A STUDY OF LEGAL AID AND ADVICE IN ENGLAND AND WALES

PETER CHRISTOPHER ALCOCK

MASTER OF PHILOSOPHY

DEPARTMENT OF ECONOMICS AND BUSINESS STUDIES

SHEFFIELD POLYTECHNIC

JUNE 1976

ProQuest LLC.
789 East Eisenhower Parkway
P.O. Box 1346
Ann Arbor, MI 48106 – 1346

ABSTRACT

It is the purpose of this study to examine the social nature of legal aid. The thesis takes as its point of departure the debates about the problems identified in the administration of the legal aid scheme and the suggestions to improve this scheme. It seeks firstly to provide the reader with an account of the historical changes in legal aid in order to acquaint him with the knowledge about legal aid on which the debates and suggestions are based. Following this the major protagonists are considered and categorised according to their approach towards the problems of legal aid. It is suggested that these varieties of approach, however, all suffer from fundamental limitations in that they fail to question or examine the social and historical basis of legal aid and the legal system. It is argued that only by examining this basis can the nature of legal aid be understood and suggestions for amelioration or change assessed. The second half of the thesis is a detailed study of the social basis of legal aid in the period of the 1920's, 1930's and early 1940's, a period chosen because of its importance for the growth of welfare services generally. The major groups involved in the creation of legal aid are identified and their interests examined; then the role of these groups in producing and changing legal aid is analysed. This is followed by a conclusion which draws together the main themes discussed in the production of legal aid in this period, stressing in particular the importance of the response of the lower classes to the scheme, and re-emphasises the need to understand the social basis of the phenomenon in order to assess policy recommendations. It is the development of this argument and its demonstration

in the analysis of the production of legal aid that is the major contribution of this thesis to sociology and socio-legal studies.

CONTENTS

PREFACE

It is the purpose of this study to elucidate the social nature of legal aid. Although partly motivated by a desire to understand and explain the ideological debates about what should be done to improve legal aid or to solve the problem of providing legal services to the poor, the study does not attempt to contribute to this debate by recommending a new or more radical approach, or by suggesting that a solution to the problem may easily be found. Indeed, in a reappraisal of this the legal aid problem, it can be seen that the problem only exists for a legal ideology which wishes to legitimate its concentration upon the upholding and administering of a legal system dealing primarily with commercial and property interests, by claiming that the services provided are equally available to, and useful for the majority of the lower classes. Thus, rather than seeking a solution to the problem of legal aid, this study seeks to explore its availability by discussing for whom legal aid is a problem and how the concerns and practices of those involved with it determine the form which the aid takes, and, of course, at the same time prescribe the limitations to any suggested changes in it.

In order to make such a reappraisal of legal aid it is necessary to adopt a perspective outside of the legal ideology within which the problem is conceptualised. In fact, it is necessary to take up the theoretical concern of explaining the existence of this ideological problem itself as a function of the economic, political and ideological practices of those concerned with it. Therefore this study is an attempt to describe the limitations of existing writing and research on the availability of legal aid and to begin a partial explanation

of the social nature of legal aid within a particular historical period. As will be argued later, a full explanation of legal aid would require a detailed appraisal of the social formation of the particular period, and of the major economic, political and ideological practices within it, which would be too great a task for this study.

Four chapters are used for the discussion of this approach. The first is an overview of the changes in the availability and organisation of legal aid, intended to provide a background or what could be called 'common knowledge' of the changes in the provisions for legal aid in this country, with comparative examples being drawn from Scotland and the United States. Although presented in a chronological form, it is not intended that this overview should give the impression that changes in the provision of legal aid have followed any sort of gradual development; this impression would involve the imputation of order to specific historical events, which, as argued in the later chapters, are products of particular social configurations at specific historical conjunctures. The first chapter is not a 'history' of legal aid, since the notion of historical knowledge implies some measure of understanding which is not provided here; it is primarily a vehicle for acquainting the reader with knowledge which he will need to read and comprehend later material.

