed what work a society should undertake. He deemed women's cases against husbands for non-support to be a waste of a lawyer's time and a society's resources. As he stated, "Endless time is used in obtaining bonds, securing the consent of the Judge, and otherwise attending to details. In separate support cases, many are contested when at times hours are wasted merely waiting for the case to be reached."<sup>7</sup> Thus here was a lawyer complaining about actually having to go into court and worry about details and legal process. As we will see, over the next two decades, domestic relations cases continued to provoke enormous controversy which reflected upon the very identity and nature of legal aid.

Rather than legal aid societies taking such cases, he envisioned that social workers in charity organizations could handle them more effectively. He propounded "Great success has attended the efforts of social workers in Boston by making a personal visit upon the putative father . . . and almost without exception *she* obtains a confession of

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<sup>7</sup> William Sabine, "Character of Litigation to be Undertaken," First Convention of Legal Aid Societies of the United States," (Pittsburg, 1911), 45-46.

responsibility. It is then not difficult to make an arrangement for reasonably small weekly payments. When once in the hands of a trained social worker, the money is sure to be applied, and between \$300 and \$500 collected.”<sup>8</sup> Indeed women lay lawyers had been conducting such work within legal aid societies for years. What is important here to understand is that Sabine defined such work and social workers as outside the appropriate purview of a legal aid society and something other than the practice of law. Women’s domestic legal claims were simply not legal enough for the new breed of male legal aid lawyer.

As Sabine’s comment made clear, he assumed correctly that the social worker would be a woman. Whereas law and lawyers were coded as male, the emerging profession of social work and social workers were coded as female. Yet no social worker was asked to speak or comment upon Sabine’s statement. This was so, even though Maude Boyes who was superintendent of the Chicago Legal Aid Society, was in the audience. Boyes had spent almost a decade handling women’s domestic relations claims as well as other cases brought to the Society and she had previously served as the superintendent of the Protective Agency for Women and Children. She was also the only woman delegate at the conference. Indeed the women’s board of directors of the Chicago Legal Aid Society had specifically granted funds to Boyd to attend the conference perhaps with the understanding that she would be the lone woman representative. Boyd must have realized that with the exception of Briesen, she was the most experienced legal aid worker in the room. Indeed in another context, Boyd subtly asserted her own superior knowledge and experience over that of lawyers. As she wrote in one annual report of the Chicago Legal Aid Society, “During the year our staff of attorneys has changed and we have no one today who was

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<sup>8</sup> Id., 47.

with us a year ago . . . It is always a source of gratification to the Superintendent that there are few changes made in the office staff, except among the attorneys; we expect that they will not stay with us long, but while they are here they bring all the enthusiasm of the beginner.”<sup>9</sup>

As national legal aid conferences continued to be held, women’s presence at them remained low. For example, in 1916, only three women attended the conference – again Maude Boyes, Paula Laddey, an attorney for the New Jersey Legal Aid Society, and Miss L.E. Miller an investigator at the Legal Aid Bureau of St. Louis. Moreover, for years, it remained rare to find any women to hold office in the various national legal aid umbrella organizations. In contrast, in 1922, when the first official national legal aid organization was incorporated as the National Association of Legal Aid Organizations (NALAO), John Hassrick of the Bureau of Legal Aid of Philadelphia, was elected to serve on the National Executive Committee with only nineteen months experience as a legal aid attorney.<sup>10</sup>

Likewise as these national conferences occurred, speakers repeatedly asserted that that the New York Legal Aid Society was the first in the country. Although a small number of legal aid providers attempted to argue with such an assertion, their comments were consistently ignored. For example, in 1916, Rudolph Matz in a speech to the National Alliance of Legal Aid Societies, specifically stated that histories that understood the NYLAS as the first legal aid organization were incorrect and that the Protective Agency for Women and Children was the first such organization. Matz, who was the head attorney at the Chicago Legal Aid Society was also the son of one of the founding members of

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<sup>9</sup> *Chicago Legal Aid Society Annual Report 1917*, 24-25, quoted in Jack Katz, *Poor People’s Lawyers in Transition* (New Brunswick: Rutgers University Press, 1982), 47.

<sup>10</sup> NALAO, 1922, 10.

PAWC.<sup>11</sup> Likewise an article written by Maud Boyes understood PAWC as a full-blown legal aid society which had handled a wide-variety of cases on behalf of women.<sup>12</sup> Such corrections fell on deaf ears. Which society was understood as the first legal aid society was much more than just a matter of who got credit. Rather, how legal aid's genesis story was constructed set the framework for who were considered appropriate providers and clients of legal aid.

National conferences and the creation of a national association were only one element of masculinizing the field of legal aid. The ways in which legal aid was promoted to a larger audience also reflected transformation and masculinization. As elaborated in previous chapters, before the second decade of the twentieth century, the quintessential legal aid client was portrayed by legal aid societies and the press as female. For example, when one of the first major articles on the New York Legal Aid Society appeared in *Greenbag* in 1903, it emphasized the Society's female clients and their wage claims against employers who had failed to pay them. The article also elaborated upon the multiple types of domestic relations claims handled on behalf of women by the Society.<sup>13</sup> In contrast, in 1914, a second *Greenbag* article proclaimed that legal aid clients were entitled to a free lawyer "[b]y reason of their manhood."<sup>14</sup> Indeed the quintessential client of legal aid was re-conceptualized to be a wage earning man with a dependent wife and children. By reason of his very status as head of the family, caring for a wife and children, he had a right to an attorney. The article surmised that, "However poor a man may be, there are always two points where he is vulnerable. Whatever touches his wages or his

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<sup>11</sup> *Proceedings of the National Alliance of Legal Aid Societies, Third Biennial Convention* (October, 1916), 137.

<sup>12</sup> Maud Parcells Boyes, "Legal Aid Societies: For the Protection of Home and Family," in ed. Shailer Mathews, *The Woman Citizen and the Home* (Chicago: The Civics Society, 1914), 3137.

<sup>13</sup> Waddill Catchings, "The Work of the New York Legal Aid Society," *Greenbag* 15: (1903) 316.

<sup>14</sup> William E. Walz, "Legal Aid Societies: Their Nature, History, Scope, Methods, and Results," *Greenbag* 26(1914): 98,99.

family goes home directly to his life and to his soul.”<sup>15</sup> Indeed legal aid allowed the wage earning man to maintain his manliness by preserving his ability to support his family.

Further separating women from legal aid, the article assured the reader that legal aid societies rarely accepted divorce or bastardy cases and that “The entire matter is really one not for the law but common sense.”<sup>16</sup> He continued, “[a] few exceptions here and there only go to prove the rule.”<sup>17</sup> As demonstrated in previous chapters, the author’s assertion was baseless and domestic cases, especially those involving the non-support of women and children, including bastardy cases, filled the dockets of legal aid societies. Yet the author’s recitation again served to at least discursively sever the connection between legal aid and women. It further attempted through its language of manhood and entitlements to remove legal aid from the feminized realm of charity and social work. Legal aid leaders were so anxious to disassociate women and legal aid that the Pittsburgh Legal Aid Society went so far as *prohibiting* women from even serving on its board of directors.<sup>18</sup>

For many male leaders of legal aid, one way of distinguishing the sphere of feminized charity filled with female social workers and clients from the masculinized sphere of legal aid, where independent men sought legal counsel, was to construct the legal aid society as any other legal office. A symbolic marker was to charge legal aid clients a small fee. This was a practice that the WWPU, PAWC and CLPW never adopted. Male leaders,

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<sup>15</sup> William E. Walz, “Legal Aid Societies: Their Nature, History, Scope, Methods, and Results,” *Greenbag* 26(1914): 98, 100.

<sup>16</sup> William E. Walz, “Legal Aid Societies: Their Nature, History, Scope, Methods, and Results,” *Greenbag* 26(1914): 98, 100. Bastardy cases involved claims for an illegitimate child’s support brought by the mother against the father.

<sup>17</sup> William E. Walz, “Legal Aid Societies: Their Nature, History, Scope, Methods, and Results,” *Greenbag* 26(1914): 98, 101.

<sup>18</sup> *Proceedings of the National Alliance of Legal Aid Societies, Third Biennial Convention* (1916), 149.

however, contended that charging a fee, which all admitted was so small that it did little financially for legal aid organizations, professionalized legal aid. Reginald Heber Smith claimed that such a fee, put the “relationship between client and [the legal aid] society on a more businesslike basis, it tends to maintain self- respect, it prevents a tendency to pauperization, and it gives the client a greater sense of responsibility toward the society.”<sup>19</sup> In addition, a number of legal aid societies took a percentage of any money judgment obtained on behalf of the client.<sup>20</sup> These fees were intended to create a business-like arms-length transaction.

The greatest opponent of fees were those women who had long participated in providing legal aid to women. Maud Boyes responded to the argument for legal fees with the following: “We surely believe that justice should not be a purchasable commodity but a right.”<sup>21</sup> As Boyes explained, the Chicago Legal Aid Society had initiated a fee in 1905 and continued the practice until 1916. In that year, the Women’s Committee, which had long objected to a fee, recommended that it be removed on the ground that clients were simply too poor to pay and that it was unjust. Furthermore pointed out that such a fee made legal aid look too much like the work of a “private attorney who makes small charges and has a large practice.”<sup>22</sup> Thus where male leaders of legal aid desired the legal aid office to resemble a regular law practice as symbolized by the payment of a fee, Boyes understood that legal aid’s mission to be larger and that the poor were entitled to legal aid that was entirely free. This question of fees, however went to the broader issue of the very nature of

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<sup>19</sup> Smith, *Justice and the Poor*, 167.

<sup>20</sup> See e.g. *Proceedings of the National Alliance of Legal Aid Societies, Third Biennial Convention* (1916), 98.

<sup>21</sup> Maud P. Boyes, “Should Legal Aid Societies Charge Fees for Services Rendered,” *Proceedings of the National Alliance of Legal Aid Societies, Third Biennial Convention* (1916), 92.

<sup>22</sup> Maud P. Boyes, “Should Legal Aid Societies Charge Fees for Services Rendered,” *Proceedings of the National Alliance of Legal Aid Societies, Third Biennial Convention* (1916), 91.

a legal aid society.

*Justice and the Poor: A Revolution in Legal Aid*

Reginald Heber Smith, upon graduation from Harvard Law School in 1914, took the position of general counsel of the Boston Legal Aid Society (BLAS). He remained in the position for four years and then joined the elite Boston law firm of Hale and Dorr. Smith, working from this very elite perch and having spent only four years as a legal aid attorney, would become legal aid's principle national spokesperson and its most effective liaison to bar associations.<sup>23</sup>

Smith's publication of *Justice for the Poor* (1919), which had been funded by a grant from the Carnegie Mellon Foundation, was a watershed event for legal aid. Although, *Justice and the Poor* generally has been understood by historians as accurately describing the then current state of legal aid and its history, a more nuanced reading is that *Justice and the Poor* was inspirational, setting forth what Smith and the new leaders of legal aid hoped legal aid societies would become in the future -- not what they currently were or had been. Yet the impact of *Justice and the Poor* was monumental. Before its publication, legal aid workers were speaking primarily to one another. *Justice and the Poor* redefined the provision of free legal aid to the poor as a national and public issue connected to the efficacy of democracy. Drawing upon the agenda set forth by the new leaders' of legal aid, part of *Justice and the Poor's* mission was to continue the process of masculinization and professionalization. The work set out to accomplish this goal in a multitude of ways. *Justice and the Poor* rewrote the history of legal aid such that women's roles in founding legal aid organizations were eliminated. In its place and quite inaccurately, Smith

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maintained that the New York Legal Aid Society was the first legal aid society in the country. Although Smith and others who constructed such a history were at times corrected, they did not waver from this story.

One of the major themes of *Justice and the Poor*, and in part how the genesis story functioned, was to dislocate the provision of legal aid from lay lawyers, social workers, and social work. Instead Smith situated legal aid firmly in the masculine realm of lawyers and law. Smith had a very clear vision of what legal aid societies ought to be and he was able to synthesize, articulate, and expand upon the general sentiment of the new leaders of legal aid. For example, even before *Justice and the Poor* was published, He entitled a 1917 article on the Boston Legal Aid Society, “A Lawyers Legal Aid Society.” In it, he stressed that the “Distinguishing characteristic of the Boston Legal Aid Society is that it is pre-eminently a lawyers’ institution . . . Only by appreciating the fact that lawyers have been the dominating influence throughout its history can the story of its growth . . . be understood.”<sup>24</sup>

Likewise, *Justice and the Poor* emphasized by fiat, rather than analysis, that legal aid societies were engaged in the practice of law and not social work. As Smith wrote, “The societies are engaged in the practice of law and not in social service work as that phrase is generally used. More closely than anything else, the work resembles an attorney engaged in general practice.”<sup>25</sup> Seeking to separate out “real” legal aid societies, Smith wrote, “The most important thing [about BLAS] is the fact that its initial impulse came entirely from the bar.”<sup>26</sup> Again, Smith’s subtext was the distinction that it did not arise from women’s work and philanthropy. Smith again asserted, “The scope of the work is confined to the field of

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<sup>24</sup> Reginald Heber Smith, “A Lawyers Legal Aid Society,” (1917).

<sup>25</sup> Smith, *Justice and the Poor*, 152.

<sup>26</sup> Smith, *Justice and the Poor*, 141.

legal action.”<sup>27</sup> Smith, reaching for an elusive distinction between legal aid work and social work, contended, “[L]egal aid work is a distinct thing from charity work, it requires the legally trained mind acting in the light of a knowledge of legal affairs.”<sup>28</sup> Such language highlighted that social workers should not be engaged in the provision of legal aid and that only lawyers with specialized knowledge had the ability to do so. The problem with Smith’s statements were that they conflicted with reality. As Smith knew, social workers were part of a multitude of legal aid societies and they engaged in much of the everyday work conducted by these organizations. Moreover, Smith’s assertions elided the complicated question of whether there was much of a difference between the work of social workers and the work of lawyers in legal aid organizations. Yet if Smith read social workers into the story, legal aid would have looked too much like philanthropy and the tenuous hold of the bar’s monopoly over law would have been called into question.

Smith also claimed that legal aid organizations needed to be structured so that attorneys would work in autonomous and independent legal aid societies. He warned that if lawyers and legal aid societies were attached to social service organizations then attorneys’ “freedom of thought,” would be impinged. Moreover he claimed that any non-attorney director of such an agency would be incompetent in connection with legal matters. In other words, legal knowledge could only be truly possessed by a lawyer. Smith further asserted that a legal aid office attached to a social service agency reached fewer people as the poor would be less inclined to ask for the services of a charity.<sup>29</sup> Indeed, like the traits of the ideal man, a legal aid society needed to be strenuously independent. As the attorney would be harmed by dependence on others, so too would the man who was in need of legal aid but

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<sup>27</sup> Smith, *Justice and the Poor*, (page number needed)

<sup>28</sup> Smith, *Justice and the Poor*, 178.

<sup>29</sup> Smith, *Justice and the Poor*, (page number needed)

who would be unwilling to seek such aid if it made him feel dependent—less than a true man. Rather the relationship between the legal aid attorney and his client needed ideally to be a relationship between equally independent men. This argument of dependence and independence, entitlement and charity, would become one of the major themes of lawyers' criticisms of social work.

Smith also strenuously argued against legal aid societies taking divorce cases. As he wrote, "The issue is not between divorce and no-relief; non-support proceedings will secure support and separation proceedings will protect against brutality or physical abuse. The issue is between legal action that breaks up the home forever and legal action which preserves the home or leaves the path open for reconciliation."<sup>30</sup> While we might understand Smith's objection to legal aid societies accepting divorce cases as a reflection that divorce was understood by many to be immoral and as part of an ideology that sought to keep families together, we must also understand that it was primarily women who sought divorces. One way of reducing the number of female legal aid clients was to refuse to handle divorce cases.<sup>31</sup>

*Justice and the Poor* was a success on multiple levels for it revised the past history of legal aid, sought to elevate the standing of the legal aid attorney, saw legal aid as a right, and began to argue that the established bar was responsible for supporting legal aid societies. Smith's vision of legal aid was deeply masculine. The legal aid provider was to be a lawyer, in an independent society, which was unconnected to social work. Moreover

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<sup>30</sup> Smith, *Justice and the Poor*, 155

<sup>31</sup> On the history of divorce see Hendrick Hartog, *Man and Wife in America: A History* (Cambridge, Mass: Harvard University Press, 2000); Norma Basch, *Framing American Divorce: From the Revolutionary Generation to the Victorian* (Berkeley: University of California Press, 1999); J. Herbie DiFonzo, *Beneath the Fault Line: The Popular and Legal Culture of Divorce in Twentieth-Century America* (Charlottesville, University Press of Virginia, 1997).

bar associations would be responsible for establishing, staffing, and managing legal aid societies. Indeed, when Smith wrote *Justice and the Poor*, he believed that women should not even be lawyers. *Justice and the Poor* was not entirely original but rather brought together, solidified, and disseminated the thinking on legal aid which a new crop of male leaders of legal aid had been espousing during the previous decade. Not surprisingly, it was embraced by such male leaders, functioning as a sort-of bible and providing legal aid with a reformulated history and blue print for the future.<sup>32</sup>

The history that Smith set forth quickly became accepted doctrine. The origins of the provision of legal aid to the poor and the work of women in legal aid offices as lay lawyers and formally trained lawyers, was further ignored and suppressed in the coming years. For example, in 1922 at NALAO's conference, Leonard McGee, president of NALAO and head of the New York Legal Aid Society, announced that "Legal Aid Work has been a young man's work."<sup>33</sup> McGee went on to name the past and present leaders of legal aid. Not surprisingly, not one woman was mentioned, not even Rosalie Loew.<sup>34</sup>

As such transformations occurred, Smith and the new leaders of legal aid courted bar associations. In 1921, a special committee of the American Bar Association, of which Smith was a member, presented a report on legal aid to the Association. It claimed that lawyers had a moral obligation to ensure that all who needed legal counsel could obtain it whether or not they could pay for an attorney. Such moral obligation could be performed by lawyers, not through direct work with the poor, but rather through the ABA supporting legal aid organizations. As the report states, [T]o the extent that legal aid work has become a national

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<sup>32</sup> Grossberg, "The Politics of Professionalism," 308.

<sup>33</sup> Leonard McGee, "Duties and Work of a National Legal Aid Organization," *Proceedings of the Fifth National Conference of Legal Aid Bureaus and Societies* (March 1922), 100.

<sup>34</sup> Loew was chief attorney of the New York Legal Aid Society from 1901 to 1903. She began working as an attorney with NYLAS in 1897.

movement the American Bar Association alone has adequate jurisdiction to sponsor, aid, and *direct* it.<sup>35</sup> As Charles Hughes, who had originally been Chairman of the special committee stated, “While the legal aid organizations are instruments of the entire community, they perform a service which lawyers should regard as peculiarly their own.”<sup>36</sup> In return for the support of the ABA, the ABA would then provide oversight of legal aid organizations. Indeed legal aid leaders like Smith believed that sponsorship by the ABA would provide needed funds as well as prestige. It would also firmly position legal aid in this very elite, conservative, and masculinized professional organization.<sup>37</sup> It certainly would not have elicited the support of lawyers of national prominence, if it had been disclosed that women social workers performed a great deal of the legal work in at least some organizations.

*The Chicago Model: Realities, Social Work, and Continuing Controversy*

The idea that legal aid was something distinct from social work, and that its delivery required professionally trained lawyers, did not go unchallenged nor did it constitute the material reality of how legal aid was provided. Due to this disconnect, Smith’s and others’ attempts to disassociate social work from legal aid created significant discord between various legal aid societies and legal aid providers. In many ways, Smith’s work also took direct aim at the Chicago Legal Aid Society and other societies that were part of social service agencies and which were heavily staffed by social workers. In fact, by 1918, social workers dominated the Chicago Legal Aid Society with two social workers for every one

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<sup>35</sup> “Report of the Special Committee on Legal Aid Work,” in *Report of the Forty-Fourth Annual Meeting of the American Bar Association*, 1921, 495.

<sup>36</sup> *Id.* At 497. Hughes resigned as Chairman of the Committee before the 1921 convention when he was appointed Secretary of State.