The second chapter is a reappraisal of the legal aid problem. It is a critique of prior attempts to solve this problem, and an attempt to situate these efforts within the ideological practices of those involved in the creation of legal aid; it will be argued that the problem only exists for these practices because of their desire to legitimate their involvement in the existing legal system. This chapter suggests that in order to avoid the limitations imposed

by such an ideological perspective, a theoretical position must be adopted which can explain the social nature of legal aid as the product of the practices of those groups involved in its creation during a specific historical period.

Chapters three and four use this theoretical framework to begin to explain the creation of legal aid. Chapter three is concerned primarily to identify the interests of the groups involved in the creation of legal aid, the economic, political and ideological positions of these groups, and the nature of their concern with the legal aid problem. The fourth chapter looks at the way in which these interests determine the nature of legal aid, and the way in which the changing nature of legal aid, in turn, demands that these interests be altered and adapted. It is finally argued that the major dynamic element in forcing changes in the nature of legal aid is the antagonism between the unarticulated demands of the lower classes, especially the poorer working class; and the attempts at the legitimation of their position, by those groups within the ruling class concerned with the administration of the legal system, through the creation and adaptation of legal aid.

In spite of the increasing amount of literature purporting to deal with legal aid, there is often little conformity between writers over what activities are encompassed by the term. Therefore, the meaning adopted for the purposes of this study should be spelt out: legal aid is free or subsidized work by lawyers for persons considered, by any relevant body, to be unable to pay court costs or lawyers' fees; or the provision of such help by other institutions for what the organisers of these institutions term as 'legal problems'.

The historical focus for this study is the period of the 1920's, 1930's and early 1940's; and, in exploring the creation of legal aid during this period, much original material has been gleaned from a reading of the unpublished records of the Lord Chancellor's Office for this period, which can be found, mainly in the form of bundles of letters and memoranda, in the Public Records Office, Chancery Lane*. Reference will not be made to the specific source of information taken from these records as it would be time-consuming and of little benefit to the reader, but particular references can be supplied on request by the author. Where published material is referred to the reference procedure adopted will be to note, in parentheses in the text, the author, date of publication, and, where relevant, the page number of the reference, so that the full title and publisher of the text, as listed in the alphabetical bibliography, can be referred to.

*For anyone wishing to follow up this research by looking through these files, the reference numbers of those which do contain information relevant to the creation of legal aid are:
L.C.O. 2/557, 558, 564, 573, 644, 858, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 1032, 1033, 1055, 1056, 1057, 1059, 1066, 1193, 1681, 1809, 1836, 1837, 1838, 1856, 1859, 1891, 2843, 2844 and 2845.

CHAPTER ONE

"AN OVERVIEW OF CHANGES IN THE AVAILABILITY AND ORGANISATION OF LEGAL AID"

The purpose of this chapter is to provide the reader with a background picture of the changes which have occurred in the provision of legal aid in England and Wales, in order to assist in situating the issues and events referred to in other material. However, the chapter will also deal with changes in the provision of legal aid in Scotland and the United States, in the expectation that comparative study will help to illuminate the background to the situation here. Events in Scotland are of obvious comparative relevance, Scotland is geographically proximate and controlled by the same Parliament, although it has a different legal system; and it is referred to many times by English writers and politicians as a model to be either emulated or avoided. The United States is important because it has a very similar legal system and legal profession to those found in this country, but has developed separately and produced different legal aid schemes, which again have been frequently referred to by English writers, particularly in the last ten years or so, when the schemes operating in the United States have been quoted by many as the blueprints for the solving of the legal aid problem in this country.

In order to avoid confusion, the comparative changes in Scotland and the United States over different periods have been dealt with separately, after discussion of the situation in this country. The social organisations of the different countries are obviously very different, and although reference is made by some to the situation

in other countries, it is necessary to be wary of seeing developments in one country as parallelling or following those of another, or indeed of seeing the situation in one country as the cause or result of changes in another. Furthermore, as will be stressed later, it is necessary to avoid seeing changes in any one country as gradual or conscious developments towards a specific social form, whether this is the existing legal aid scheme or any projected future solution to the legal aid problem. Imposing such an order onto past changes is teleological and only conceals the specificity of particular historical events behind a spurious ideology of 'development'.