<sup>37</sup> On the very conservative nature of the ABA at this time see Auerbach, Ch. 4.

lawyer.<sup>38</sup> Maude Boyes proudly wrote that with twenty-two social workers on staff the Chicago Legal Aid Society was “socialized.”<sup>39</sup> Later, this became quite literally true as CLAS, in 1919, became a department of the United Charities of Chicago.<sup>40</sup>

The recognition of social work as a profession came slowly and many during the early to mid-twentieth century considered it liminal. Growing out of women’s benevolent work and charity, social work was closely associated with women.<sup>41</sup> In 1915, Abraham Flexner critiqued social work as lacking a core set of skills. Rather it was the social worker’s job to call in professionals and experts. Flexner further questioned whether social work could ever be a real profession.<sup>42</sup> In part, social work was understood as more about traits, such as sympathy and resourcefulness, rather than knowledge or skill.<sup>43</sup> Recognizing such criticisms, social workers continually sought to professionalize their work. This occurred by creating schools of social work, establishing their own professional organizations and journals, and continually trying to separate their work from that performed by women volunteers.<sup>44</sup> Importantly, scholars of social work widely accept that the prime technique that social workers developed was casework which was based on a medical model. Yet the

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<sup>38</sup> Claghorn, 487.

<sup>39</sup> Maud P. Boyes, “Should Legal Aid Societies Charge Fees for Services Rendered,” *Proceedings of the National Alliance of Legal Aid Societies, Third Biennial Convention* (1916), 91

<sup>40</sup> See Marguerite Raeder Garipey, “The Legal Aid Bureau of the United Charities of Chicago,” *Annals of the American Academy of Political and Social Science* 124 (Mar. 1926): 33 -41, 33.

<sup>41</sup> Walkowitz, *Working with Class*, 7.

<sup>42</sup> Abraham Flexner, “Is Social Work a Profession,” *Proceedings of the National Conference of Charities and Corrections at the Forty-Second Annual Session* (Chicago: Hildmann, 1915), reprinted in, *Research on Social Work Practice* 11 (March 2001): 152-165.

<sup>43</sup> John H. Ehrenreich, *The Altruistic Imagination: A History of Social Work and Social Policy in the United States* (Ithaca: Cornell University Press, 1985), 57-58; See also Daniel Walkowitz, “The Making of a Feminine Professional Identity: Social Workers in the 1920s,” *The American Historical Review* 95 (No 4): 1051-75.

<sup>44</sup> The first school of social work was created in 1898 in New York and in 1904 began to function as the New York School of philanthropy. The organization of other schools quickly followed. Walkowitz, *Class*, 27. See also Walkowitz at 53-54. It must be remembered that elite lawyers themselves were deeply concerned about the professional credentials of lawyers including whether a collegedegree should be required. See Auerbach.

casework approach, while different in certain respects and perhaps more limited, is also what lawyers used. What is crucial to recognize is that the question of what constituted a profession was deeply embedded in ideological constructs including that of gender.

At the 1922 NALAO central committee meeting, Leonard McGee, the president of the organization, labeled the role of social work and social workers in the provision of legal aid, “the most dangerous” issue ever faced by legal aid organizations. The wrong decision, he declared, may “destroy public confidence” and “deter the poor” from seeking help.<sup>45</sup> He presented the conflict in stark terms. One side believed that a legal aid society was a law office for poor people and should function as any other law office. The other side believed that legal aid was part of social services and had a duty to the community and the client which extended beyond simply providing legal services to an individual.

NALAO had appointed a committee to examine the question of legal aid’s relationship to social service agencies which Alice Waldo headed. Waldo was a social worker employed by the volunteer defenders office which was part of the New York Legal Aid Society. The fact that Waldo was the sole woman who headed a NALAO committee and only one of two women in attendance at the conference, is further evidence of the close association between social work and women. Waldo’s report was immensely conflicted and she clearly understood that she was writing for an audience of male lawyers. The report began, “The relationship between Social Service Work and Legal Aid Work . . . presents what is perhaps the most important . . . question. . . . [I]t directly throws us back to first principles –What is Legal Aid Work, what is a Legal Aid Case, Who is a proper Legal Aid client, what is the general duty to the poor, what is the particular duty of Society to the

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<sup>45</sup> Leonard McGee, “Preface,” *Record of Proceedings at the Meetings of the Central Committee of the National Alliance of Legal Aid Societies* (Dec. 15, 1922), VIII.

indigent person needing legal advice and assistance.”<sup>46</sup> The report recognized the heated nature of the debate and urged its readers to rid themselves of “prejudices” and “stereotypes.”<sup>47</sup> The goal of the report was to search for a middle-ground and to try to reconcile the two opposing camps.

Although male legal aid leaders sought to distinguish legal aid from charity, philanthropy, and social work, Waldo positioned legal aid societies as both charities and social service agencies and articulated how legal aid might be considered one element of social service work. Moreover, unlike Reginald Heber Smith’s work, the report recognized the wide use of social workers in legal aid organizations, including social workers who were in charge of client intake. It called “untenable” the claim that legal aid societies were like any other law office.<sup>48</sup> Rather, legal aid lawyers, unlike private lawyers, had a duty to ensure that a client received all available and necessary social services.

Yet as soon as the report articulated these claims, it quickly backed away from them, diminishing the extent of the controversy by arguing that the trouble was simply at the margins. Accepting the statistics in *Justice and the Poor*, Waldo’s report found that very few legal aid clients needed social work services. How the report derived these statistics was highly gendered. The male worker who had a personal injury claim needed only legal aid in order to collect the damages rightly owed to him. In contrast, the report situated domestic relations cases as properly in the field of social work and not law. The report continued, “A dispute between any married couple may involve elements very different from a simple legal claim . . . In marriage there is a large social interest and the

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<sup>46</sup> Alice Waldo, “Report of the Committee on Relationship Between Social Service Work and Legal Aid Work,” *Record of Proceedings at the Meetings of the Central Committee of the National Alliance of Legal Aid Societies* (Dec. 15, 1922), 35.

<sup>47</sup> *Id.*, 35-36.

<sup>48</sup> *Id.*, 43.

law recognizes it. Therefore, even if the parties need purely a [sic] legal relief, the legal relief itself involves questions of social interest which may properly be within the field of the social worker.”<sup>49</sup> Indeed, the report suggested that if social workers were going to be removed from legal aid organizations, they were going to take domestic relations cases with them.

Having recognized the role that social workers might play, she then criticized those social workers who too strongly claimed that they should be on the frontline and determine the legal needs and requirements of a client. Trying to put out this growing fire, she took a middle position arguing that that intake and diagnosis need not be done entirely by a social worker nor should one have to be an attorney. Rather she imagined a new cadre of professionals who would be trained legal-social workers. Thus, the female lay lawyer of the past would now become the professionalized legal-social worker of the future. Indeed it was this idea that would dominate the later thinking of legal aid leaders who took a moderate position in regard to social workers’ role in legal aid as compared to Smith’s more conservative position.

Waldo’s report, however, also warned that the most radical of social workers did pose a significant danger to legal aid as they elevated morals and justice over the rule of law. It declared that such thinking was “subversive and dangerous” of democracy itself.<sup>50</sup> Putting these “radical” but unnamed social workers between a rock and a hard place, she also criticized them for being more concerned with societal good than the interests of the individual client. Later criticisms of social workers would echo this double-edged complaint that social workers wanted to bend or even ignore the law so that justice would

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<sup>49</sup> Id., 41.

<sup>50</sup> Id., 45.

be served in the individual case and that they failed to provide their clients with zealous advocacy for they were more concerned with community well-being than their clients' needs. Siding with the male leaders of legal aid, Waldo concluded that legal aid's alignment with bar associations was more advantageous than its alignment with social workers and social service agencies. The report concluded by once again explicitly masculinizing legal aid and its history, claiming that bar associations were the rightful "foster father" of legal aid but that in the future social workers might become their "foster mother."<sup>51</sup>

Waldo's report was in tension with itself as it sought to reconcile lawyers and social workers, legal aid societies and social service agencies. At moments, it recognized the need for social workers in legal aid and at moments it denied such need. At times, it seemed to acknowledge the history of social workers and lay lawyers in legal aid and at moments it denied such history. Moreover it assumed that all legal aid lawyers were male and that social workers were female. Waldo, herself, occupied a liminal position. Although she did not have formal legal training, she was the head of investigations for the volunteer defenders office, a position that was deeply seeped in criminal law and which gave her a tremendous amount of discretion in handling criminal cases. Thus she, in fact, was a lay lawyer working in a legal aid society. She was also a woman without formal legal training, heading a committee and writing a report for primarily male lawyers. On a personal note, Waldo deeply yearned to attend law school and she enrolled in a

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<sup>51</sup> Alice Waldo, "Report of the Committee on Relationship Between Social Service Work and Legal Aid Work," *Record of Proceedings at the Meetings of the Central Committee of the National Alliance of Legal Aid Societies* (Dec. 15, 1922), 45-46.

correspondence law school which turned out to be a sham.<sup>52</sup> She, who was very well read in law and who in a sense practiced law every day, obviously saw herself as becoming the trained lawyer-social worker of the future.

Robert Kelso, President of the National Conference on Social Work, briefly responded to Waldo's report. He argued that social workers constantly saw clients who also needed legal help. Likewise, he stressed that social workers should conduct initial interviews with clients in legal aid organizations in order for all of the client's needs to be assessed and met. Yet Kelso also had a more hostile understanding of law. He propounded that at the heart of law stood contracts and property which elevated the individual above ideas of societal and community good. Likewise lawyers protected the sacredness of contracts and property through inflexible rules, which often failed to produce substantive justice. In contrast, he argued, the social worker brought the idea of the "social" into the law. Pointing to a "revolt" by social workers, Kelso celebrated how social workers created juvenile courts, workman's compensation boards, and zoning boards, which saw the individual as part of a larger community and which challenged much of the formality of law. He further argued that legal education needed to change to bring in "social conditions" regarding how people, especially the poor actually lived and how law created such conditions. Thus as the debate unfolded, the rupture between social workers and lawyers began to be about the very nature of the law and the role of lawyers.<sup>53</sup>

Shortly after the 1922 conference, Waldo delivered another address to social

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<sup>52</sup> Alice Waldo, "Social Point of View in Legal Aid Work," *The Social Welfare Forum* (1923), 190

<sup>53</sup> Karen Tani, exploring differences between lawyers and social workers conception of rights stemming from New Deal programs argues that social workers understood rights as government responsible for substantive and material human needs. In contrast, lawyers had a more procedural understanding of rights. Karen Tani, "Securing a Right to Welfare: Public Assistance Administration and the Rule of Law, 1935-1960 (working manuscript, Ch. 3.

workers, in which she contended that lawyers were only able to address a client's immediate problems whereas social workers were able to delve to the root of the issue.<sup>54</sup> Waldo also pointed to, while attempting to smooth, political differences between lawyers and social workers. As she stated, "Often lawyers . . . have spoken of social workers as wild eyed bolshevii [sic], ready to disrupt the world overnight. They think that because we rail at injustices in perhaps a heated fashion when we see intolerable conditions, we seek the abolition of law and lawyers."<sup>55</sup> The use of "Bolshevii" must have been particularly meaningful to the audience as this was a time when conservatives were labeling as communists leading women social workers and reformers.<sup>56</sup> Moreover, as Daniel Walkowitz has demonstrated there was a general wide-spread suspicion of social workers' politics and some social workers did have socialist sympathies. For some lawyers, social workers' politics made them dangerous, biased and unprofessional.<sup>57</sup> In part the split between social workers and lawyers over legal aid may have also been about what the poor actually needed – a lawyer or deep social change. Furthermore to the extent that lawyers and the general establishment supported legal aid as one means to assimilate and de-radicalize immigrants, social workers with left sympathies undermined this purpose.<sup>58</sup>

Margerite Raedar, the head attorney at the Chicago Legal Aid Society, quickly replaced Waldo as head of NALAO's Committee on Relations with Social Service Agencies. Raedar was perhaps better suited to the task having years of experience as a legal

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<sup>54</sup> Alice Waldo, "Social Point of View in Legal Aid Work," *The Social Welfare Forum* (1923), 189.

<sup>55</sup> Alice Waldo, "Social Point of View in Legal Aid Work," *The Social Welfare Forum* (1923), 190.

<sup>56</sup> See Linda Gordon, *Pitied but not Entitled*, 93.

<sup>57</sup> Walkowitz, 67-68.

<sup>58</sup> Historians generally believe that this de-radicalization argument was one of the principal reasons for the development of legal aid. See Auerbach, Ch 3,4.

aid attorney at a society which was deeply ensconced in social work. The committee immediately undertook a survey of legal aid societies and social service agencies to determine the relations that existed on the ground, the need for interaction between the two professions, and the attitudes of lawyers and social workers towards each other. Not surprisingly, the survey found that social workers did not fully appreciate the value of legal aid and legal aid attorneys did not see the value of social work.

Some social work agencies in cities without legal aid societies did not feel that such a society was needed as they did much of their own legal work and relied on attorney board members when they needed additional legal advice. Even where legal aid societies did exist, at times social workers complained about the quality and attitudes of legal aid attorneys. Some of the surveyed social workers responded as follows: “There has been little confidence in the advice or ability of the Legal Aid Department; the lawyer in charge is said to be erratic and undependable.” Another social worker wrote, “We find the Legal Aid Society perfunctory and uncooperative, often adopting a contemptuous attitude toward social problems and opinions of social workers.” Others complained that lawyers were impatient and untrained. Such criticisms are important for they represent a unique example where we can hear the voices of practicing social workers regarding legal aid attorney’s actual performances.<sup>59</sup> What becomes clear, is that social workers, at times, distrusted the ability of legal aid attorneys and preferred to rely upon their own legal knowledge. Some social workers also viewed legal aid attorneys as contemptuous of social workers. Undoubtedly, attorneys’ sense of superiority derived from the professional knowledge that they believed they possessed and the ways in which gender infused such hierarchies. In contrast, some

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<sup>59</sup> Report of the Committee on Relations with Social Agencies (1923-1924) in Reports of Committees of the National Association of Legal Aid Organizations (1923-1924), 103, 104.

social workers refused to defer to lawyers elevating their own practical knowledge above that of the “legally trained mind.”

Raedar’s report continued that legal aid attorneys had a duty to at least refer clients to social service agencies when needed. It further recommended that legal aid societies have social workers on staff. As the report stated, “The fact that so few cases are referred to Social Agencies by Legal Aid Agencies doubtless shows that legal aid workers do not recognize social problems or if they do, do not feel any responsibility for seeing that they are solved.”<sup>60</sup> Echoing and building upon Waldo’s earlier report, it recommended that social workers receive more formal training in law. This was radical at a time when bar associations were firmly consolidating their monopoly over law. The committee’s report challenged this monopoly, essentially claiming that with some legal training, social workers could understand and engage in providing legal advice. It made visible a practice that had long been occurring. Moreover, it overtly challenged the male nature of the legal profession by implying that female social workers had the capacity to engage with law. It stood in significant contrast to Reginald Heber Smith’s assertion that legal aid had to be provided by lawyers.

Raeder emerged as one of the most ardent supporters of a combined social work/law approach to legal aid. In a NAOLAO speech, Raeder proudly exclaimed that CLAS was “socialized” and that to be “socialized” meant that attorneys and social workers worked closely with one another, that social workers provided legal advice, often investigated cases, and engaged in mediating and settling cases. In a question and answer period following Raeder’s presentation, she was specifically asked whether in Chicago “prospective clients

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<sup>60</sup> 104

[were] interviewed by persons who are not attorneys.”<sup>61</sup> Raeder’s answer is telling: “[O]ne worker talks to all the clients that come in and she tries to determine in a preliminary way whether the client is entitled to free services. That worker is now an attorney who has social work training. Our cases are handled first by social workers, but it happens that they are attorneys as well as social workers with the exception of the workers that handle wage claims collections which are handled entirely by social workers. We find they are much more successful in making collections from the people than attorneys.”<sup>62</sup>

Thus CLAS continued the tradition of the WWPU, PAWC, and the LCPW, in having women lay lawyers (now social workers) handle wage claims. Unlike domestic relations claims which might be constructed as not real law and thus appropriate for a social worker, such argument could not be made regarding wage claims. Such claims involved contracts and represented one of the largest category of cases in any legal aid office. Raeder made it clear that social workers were practicing law. Moreover, CLAS refused to make a hard distinction between law and social work. Perhaps, even more troubling, there was no clear hierarchy between lawyers and social workers. The social workers within CLAS reported to Raeder and Raeder reported to the head social worker.

Broadly, as Raeder expounded, “[C]lients receive not only legal assistance, but also assistance in solving their social problems which are often at the root of the legal

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<sup>61</sup> Marguerite Raeder, “Relation Between Social Service Agencies and Legal Aid Organizations,” *Proceedings of the Fifth National Conference of Legal Aid Bureaus and Societies* (March 1922), 34.

<sup>62</sup> Marguerite Raeder, “Relation Between Social Service Agencies and Legal Aid Organizations,” *Proceedings of the Fifth National Conference of Legal Aid Bureaus and Societies* (March 1922), 34-35.

difficulty.”<sup>63</sup> As she articulated, under the Chicago model, the legal aid attorney was continually available for social workers to call upon when they had legal questions regarding advice to a particular client. Such availability of lawyers allowed social workers to determine whether a client specifically needed legal aid services or whether passing along particular legal advice would suffice. Lawyers also educated social workers on points of law and coordinated with social workers on actions to be taken by the attorney.<sup>64</sup> Thus were the independent legal aid society worked on a top down hierarchal basis, the social work model functioned more cooperatively.

As Raedar pointed out, social workers unlike legal aid attorneys in independent legal aid societies had the ability to provide clients with immediate financial relief which legal aid societies did not. Likewise social service agencies could pay court costs, often something that stand alone legal aid societies lacked the resources to do. Further as state welfare programs became available, lawyers working closely with social workers could help clients meet eligibility requirements. For example, Illinois had a provision by which potential recipients of mother’s pensions were excluded from being eligible if they owned a certain amount of property. Legal aid lawyers working side by side with social workers helped women who had interests in small amounts of real estate or other property to dispose or transfer it. As Raeder propounded, only through close cooperation between lawyers and social worker could legal aid “fulfill what would seem to be its highest

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<sup>63</sup> Marguerite Raedar, “Relation Between Social Service Agencies and Legal Aid Organizations,” *Proceedings of the Fifth National Conference of Legal Aid Bureaus and Societies* (March 1922), 34-35, 39.

<sup>64</sup> Legal Aid as Part of a community program. 75

purpose, that of securing equal justice and equal opportunity for the poor.”<sup>65</sup> Thus, as explained by Raeder, the underlying reasons for the poverty of the legal aid client needed to be addressed not just the legal problem.

*The Lawerly Critique of Social Workers*

Following the NALAO conventions of the early 1920s, a cottage industry developed in both legal aid lawyers and social workers writing on the animosity between the two professions and how their approaches differed. Reginald Heber Smith was consistently unsparing in his critique of social workers and his belief that they should not be part of legal aid societies. For Smith, legal aid needed to be firmly within the masculine field of law. Yet Smith’s critique was also more substantive. Smith believed that social workers and the legal reforms that they championed challenged the basic tenets of the role of law in a democracy. The entire idea of family courts and juvenile courts where social workers attempted to present issues involving litigants’ background and experience intentionally decimated traditional rules of evidence.<sup>66</sup> For Smith, such evidentiary rules ensured uniformity and that cases were decided based upon legal merit rather than an individual’s personal characteristics.

In addition, Smith believed that the confidentiality of the lawyer-client relationship would be ruined by social workers’ involvement. In part, he was saying that social workers were not and could not be considered legal professionals or part of a legal team. Echoing

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<sup>66</sup> Reginald Heber Smith, “Forward,” in John S. Bradway, *Law and Social Work: An Introduction to the Study of The Legal-Social Field for Social Workers* Chicago: University of Chicago Press, 1929), viii.

popular sentiment, he viewed social workers as mere meddlers.<sup>67</sup> As such, providing them with any information would destroy attorney-client confidentiality. Although Smith never stated it as such, his criticisms came close to the stereotype of women not being able to keep secrets. Other criticisms of social workers by lawyers included that they were “too sympathetic to their clients, they were too idealistic, too controlling, and gave too much legal advice.”<sup>68</sup> The constant trope that social workers too often sympathized with their clients might best be understood as an attack upon social worker’s professionalism. One of the hallmarks of professionalism was objectivity which was also a trait associated with masculinity. Such criticisms thus called into question social worker’s professionalism while emphasizing the female nature of social work. Such close association between social work and women in part functioned to preclude the necessary objectivity which would raise the social worker to a professional akin to the lawyer.