England and Wales before 1914:

In the light of this last point it can be seen that it is more than unlikely that the clause in the Magna Carta, which states that "to no man will we sell or deny justice", constituted the binding contract between State and people which Gurney Champion (1926; P.163) claimed that it did. However, this clause in the Magna Carta does demonstrate that even in a centralised legal system as little developed as that of Medieval England, there was some recognition of a need to ensure, on paper at least, that the law was not available only to a privileged class in society. Maguire (1923) has unearthed evidence of poor suitors being excused certain legal fees during this period; but the first recorded recognition that poor persons could use the courts without payment came in 1495 in the statute 11 Henry VII,c. 12. Quoted at length in Maguire (1923; P.373), this Act permitted a judge to appoint attorneys to carry through poor persons' cases free of charge, providing that the applicants had a "yearly lyving" of under 40s. and a capital worth of less than £5.

This 'in forma pauperis' procedure was seemingly not in constant use, and by the time of Elizabeth I contained a clause which required that, "If the matter shall fall out against the Plaintiff, he shall be punished with whipping and pillory."

It is extremely doubtful that this sanction was ever consistently invoked, but its existence on paper did at least indicate a lack of any real commitment to extending the full use of the legal system to the lower classes of the time. The 'in forma pauperis' procedure remained little used and little changed for centuries, despite the increasing centralisation and expansion of the legal system as a whole. In 1846 the County Courts Act introduced a new court system with lower court fees and purportedly no need for legal representation, whose courts would hear many cases involving lower class litigants; but it soon became clear that the majority of cases in these courts were commercial debt-collecting actions; the quicker, cheaper procedure of the courts making them attractive to businessmen, so that the lower classes were involved only as defendants in actions for debts. However, fears about the repercussions of having a legal system which effectively excluded the majority of the population had not disappeared by the nineteenth century and towards the end of the century there were the first major changes in the official legal aid scheme.

In 1883 the Act of Henry VII was repealed, and provision for actions to be brought 'in forma pauperis' brought under rules, made by the Rules Committee of the Supreme Court. In the twenty-five years from 1858 to 1882 the number of 'in forma pauperis' applications had only averaged five a year, and, anyway, under the 1495 Act, this procedure had only been available to plaintiffs, who further

had to produce the signed approval of counsel of the merit of their case. The rules of 1883 raised the capital limit which would determine eligibility for the procedure from £5 to £25 and made the scheme available to defendants as well as plaintiffs. However, it was still necessary to procure counsel's opinion and an affidavit from a solicitor in order to proceed 'in forma pauperis' after 1883; and applications only increased to an average of thirty-two a year. The decision in Carson v. Pickersgill[1] did not help to extend the usage of the procedure since it confirmed that the lawyers representing a poor litigant could not recover their full costs, but merely their out-of-pocket expenses.

In the late nineteenth century there were also the beginnings of unofficial schemes to provide free legal assistance for poor persons. The University Settlements in East London, which provided the opportunity for young gentlemen from Oxford and Cambridge to broaden their experience of life, as well as co-ordinating charitable aid to the poor, began to hold regular weekly meetings at which lawyers would give free legal advice to anyone who came along, providing that they were 'poor'. The first of these advice centre meetings began at Mansion House in 1890, followed by others at Southwark in 1897 and Toynbee Hall in 1898. These legal advice centres were usually dependant upon the charity of individual lawyers, who turned up after a full day's work, and the services provided were effectively restricted to the giving of advice, which was often "ad hoc and superficial" (Gurney Champion, 1926; P.17), or the occasional drafting of a letter in pursuance of a claim.