Although such criticisms were often based on stereotypes and were internally inconsistent, in that social workers were accused of both being too zealous in representing a client’s interests and of failing to adequately represent a client, there were some real differences between how lawyerly lawyers understood legal aid and how social workers and their allies understood legal aid. The lawyerly model of legal aid ideally saw the lawyer’s involvement with a client as somewhat minimal. Only a singular and specific legal issue was addressed by the lawyer and after settlement or a decision by a court, the case was closed. On the other hand, social workers might seek out additional problems a client faced. Moreover, a settlement or judgment did not necessarily end the relationship with the client. As Margerite Raeder pointed out a social workers might attempt to “persuade” families “to

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<sup>67</sup> See Daniel Walkowitz, “The Making of a Feminine Professional Identity: Social Workers in the 1920s,” *The American Historical Review* 95 (No 4): 1051-75.

<sup>68</sup> “A Lawyer Looks at Social Workers, Survey (Feb 15, 1925), 585.

expend the money [from a judgment] wisely.”<sup>69</sup> In other words, social work could in fact be quite intrusive into the client’s life.

Even more of an anathema to the lawyerly legal aid model, social workers at times were particularly sympathetic to wives rather than to husbands. For example, at times, wives were able to prevail upon social workers to seize control of funds from judgments rather than allow drunken husbands access and control of such money. The social worker, acting as an administrator of such property, would then use the funds to pay family expenses. Such involvement, especially when the husband was a client of the legal aid society, smacked of breaches of confidentiality and loyalty to the client. Moreover, rather than such compensation returning the family to independence, critics saw it as enhancing the dependency of the family on outside support. As Raeder admitted, there were no clear cut rules regarding what to do in such cases, rather Chicago’s legal aid lawyers tried to do what was in the “best interest of the client in the long run.”<sup>70</sup> This gave the legal aid provider significant discretion and allowed her to substitute her own judgment for that of the head of the family. Where lawyerly lawyers might countenance the need for a single mother to rely upon the social worker to administer funds, where a male head of household existed, the social worker’s action pauperized and feminized the man. In other words, instead of such aid underwriting his manly independence, it emasculated him.

Pointing to a larger difference as well, for the social worker, the unit of their attention and focus was the family and where husbands were missing the mother-child dyad. For the strict lawyerly model of legal aid, it was the individual rights bearing man. Joel Hunter, of Chicago’s United Charities, pointed out the attitudinal difference between

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<sup>69</sup> Raeder, 29

<sup>70</sup> Raedar, 34.

lawyers and social workers. As he stated, "Social workers are often irritated by the delays and rigidity of 'the law.'" Lawyers cannot understand the amount of time that family case workers spend on domestic problems. Let me illustrate by the difference between a good original interview in a Legal Aid office and one in a Family Service office *in one point*. The Legal Aid interviewers will direct the interview so that all irrelevant material is eliminated and so that everything relating to the particular legal problem is covered. The Family Service worker will do everything possible to put the client at ease so that he will talk freely and in his own way about his feelings and attitudes relating to the problems on his mind."<sup>71</sup> Again, for the social work model, the entire life of the client was relevant and a legal problem could not be cordoned off; rather the legal problem itself was a symptom of other problems. For the lawyerly model, only the client's particular legal issue was relevant.

### *Divorce and Domestic Relations*

Perhaps no issue divided lawyerly legal aid societies and social workers and their allies so much as divorce and various types of domestic relations claims. Lawyerly leaders of legal aid blamed women social workers for their too lenient approach to divorce and their overzealous representation of women clients. As one report which surveyed legal aid lawyers explained, social workers frequently asked legal aid lawyers to secure divorces for women whose husbands had deserted them and who were now living with different men. Often the wife had children with the man with whom she was now living. Some lawyers argued that because of the woman's unclean hands (in that she had committed adultery), she was not by law entitled to a divorce. Other lawyers believed

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<sup>71</sup> Joel D. Hunter, "Social Agencies and Legal Aid Theory," *The Annals of the American Academy of Political Social Science* 205 (1939): 129, 131.

that such divorces brought little social benefit, wasted resources, and that it was ethically wrong to take such cases.

Mainstream legal aid lawyers' hostility to divorce was palpable. As head counsel for the Cleveland Legal Aid Society admitted, "Last year out of seven thousand four hundred and nine cases we had twelve hundred domestic complaints . . . . Out of that number, I think the court records will show we handled thirty-two divorces. Perhaps that will seem a large number – too many. The rule against handling divorces is a wise one and without it we would be courting disaster, since the number of domestic complaints tends to increase."<sup>72</sup> According to this perverse logic, legal aid needed to limit the divorce cases that it accepted for there was simply too much demand from clients. As recognized, if societies liberally accepted divorce cases, they would have been swamped by women in need of services which would further have feminized legal aid. Indeed Cleveland was so concerned about taking divorce cases, that each one had to be approved by its executive committee. Even with Cleveland's stringent rules regarding divorce, other legal aid leaders insinuated that its practices were too lenient.<sup>73</sup> For example, BLAS and the Cincinnati Legal Aid Society refused to take divorce cases altogether.<sup>74</sup> A NALAO survey in the early 1930s found, "[T]he number of persons who seek assistance from legal aid organizations in divorce actions is very great, although the number of cases in which pleadings are filed and relief sought for clients through court actions is very small. One organization reported 21 court

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<sup>72</sup> C.E. Clarke, "Practical Steps for Legal Aid Work," *Proceedings of the Fifth National Conference of Legal Aid Bureaus and Societies* (March 1922), 55.

<sup>73</sup> *Proceedings of the Fifth National Conference of Legal Aid Bureaus and Societies* (March 1922), 65-67.

<sup>74</sup> See *Third Conference of Legal Aid Societies of the United States* (Nov. 19, 1914) (NYPL), 52. See also Kate Holladay Claghorn, *The Immigrant's Day in Court* (New York: Harpers 1923).

actions in the past *five years*; another 127; and another 60.”<sup>75</sup> These numbers are quite astounding as even small legal aid organizations handled thousands of cases a year. Moreover lawerly legal aid societies also became more willing to represent men in cases arising from domestic relations. For example, such societies began to represent men who were criminally charged with the non-support of wives and families.<sup>76</sup> Even outside of the criminal context, legal aid societies increasingly represented men seeking to reduce or suspend support payments.<sup>77</sup>

In contrast, those societies where women lawyers and social workers continued to have substantial power were more willing to accept women’s divorce cases.<sup>78</sup> In Chicago, up until 1919, the women directors of CLAS were in charge of divorces and whether a particular case would be taken. Minutes from their meetings indicate that it was rare that a case was refused. Such sympathy to the need for divorce continued through the 1930s. In 1939, Mary Isham, a social worker with the San Francisco legal aid bureau wrote, “While a divorce might destroy the stability of a home and adversely affect the personalities of the people involved, it should be recognized that in some instances a divorce may provide a means of escape from a tense home atmosphere . . . Some of the objectives that may be gained by a divorce are: (1) legitimation of children, (2) establishment of custody of children; (3) mental release from the presence of a violent and fearsome person; (4) establishment of security and stability in the home; (5) re-

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<sup>75</sup> Report of the Committee of Records, NALAO, Reports of Committee 1931-1932, 44.

<sup>76</sup> On the use of criminal law to compel men to support wives and families see Michael Willrich, “Home Slackers: Men, the State and Welfare in Modern America,” *Journal of American History* 87: (Sept. 2000): 460-489.

<sup>77</sup> Joseph Nissley, A Bar Association Committee Does Legal Aid Work (Sept. 1939), *The Annals of the American Academy of Political Social Science* 205 (1939), 87.

<sup>78</sup> Claghorn, 488

establishment of the self-respect of the women.”<sup>79</sup> Here we see that domestic violence, and even the psychological fear of violence, was now explicitly recognized as a grounds for legal aid to accept a divorce. Likewise the desire for stability and the legitimation of children was as well. These were reasons for divorce that some lawerly legal aid lawyers continued to reject as legitimate.

Social workers constantly complained that in connection with domestic relations claims lawyers were dogmatic, inflexible, and rejected their cases without explanation. Recognizing a bit of a crisis, NALAOs’ committee on records, taking an unusual step, recommended that at least where a social agency or juvenile court recommended a divorce, societies accept them. In 1932, Ruth Miner, the sole woman on the executive committee of NALAO suggested that legal aid organizations be urged to stop refusing all divorces.<sup>80</sup> Indeed it is quite astonishing that at a time when societies became increasingly willing to take criminal cases, they continued to be so unwilling to take divorce cases. Indeed this was a far cry from what the women of the PAWC had imagined that legal aid would be.

Some legal aid lawyers also complained that social workers at times wanted men barred from homes, and their wages garnished for failure to pay support, when from the lawyers standpoint, insufficient legal grounds existed.<sup>81</sup> The gist of such complaints was that social workers favored women and ignored men’s legally protected rights to their wages. Indeed the dockets of legal aid societies, especially those dominated by social workers were filled with non-support and garnishment cases. In part lawerly lawyers’

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<sup>79</sup> Isham, *Annals* (1939).

<sup>80</sup> Minutes of the Meeting of the Executive Committee, NALAO, Reports of Committees 1930-1931, 30.

<sup>81</sup> Report of the sub-committee of the Committee of the American Association for Organizing Family Social Work on Relations with Legal Aid Societies” in National Association of Legal Aid Organizations, Reports of Committees, 1927-1928, 90-91. See Michael Willrich, “Home Slackers: Men, the State and Welfare in Modern America,” *Journal of American History* 87: (Sept. 2000): 460-489.

complaints did reflect many social workers' belief that husbands and fathers were morally and legally bound to support wives and children. For example, from 1909 to 1915, United Charities of Chicago handled over eight thousand and eighty cases against men who failed to support their wives and children.<sup>82</sup> Whereas many social workers were exceedingly comfortable supporting civil and criminal punishment against errant husbands and policing such men, some legal aid lawyers began to have significant qualms about the strict enforcement of such laws.