[1] 54 L.J.Q.B. 484. (1885)

There were some 'legal aid societies' in Britain at this time, who would pursue poor persons cases in the courts in return for a share in any money recovered in the action by way of compensation. The solicitors behind these societies managed to make a sufficient living out of conducting these cases, but were officially despised by the main body of the legal profession, who dubbed them with the name 'ambulance chasers'[2], constantly remarked that their activities were 'unethical', and demanded that the 'speculative solicitors' behind these 'legal aid societies' be driven out of business by the strict enforcement of professional codes of conduct. There is evidence to suggest that, even by the 1960's, however, they had failed to achieve this[3].

In this country provision of legal help for the lower classes in criminal cases had always been approached separately from that in civil cases. In the nineteenth century the only way in which a defendant, who could not afford court or counsel fees, could secure legal representation was by means of the 'Dock Brief'. Under this procedure the defendant would apply to the judge, who, if he allowed the 'Dock Brief', would permit the defendant to choose any frocked barrister present in court to represent him at a cost of £1:3s:6d. The only representation available under this system, however, was

[2]This stems from the practice of some firms to send letters, and sometimes employees ('runners'), around the casualty wards of hospitals requesting accident victims to avail themselves of the facilities of the society to claim compensation. The majority of 'legal aid society' work was accident litigation, since it produced compensation out of which the firm could be paid.

[3]In 1964 'The Guardian', quoted in Abel Smith and Stevens (1967; P.345), carried a note of two firms of solicitors offering to take accident cases for 10% of any compensation recovered.

that by a barrister, briefed in court, immediately before the case; and at the turn of the century this was felt to be inadequate, even for criminals. In 1903 the Poor Prisoners Defence Act was passed, providing for solicitors and barristers to be allocated to poor prisoners by the committing magistrate or the trial judge, if it was "desirable in the interests of justice" that the defendant be represented. This representation was, however, only available in the High Court and could only be given if the defendant first disclosed his defence to the committing magistrate; and, although there was provision for payment of the lawyers involved out of local funds, the fees did not amount to very much, particularly when compared with the amount paid to prosecuting lawyers.

Thus it can be seen that, although there had been a legal aid scheme officially in existence since 1495 in this country, it had been virtually ineffectual and had changed little until the beginning of the twentieth century.

Scotland before 1914:

In Scotland statutory provision for legal aid dated from 1424, when poor persons were first allowed to have lawyers appointed to conduct their cases free of charge[4]. There were, however, requirements for a 'probabilis causa litigandi', a statement that the case was worth bringing, and a certificate of poverty, often given by the local minister or Parish elders; these requirements were as strict as those under the English scheme. Unlike the English scheme, which

[4]These lawyers would be drawn from a list of nominations confirmed by the local sheriff. Lawyers remained on the list, the 'Poor Persons' Roll', for one year.

was only available for cases being heard in the High Court, legal aid in Scotland was available in the Sheriff Court and the Court of Session, although effectively not in the police and justice of peace courts, which heard more cases than any other courts (Young, 1969, P.201).

Despite Scottish claims that their official legal aid scheme was the most comprehensive in the world at the beginning of the twentieth century, Young (1969) adduces no evidence that it had been more widely used than the English scheme, and, of course, it was limited to free representation in court actions. The need for any other form of legal services for the poor was ignored, and, as in this country, unofficial voluntary attempts to provide other services were being introduced at the end of the nineteenth century. In fact, perhaps the largest voluntary legal advice centre in Britain began operating in Edinburgh in 1900. The Edinburgh Legal Dispensary advised 37,645 people in its first twenty-five years of operation; the average of 5.48 clients per night in its first year increasing to 45.94 in its twenty-fifth.

United States before 1917:

The situation in Great Britain contrasts starkly with early provisions for legal help in the United States. After the United States achieved independance from Britain, the 'in forma pauperis' procedure was retained only in some states; and, following the example of New York, where the first office was opened in 1876, legal advice centres, or 'Legal Aid Offices' as these were called, became the primary form of free legal help for the lower classes. The offices were financed largely by regular contributions from

the local 'community chest', a charitable fund set up in many large cities and controlled largely by prominent local businessmen. These contributions were normally sufficient to employ one or two lawyers, full-time, in giving legal advice to local people who fell below a strict poverty test and so were assumed to be unable to afford to hire a lawyer in 'private practice'. However, if the lawyer felt that a poor client had a worthwhile case, he could in addition to giving advice, represent that person in court free of charge.

Therefore, by the beginning of the twentieth century, there was a full-time legal service for the poor provided by these 'Legal Aid Offices' in the United States, the like of which were not found in Britain. Heber Smith (1917) praised the achievements of charity in providing such a scheme and cited the American offices as an example to be followed throughout the world. Even in the United States, however, 'Legal Aid Offices' could only be found in the largest cities; they gave mostly legal advice only since they could not afford many court cases and did not want to compete with 'private practice'; and they attracted the least competent and least successful lawyers, who had failed to establish their own private firm.

England and Wales 1914-1951:

By the time of the publication of Heber Smith's book in the United States in 1917, there had been important changes in the legal aid scheme in England and Wales, which were to provide the basis of a new scheme which operated, with modifications, for the next thirty years.

In spite of the widening of the eligibility criteria for the

'in forma pauperis' procedure under the new rules in 1883, there were still only about 15 to 20 applicants a year throughout the 1900's. In 1913 a High Court Rules Committee considered the desirability of reforms in the procedure, and eventually, after numerous redrafts, a new set of rules was introduced in 1914. These rules changed the name of the system to the 'Poor Persons' Procedure'; extended the maximum amount of capital determining eligibility to £50, with discretion to raise this to £100 in exceptional circumstances; provided for applications to be considered by a panel of 'reporting' solicitors and for volunteer 'conducting' solicitors to be assigned to successful applicants by a permanent body of state-paid administrators, called 'prescribed officers'; and allowed for these solicitors (but not any barristers who may also be assigned under the scheme) to be paid out-of-pocket expenses, hopefully from a fund set up by voluntary subscriptions with contributions from the Treasury.

The 'Poor Persons' Procedure' was still only available in the High Court, since as early as 1849 the case of Chinn v. Bullen[5] had indicated that there was no county court rule allowing poor persons to conduct their own cases free of cost in those courts. Effectively the 'Poor Persons' Procedure' was only used in the High Court by applicants for petitions of divorce. During the first world war there was an increase in the demand for divorce, and an increase in the number of applications for representation under the 'Poor Persons' Procedure', for which the legal profession and the 'prescribed officers' were not prepared. As well as this there were complaints that the 'out-of-pocket' expenses paid to

[5] 19 L.J.C.P. 42.

some solicitors under the 1914 rules were allowing these solicitors to make a living out of conducting poor persons cases (one solicitor was reputed to be conducting over 400 poor persons cases a year) and yet the Treasury fund to provide for these expenses had never materialised.

In 1919 a committee was set up under the chairmanship of Lord Lawrence, High Court judge, to look into the operation of the rules. The Lawrence Committee recommended that the rules be tightened up to prevent the procedure becoming overloaded and to stop exploitation by 'unethical' solicitors. Rules incorporating the recommendations of the committee were approved by the High Court Rules Committee in 1920, adding an income limit of £2 a week, extendable in exceptional circumstances to £4, to the capital eligibility limit; requiring the payment of a deposit of £5 (£15 in nullity cases) by the applicant before a certificate would be granted for matrimonial proceedings; and restricting the payments to be made to conducting solicitors to expenses actually incurred, without the previous additional payment to cover office costs. These 1920 rules also formally abolished the 'in forma pauperis' procedure, a loophole which had been left by the 1914 rules, and which enabled unscrupulous solicitors to take a poor persons' case under the 'in forma pauperis' procedure and so claim these full expenses.