This story in part complicates our understanding of social work. Quite consistently a host of scholars have demonstrated the significant social control that social workers asserted over poor women's lives. Although this is undoubtedly correct, the social work model also provided resources and services to women which the lawyerly model of legal aid often rejected. It also points to how social workers were at times much more willing to believe women's stories than were some male lawyers. Indeed out of necessity, poor women often were willing to submit to social worker's supervision in return for social workers providing the legal resources to police male behavior.<sup>83</sup>

#### *In Further Defense of Social Work*

One of the goals of those who supported even moderate cooperation between lawyers and social workers was to have them share information. Social workers had created central registries where cases that were handled by social service agencies/charities would be recorded to prevent duplication of effort, provide information, and ensure that families did not receive overlapping aid. Those proponents of a social work-legal aid approach,

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<sup>82</sup> Michael Willrich, "Home Slackers: Men, the State and Welfare in Modern America," *Journal of American History* 87: (Sept. 2000): 460-489.

<sup>83</sup> On this point see e.g. Willrich, "Home Slackers; Gordon, *Pitied but not Entitled*; Gordon, *Heroes of their Own Lives*.

believed that legal aid societies should register their cases with such exchanges. They argued that social workers could provide lawyers with information that would help their clients' cases, including assisting in locating witnesses, family members, and important financial and medical records. Likewise, social workers wanted to know about pending cases.

In contrast, Smith and other lawyerly lawyers strenuously objected to legal aid sharing any information with social service agencies. As Smith stated, in Boston, "we did use [the social service exchange] . . . In the selfish sense that we took all the information they could give us, and of course they wanted us . . . [to] register our cases there. That we have refused to do on the ground that it would do no good because if the social workers came and asked us as to the case records in our files we could not, as a matter of law, tell them anything . . . Legal Aid Organizations have always got to remember they stand behind a certain line, the line of law, and the minute they break that line or transgress it they are gone in my opinion."<sup>84</sup> Smith's statement came close to calling the conduct of Chicago's Legal Aid Society's attorneys, who continually shared information with social workers and were part of a social service exchange, unethical. Moreover, as Smith sought to police the boundary between lawyers and social workers, he insinuated that lawyers who worked too closely and too cooperatively with social workers, crossed the line and ceased to be lawyers.

Yet, as a number of attorneys and social workers pointed out, Smith's hard line approach did not correspond with the actual attorney-client duty. A great deal of information that a lawyer possessed regarding a case was not protected by the privilege and was available in public records.<sup>85</sup> Kate Holliday Claghorn of the New York School of Social Work, took to task lawyers who made such arguments implying that they were both wrong

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<sup>84</sup> Smith, 72-73.

<sup>85</sup> 73?? Find citation

and insulting. Rather she propounded that like the lawyer, “It is a fundamental principle of the social worker to maintain as sacredly confidential the relation between himself and his client. Nothing is regarded as more unethical in the practice of social work than to make public items of information about a case.”<sup>86</sup>

As indicated by Claghorn’s comment, social workers and women legal aid lawyers were at times dumb-founded by lawyerly legal aid attorney’s hostility to social work and some began to engage in a serious critique of the narrowness of legal aid and to publicly and directly take issue with Smith and other lawyerly lawyers of legal aid.<sup>87</sup> Claghorn provided one of the most cogent and hard hitting criticisms of legal aid in *The Immigrant’s Day in Court* (1923), which like Heber’s *Justice and the Poor* was sponsored by the Carnegie Foundation. One of Claghorn’s fundamental criticisms of legal aid was its focus on narrow legal technicalities rather than on the client as a whole. She wrote, “The legal mind trained in analyzing technical distinctions in laws . . . tends to regard legal protection as the task of fitting a given law to a set of circumstances shown in a given case, without reference to the personality of the client, or to any service rendered him other than that of securing the technical right involved.”<sup>88</sup> Thus unlike social work which she understood as seeing the individual and their problems as a holistic whole, legal aid failed to recognize the individual and the subjective and specific material reality of his or her life. Rather legal aid narrowly defined what constituted a legal problem. Such constricted understandings, according to Claghorn, resulted in legal aid lawyers failing to communicate with or understand their clients’ problems and lives. This argument went to the very idea of the rule of law. Lawyers

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<sup>86</sup> 182

<sup>87</sup> See Kate Holladay Claghorn, *The Immigrant’s Day in Court* (New York: Harpers 1923), 469-471, 481-483, 486, 489-490.

<sup>88</sup> Claghorn, 470.

understood that the rule of law meant that all were treated in the same way. In contrast, Claghorn argued that each individual needed to be treated based upon the specifics of their lives and needs.

Claghorn was further aware of disturbing gender dynamics. She remarked that the New York Legal Aid Society had two women lawyers on staff but that this constituted only a small proportion compared to the number of male attorneys. When she questioned the chief attorney about this situation, he replied that “the clients prefer to tell their troubles to a man, the Europeans especially feeling greater respect and confidence in a man in regard to legal matters.”<sup>89</sup> This of course had not proved to be the case in the earlier part of the century when Loew, Rembaugh, Quakenbos, and other female attorneys worked for the NYLAS. Claghorn was also especially concerned about the interactions that she observed between male attorneys and their female clients and commented upon a number of instances where such attorneys failed to believe or were uninterested in women’s claims.

For instance, she observed a waitress who told a male NYLAS attorney that her employer had docked her wages and terminated her because she refused to work nine hours a day and on Sunday. The attorney advised the waitress to accept the money the employer offered and not to press any claim. Claghorn wrote, “The attorney was apparently not interested in the laws regarding hours of women’s labor.”<sup>90</sup> Speaking of female domestic workers who sought legal aid, she wrote chidingly that the chief attorney believed that “[T]he fault is often with the employees in these cases, as they are

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<sup>89</sup> Claghorn, 480-481.

<sup>90</sup> Claghorn, 482.

undisciplined and irresponsible.”<sup>91</sup> She further commented that the law was in fact often on the servant’s side in these cases. Clearly Claghorn believed that these legal aid attorneys were failing to adequately counsel their female clients. She concluded that both more women attorneys as well as social workers were necessary.

In a review of *The Immigrants Day in Court* published in the *New Republic*, John Arthur MacGuire, of the New York Legal Aid Society, had some harsh words. His primary criticism was Claghorn’s sympathy with social workers whom he viewed with great suspicion. As he wrote, “They wish to absorb the legal aid organizations, or at least permeate them with the theories and practice of social services. . . . It is fair to state the reasons for the legal aid worker’s wish to remain separate and distinct. He is a lawyer and proud of it.”<sup>92</sup> Further, MacGuire expounded that the client using the services of legal aid was suppose to be a one-time affair for an otherwise independent man. Specifically, he wrote, “The poor man, particularly the poor alien, needs even more than the rich to be disciplined in the idea that visits to lawyers should be rare and law suits rarer.”<sup>93</sup> In contrast he saw social workers as breeding dependence and becoming a permanent part of the lives of the poor.

#### *Finding Common Ground*

Throughout the 1920s and 1930s, social workers, both those who worked in legal aid societies and those who did not, continually sought to find common ground with legal aid attorneys while arguing for the crucial role that social workers could play. As J. Prentice Murphy stated at the 1927 National Proceeding of Social Workers, “It is no new

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<sup>91</sup> Claghorn, 482.

<sup>92</sup> John MacArthur Maguire, “Review of *The Immigrant’s Day in Court*, *The New Republic* (April 18, 1923), 218.

<sup>93</sup> *Id.*

thing to say that the lawyer and the social worker are engaged in fields of labor which are closely related and which cross and recross and overlap in countless situations.<sup>94</sup> Such social workers thus sought a reciprocal relationship in which social workers learned the basics of law and lawyers learned the rudimentaries of social work. Social workers, however, refused to recognize any hierarchy between the professions and reserved the right to be critical of law. As Murphy continued, “There should be a readiness to question the law, and no reason why we should not question the opinions and decisions of lawyers and judges, just as they question us.”<sup>95</sup>

Social workers, often sounding much like legal realists, refused to understand law as static. To the extent that law did not work in practice, it needed to be changed, and social workers continually pointed to juvenile courts, probation, workmen’s compensations, and domestic relations courts as the positive results of legal change and social agitation by non-lawyers. Likewise, social workers did not see the lawyer as having a monopoly over law which bestowed status and privilege upon the lawyer. Rather lawyers and legal services were needed to help social workers with the myriad of problems that their clients faced. Lawyers thus needed to be on call to help social workers as part of their larger endeavor. Social work and law were thus on a continuum and the social worker should be trained in law just as the lawyer should be trained in social work.

As prominent a jurist as Roscoe Pound also weighed in on the issue of law, legal aid, and social work. Speaking at the 1923 National Conference of Social Work, Pound emphasized that there were no longer boundaries between the social sciences and jurisprudence. Rather jurisprudence without the social sciences produced theoretical

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<sup>94</sup> J. Prentice Murphy, “The Use by Social Workers of Legal Resources in the Practice of Case Work,” *Proceedings of the National Conference of Social Work*, 1927, 622.

<sup>95</sup> Murphy, 623.

answers that were in practice futile. Addressing the criticisms of social workers by legal aid lawyers and advocates, Pound argued that social workers' possessing legal knowledge and providing legal advice, allowed for both the prevention of legal wrongs and the wise handling of cases. Praising social workers for their advanced methods and their ability to fix and prevent legal problems, he lamented that "the law still lags."<sup>96</sup> More specifically, Pound criticized bar associations and professional ethics as out of touch with society and the needs of the poor. Rather, he saw social workers as having the lived experience of how justice functioned for the poor and argued that social workers and lawyers must work together. Rather than a one way street in which social workers simply needed to learn law, lawyers, he argued, needed to learn from social workers. As Pound wrote, "Social workers have accumulated a mass of data and have developed methods and techniques which the lawyer must study and must learn to utilize."<sup>97</sup>

Few lawerly legal aid attorneys would have agreed with Pound. A more moderate wing, however, led by John Bradway, attempted to negotiate the relationship between legal aid lawyers and social workers on grounds that more readily comported with gender norms and professional hierarchies. Bradway was in a particularly good position to address such issues. In his eighteen years serving as the executive secretary of NALAO, Bradway did much to publicize legal aid among social workers and he was the legal aid lawyer who most often spoke at meetings of social workers. Moreover he served as a member of the certification committee of the American Association of Social Workers and was the legal aid advisor to *Social Work Technique*. Whereas Smith was the face of legal aid that was presented to bar associations, Bradway was the face presented to social

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<sup>96</sup> Pound, 161.

<sup>97</sup> Pound

workers. Indeed Bradway was so focused upon and concerned with the relationship between legal aid lawyers and social workers that, in 1929 and then again in 1939, he edited special volumes of the *Annals* which were devoted to the issue. In 1929, he also published a legal textbook to be used by students in social work schools and throughout his career he wrote streams of articles and pamphlets on social work and legal aid.

Yet unlike Pound or Margerite Raedar, Bradway often uncritically defended law, lawyers, and the rule of law. At times, he claimed that social workers failed to see “the majesty of law as a whole,” focusing too intensely on individual cases. As he once proclaimed, “The law is the ultimate repository of most of the worthwhile ideas of our social thinking.”<sup>98</sup> In another speech he exclaimed, “There is no fault to find with the laws of our country. They are remarkably fair and are designed to operate with absolute equality on all classes of persons in our community.”<sup>99</sup> The primary problem, as defined by Bradway, was simply access to an attorney.

Bradway also envisioned a role for social workers in legal aid in which they were generally subordinate to the lawyer. Such a role thus comported with gender hierarchies and norms. For instance, Bradway articulated that the legal aid social worker might act as an investigator, something that he claimed legal aid lawyers seldom had time to do. In such a role, the social worker would act as a helpmate to the lawyer and she would ultimately be directed by and answer to the lawyer. As executive secretary of NALAO, Bradway, however, was also a realist deeply devoted to the provision of legal aid to the poor and the establishment of legal aid societies throughout the country. Although the ideal was that bar associations and lawyers would take responsibility for the

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<sup>98</sup> John S. Bradway, “The Use by Social Workers of Legal Resources in Constructing Social Programs,” *Proceedings of the National Conference of Social Work*, 1927, 630.

<sup>99</sup> Bradway, 188.

establishment and support of such societies, the reality was that this often did not occur. Rather it was established social service agencies, such as United Charities, or even philanthropic and reform groups, such as women's clubs, which demonstrated an interest in founding legal aid societies and had the resources to do so. Bradway was not only willing to work with such organizations but often sought to make contact himself. By the 1920s, he had come to believe that social workers could play an important role in creating, managing, and maintaining legal aid societies.

*Law and Social Work: An Introduction to the Study of the Legal-Social Field for Social Workers* (1929), authored by Bradway, provides a fascinating case study in contradictions and conflicts regarding the role of social workers and their interactions with law and legal aid. Even producing such a legal textbook for social workers was controversial and one can sense Bradway's hesitancy. Seeking the blessing of lawerly lawyers for such an endeavor, Bradway prevailed upon Reginald Heber Smith to author the forward. Smith began with an olive branch to social workers, writing, "For a dangerously long period [law and social work] . . . have been held apart by ignorance, misunderstanding, and distrust. Instead of full harmony there has been too much discord; instead of an instinctive sympathy that would have energized both groups there has been a more or less thinly disguised antipathy. . . . All of this is unnecessary. It is a sheer waste and tragic folly."<sup>100</sup> Yet, as soon became clear, Smith's concession only went so far and much of his text sought to establish strict disciplinary boundaries. The heart of Smith's message, in clear contrast to Roscoe Pound and the Chicago model of legal aid, was that

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<sup>100</sup> Reginald Heber Smith, Forward to John Bradway, *Law and Social Work and Introduction to the Study of the Legal-Social Field For Social Workers* (Chicago: University of Chicago Press, 1929), vii.

law and social work were two entirely distinct professions which at bounded times might work together and cooperate.

The examples Smith gave of possible cooperation were highly gendered. In one hypothetical Smith sets forth the plight of a family where the father/husband had been injured in a car accident and was unable to work. When the wife went to a social work agency in need of funds, it was the social workers' job to procure such funds and then contact an attorney. The attorney would pursue any legal claim of the husband/father due to the accident. Although the example was not per se incorrect, the gender assumptions are worth exploring. Smith assumed that the husband was the family breadwinner but that it was the wife who would seek the aid of a social worker while the husband became the client of legal aid. Social work was feminized – it was a woman who asked for the charitable funds necessary to sustain the family, while legal aid restored the husband's independence. Moreover the only legal knowledge that the social worker required was enough to direct the client to a lawyer.

Smith then returned to some of his favorite criticisms of social workers including how social workers undermined justice. Discussing juvenile and family courts, Smith presented the very different roles that social workers and lawyers played. He wrote, the social worker was concerned with the best interests of the child and wanted the court to use investigations of the family conducted by a social worker. In contrast, the lawyer represented and was concerned only with the parent and the legal rights that the parent possessed. Likewise the attorney wanted the court to review only that evidence which was proffered by lawyers in court pursuant to clearly set forth rules of evidence. As Smith wrote, "The lawyer is . . . deeply fearful of seeing swept away all the safeguards of

individual liberty which have been tediously and painfully evolved.”<sup>101</sup> Thus here Smith recognizes the presence of social workers in the courtroom, but finds them dangerous and potentially ruinous of basic constitutional rights. When one parses Smith’s text, it appears that he actually would have limited any real cooperation between lawyers and social workers to distinct family matters. The two examples that he provides regarding when lawyers and social workers might cooperate include whether a legal aid society should take a particular divorce case, and whether a man should be pressured to marry a woman that he impregnated. Thus as Smith’s preface makes clear, social works’ primary role involved women and the family. Otherwise the social worker was to leave law to lawyers.

Given the book’s purpose, the fact that Bradway was quite open to social work, that it was funded by the Graduate School of Social Science Administration at the University of Chicago and the Legal Aid Bureau of Chicago, and that Bradway had taught a course on social work and legal aid at the Pennsylvania School of Social Work, at times, its tone is surprising. For instance, Bradway declared that the purpose of the book was “to prevent social workers from giving legal advice.”<sup>102</sup> Yet the book attempted to define a “legal social field” in which lawyers and social workers had complimentary interests. Citing Roscoe Pound’s writings on the need for a sociological jurisprudence, Bradway argued that legal work was drifting towards the field of social work and social work was drifting towards the field of legal work yet significant gaps in knowledge remained on the part of both social workers and lawyers.

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<sup>101</sup> Bradway book Smith Forward viii.

<sup>102</sup> Xiii.

For every commonality, however, that Bradway found between law and social work, he followed with a criticism. For example, he wrote that social work was a newcomer that failed to recognize the importance of the older field of law; he claimed that social workers were ignorant of law; and that social work, not yet having grown to full maturity, failed to recognize and respect rules. Moreover, he primarily understood social workers' criticisms of law to be the result of ignorance rather than an accurate description of law's shortcomings. Bradway was even so concerned about erecting adequate boundaries between law and social work, that he did not endorse the practice of legal aid and social service organizations even being in the same building.

With all of these caveats and criticisms, the remainder of the book is essentially a primer on law, covering procedure, contracts, torts, workmen's compensation, criminal law, property, estates, and domestic relations. It is a nuanced and complex work and its substance contradicts its enunciated warnings that social workers needed to stay away from the law. Rather it provided a concrete manual of the basics of law and the types of claims that social workers might come across in their daily work. In a certain sense, the book is a much more elaborate version of the legal aid lawyer's handbook that Reginald Heber Smith had written for lawyers at the Boston Legal Aid Society a decade earlier. In perhaps an attempt to reconcile these internal textual conflicts, Bradway concludes that it is crucial for the social workers to be able diagnose legal problems. As he writes, "the failure of a social worker to diagnose correctly the fact that there is a legal problem involved may mean loss of rights at law and serious injury."<sup>103</sup> In such cases, the social worker was advised to identify the legal problem and then contact legal aid. Using a medical analogy, Bradway compared the social worker to the medic, as it was the social

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<sup>103</sup> 177

worker's job to deliver first aid, until a lawyer could reach the client. Yet even such a role does not fully explain why a social worker should learn significant substantive law as Bradway had set forth in *Law and Social Work*.

For Bradway, like Pound, the social worker also played an important role in a new type of approach to the law whether it be called sociological jurisprudence, legal realism, or the legal-social field. The social worker who saw thousands of cases a year, was in the position to see how law actually functioned or failed to function in on-the-ground legal problems. Thus Bradway urged social workers to record cases and their impressions and to share them with bar associations and other groups of lawyers.

*Law and Social Work* was welcomed by many social workers. As Bradway contemplated additional legal works for social workers, audiences of social workers commented that social workers should be asked to contribute their own knowledge to these legal texts and be able to identify what topics they saw as important. They further suggested that texts on social work should be created for law students and lawyers. Thus once again, social workers challenged lawyers' monopoly over law and professional privilege, insisting that their own experiences and knowledge was equally valuable.<sup>104</sup> Bradway did not fully take to heart these suggestions, but he did have an impressive agenda for writing legal works for social workers, including books on important specific state statutes with which social workers in a variety of states should be familiar. Putting aside all of Bradway's public warnings about the dangers of social workers practicing law, it is clear that social workers were being taught law with the idea that they would be providing at least some legal advice to clients.

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<sup>104</sup> Report of Committee on Relations with Social Agencies, in Reports of Committees 1928-1929 For Discussion at the National Association of Legal Aid Organizations, 89.

Although Bradway concentrated upon social workers learning law, others within legal aid firmly believed that lawyers needed to learn social work technique. As early as 1927, NALAO's Committee on Cooperation with Social Agencies began discussing the need for lawyers to be trained in social work. The lawyers and social workers who staffed the committee had strongly adopted a progressive/realist model of law which saw it as deeply connected to the social sciences. As one member wrote "Law . . . is not a closed system; it is more than a system of mere logic. It is a record of human aspirations and the organization of human interests . . . Hence law and social work are inevitably bound together."<sup>105</sup> The speaker called on law schools to provide training in social work to every law student. The Committee further passed a resolution that was transmitted to the American Association of Law Schools suggesting that courses in social work be offered. Not surprisingly, law schools mired in tradition, and perhaps viewing social work as too closely connected to charity and women refused to heed this call. On the other hand, schools of social work, began to provide courses in law for social workers with the University of Chicago and the Pennsylvania School of Social Work and Health taking the lead.<sup>106</sup>

As many social work educators understood, the connection between law and social work had deep roots. From the earliest days of the settlement houses, workers had sought to educate its neighbors on basic laws and settlement workers such as Jane Addams, Lillian Wald and a host of others had lobbied for a wide-range of progressive legislation. They also were deeply involved in local courts in a variety of ways including

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<sup>105</sup> Report of Committee on Cooperation with Social Agencies in National Association of Legal Aid Organizations, Reports of Committees 1926-1927, 64.

<sup>106</sup> Whereas Laura Kalman finds that the legal realists had little effect on the curriculum taught in law school, a brand of legal realism or at least sociological jurisprudence was part of the social work curriculum.

as probation officers and experts. In addition, some such as Florence Kelley and Julia Lathrop actually held law degrees. With its close roots to Hull House, it is not surprising that the Chicago School of Social Service Administration was a significant location for teaching law to social workers. Sophonisba Breckinridge, a former resident of the Hull House Settlement, was dean of the school and had long been involved in the education of social workers and legal reform. Breckinridge was a University of Chicago law school graduate with a doctorate in political science and particularly close with Ernst Freund. She was also a board member of the Chicago Legal Aid Society, a member of the National Association of Legal Aid Organizations, and served on a NALAO subcommittee which examined courses in law taught in schools of social work.

Breckinridge's understanding of the social work curriculum was decidedly oriented towards law. This is illustrated by a series of volumes of documents that she edited and which were intended as social work classroom texts. Each of these volumes is comprised of statutes, case law, the decisions of administrative agencies, and investigative reports. In Breckinridge's, *Family and the State*, the primary legal documents address a vast range of topics including coverture, domestic violence, marital rape, and the history of women practicing law. Emphasizing the legal nature of the text, Breckinridge assured her audience, "The importance of legal questions relating to family relationships has long been appreciated by family welfare workers."<sup>107</sup> Indeed for Breckinridge, law was very much part of social work.

There were, however, differences between her course book and the traditional legal casebook used in law schools. As she wrote, "In general, as in a law course, the chief sources of information are judicial decisions and statutory enactments. They are,

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however, supplemented by some statistical data, by commentaries, and by the results of certain social investigations which throw light upon the source of the not infrequent conflict between the legal and social work point of view.”<sup>108</sup> Unlike a casebook which would have been used in a law school, Breckinridge paid as much attention to legislation and legislative history as to actual cases and the common law. Such material often pointed to law’s failure to address people’s actual needs and how the common law created injustice. Indeed for Breckenridge, the social worker, in part, needed to be familiar with law in order to understand how law failed to accomplish justice, especially for women, and that legislation was often necessary to create legal reform. Indeed Breckinridge, unlike legal figures such as Bradway, continually and pointedly criticized law, lawyers, and judges claiming that it was social workers who ultimately sought to reform law to produce true justice.<sup>109</sup>

Sounding very much like a lawyer and a law professor, Breckenridge wrote that the social worker needed to be thoroughly familiar with law in order to engage in the “Manipulation of those agencies and institutions for the accomplishment of her immediate purpose, namely, that of bringing relief to persons in special need of service and aid.”<sup>110</sup> She further suggested that social work students learn to analyze legal cases and statutes as well as draft legislation. Breckinridge even advocated a sort of invasion of the law school by students of social work as she urged her students to make themselves at

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<sup>108</sup> Cite needed

<sup>109</sup> See e.g. Sophonisba Breckinridge, “Social Worker in the Courts of Cook County,” *Social Service Review* 12 (June 1938): 230, 231.

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home in the law library and to learn how to use its resources.<sup>111</sup> Breckinridge also clearly understood that she was addressing primarily women students.

Breckinridge was not alone in her understanding that social work students needed to be trained in law. A 1928 survey of professors in schools of social work, conducted by the NALAO's committee on relations with social agencies, found that a large majority endorsed teaching classes on legal topics. Clearly they understood that social workers were being called upon to know the law and give legal advice. Moreover they called for social work textbooks that contained important cases on issues of marriage, criminal law, landlord tenant law, and employee-employer relations. They also hoped for books that would set forth particular scenarios and legal problems that social workers encountered in their day-to-day work.<sup>112</sup> By 1939, twenty-seven out of thirty-eight schools of social work taught courses on law.

#### *Social Work, Legal Aid, and the Depression*

Meanwhile as the Depression hit, the Chicago Legal Aid Bureau and United Charities consistently reaffirmed the social work-law model allowing it to become deeply involved in government relief programs while functioning as advocates for legal reform. Working with public and private relief agencies, legal aid attorneys provided legal advice to administrators, social workers, and clients. For example, lawyers might work to prevent a client of a public agency from being evicted as the social work agency attempted to find the client housing and financial relief. Likewise legal aid attorneys and social workers cooperated to stop creditors from harassing clients, prevent foreclosures,

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<sup>111</sup> Report of the Committee on Relations with Social Agencies (March 16, 1928), in National Associations of Legal Aid Organizations (1927-1928), 63.

<sup>112</sup> See e.g, Report of Committee on Relations with Social Agencies, in Reports of Committees 1928-1929 For Discussion at the National Association of Legal Aid Organizations,96-103 .

and even assist clients in purchasing small businesses. Moreover, social workers and legal aid lawyers together lobbied for new legislation with social workers providing actual examples of hardships while assisting attorneys in drafting new laws.<sup>113</sup>

Whether or not certain legal aid offices or the established bar accepted it, there was an increasingly recognized and growing field of legal social work. The legal social worker worked alongside legal aid attorneys, investigating cases, engaging in intake, exchanging information with other social work agencies, providing referrals to clients, coordinating relief benefits, and managing cases. For example, in Chicago, the Jewish Social Service Bureau set up its own legal aid department to provide legal services to its clients. It was composed of social workers and one lawyer and the social workers went to court to represent their clients. Likewise social workers were stationed in domestic relations courts to attend to cases involving Jewish families. Such practice thus took the Chicago model and enhanced it even further by now putting social workers in court.<sup>114</sup> Thus the very thin line of what constituted the practice of law versus what constituted social work as standing on the ground that only lawyers could represent clients in court, evaporated in the midst of economic crisis.

Likewise, Chicago's Immigrant Protective League, was staffed by social workers who were primarily women. Although its earlier work had primarily involved assisting immigrants with material needs such as housing and protecting the immigrant from fraudulent business practices, with the advent of stricter immigration laws, it became a

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<sup>113</sup> Margerite Raeder Gariepy, "Legal Aid as Part of a Community Program, *Annals* v.205:72-78.

<sup>114</sup> "The Legal Aid Department of the Jewish Social Service Bureau of Chicago" Reports of Committees 1928-1929 For Discussion at the National Association of Legal Aid Organizations , 104-110. See also Breckinridge, "Social Workers in the Courts of Cook County," *The Social Service Review* 12 (1938): 230. By 1938, social workers worked in small claims court, domestic relations court, the women's court, juvenile court, the criminal court, probate court, and the state's attorney's office.

specialist in immigration law. For example one report by Adena Rich of the League stated, “No Immigrant Aid Organization can escape specializing at present, in the intricacies of the recent immigration deportation, and naturalization legislation . . . and administrative practice, under Rules and Regulations of the Department of Labor which overreach law.”<sup>115</sup> The Bureau, primarily through social workers, determined whether a client could be deported, assembled records and witnesses, wrote briefs, appeared in front of immigration boards, and appealed decisions. Thus the newly complicated administrative state created a further way in which social workers were able to represent clients and engage in the practice of law on behalf of poor clients.

In 1939, John Bradway resigned as executive secretary of NALAO, having held the position for eighteen years. In his last report as executive secretary, he looked back over the years and discussed how NALAO had believed that the expansion of legal aid would occur through bar association and how it had spent significant resources urging such associations to take responsibility for creating and maintaining legal aid societies. After so many years engaging in such a strategy, Bradway no longer put his faith in lawyers and bar associations. As he concluded, “[T]he work has not progressed as we would have wished. An analysis of the situation indicates to me that what we lack here is a group of informed members of the bar. Most of those we approach are already committed to other professional or humanitarian tasks and can give us only a divided attention.”<sup>116</sup> In contrast, Bradway believed that social service organizations were more willing to support legal aid and that new societies would be created through Community

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<sup>115</sup> Division of Work between Legal Aid Societies and Immigration Organizations in National Association of Legal Aid Organizations, reports of Committees 1929-1930, 60.

<sup>116</sup> Report on the Work of the National Association of legal aid organizations – the Nature and the Methods of Conducting It, National Association of Legal Aid Organizations, Reports of Committees, 1939-1940, 96.

Chests and other social service groups. This represented a dramatic reversal from the ideas that had first been set forth by *Justice and the Poor* and the strategy that NALAO had followed for years.

Such sentiment and the material reality of day-to-day legal aid did not always come through and at least in print both social workers and women's work in legal aid continued to be obfuscated. In 1939, once again under the leadership of John Bradway, the *Annals* devoted a volume to legal aid entitled, "Frontiers of Legal Aid Work." Out of twenty-one contributors, only three were women.<sup>117</sup> Even while Bradway saw the volume as specifically addressing how legal aid was "integrating itself with other agencies and movements in the community" women were now largely defined out of even social work."<sup>118</sup> Many of the essays consisted of the "new" "old" histories of legal aid which continued to celebrate how bar associations formed legal aid societies and how individual male lawyers championed the cause. As can be seen from the articles, the mainstream lawyer's point of view was that legal aid was and remained firmly in the control of bar associations. Not surprisingly, Reginald Heber Smith contributed an article in which he recited and touted the history the American Bar Association's support of legal aid and how the Association now firmly guided legal aid societies' policies and steered their courses.<sup>119</sup> Thus this double history of legal aid -- the schizophrenic separation of the narrative of legal aid as compared to the reality of legal aid -- haunted legal aid well into the twentieth century.

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<sup>117</sup> IX

<sup>118</sup> John Bradway, Foreword," *The Annals of the American Academy of Political Social Science* 205 (1939): ix. As Daniel Walkowitz discusses, during the 1930s, male social workers became administrators and supervisors of social work and social service agencies while women social workers reported to such men. Walkowitz, *Class*, 163, 167.

<sup>119</sup> Reginald Heber Smith, "Interest of the American Bar Association in Legal Aid Work," (Sept. 1939), *The Annals of the American Academy of Political Social Science* 205 (1939), 108.