Although less than 50% of applications were granted certificates for representation, (over 90% of these being for divorce proceedings) by 1922 there was a shortage of solicitors volunteering to conduct poor persons' cases. Several circular letters were sent out to members of the Law Society requesting them to volunteer to conduct poor persons cases; and in 1923 a second committee under Lord Lawrence

was set up to consider ways of solving the problems in the 'Poor Persons' Procedure'. In their report in 1924, the Second Lawrence Committee recommended that divorce proceedings and interlocutory proceedings for divorce be decentralised, and that the Law Society take over the administration of the 'Poor Persons' Procedure'. The latter was eventually completed in 1926, although the actual administrative work continued to be done by the old 'prescribed officers', now under the auspices of the Law Society, who were given an annual Treasury grant, initially of £3000, to cover the cost of running the scheme.

Even before the Second Lawrence Committee had presented its report, another committee had been promised to investigate the possibility of aid before the Magistrates Courts. This committee, under the chairmanship of Lord Finlay eventually sat for two periods and produced two reports. The first report, in 1926, said that the absence of provision for free legal help in the Magistrates Courts had not led to any appreciable miscarriage of justice; but that, to cover those few cases where legal help might be necessary, magistrates should be able to grant certificates for free legal representation in "exceptional circumstances", where this was "desirable in the interests of justice". They also recommended that the requirement that the defendant disclose his defence in applying for a certificate be dropped, and that the fees paid to lawyers representing poor defendants be increased.

At first nothing was done about these recommendations of the Finlay Committee. However, in 1930 a Private Member's Bill was introduced into Parliament to establish an office of 'Public Defender' to conduct defences for poor defendants. In some States in the

United States there were already 'Public Defenders', attornies employed full-time to conduct the defences of eligible, poor defendants and paid a salary out of state funds; the Bill envisaged the existence of at least one similar office in England. As a Private Member's Bill, without the support of the Law Society, this attempt was doomed to failure; however, it was followed in the same year by a Bill to implement the recommendations contained in the first report of the Finlay Committee, which became the Poor Prisoners Defence Act of 1930. The Act abolished the requirement to disclose a defence[6] and allowed magistrates to grant certificates for free legal assistance in their courts in "exceptional circumstances".

The second session of the Finlay Committee was concerned with the more general problem of legal advice and assistance in civil cases outside the High Court. A final report on this aspect of the investigation was published in 1928, stating that, generally, the current situation was satisfactory and that,

> "There are many cases where, though there may be some violation of a legal right, it is neither prudent nor advisable to litigate, and we believe that any scheme which might tend to make people more litigious should be deprecated."
>
> (Finlay Committee, 1928; Para. 13)

Although they did not recommend any substantial changes in the official provision for free help, the Finlay Committee did express praise for the efforts of unofficial bodies in providing legal advice and assistance for the poor and wished to encourage particularly the work of the voluntary 'Poor Man's Lawyer' centres.

[6] Although as the Rushcliffe Committee later pointed out (1945; Para.135), in some cases the accused was still required to disclose a defence before a judge would accept that representation was "desirable in the interests of justice".

Following the example of the settlement advice centres of the late nineteenth century, local law societies, charitable bodies, and even individual solicitors had begun evening advice sessions in church halls and similar places in large cities throughout the country, during the first quarter of the twentieth century. Like the settlement advice centres, the 'Poor Man's Lawyers' tended to be very limited in scope, usually just giving superficial advice to clients, and they relied very heavily upon the charitable spirit of the one or two solicitors who set them up. The 'Poor Man's Lawyers' in London were under the none too comprehensive supervision of the Bentham Committee, itself a charitable body; but, outside London, only twelve towns had 'Poor Man's Lawyers', and in the late 1930's the secretary of a 'Poor Persons' Procedure' committee gave an indication of the impact they had had in some circles:

> "I do not quite know what is meant by the Poor Man's Lawyer Association."
>
> (quoted in Allen Jones, 1938; P.298)

However, after the Finlay Committee, the 'Poor Man's Lawyers' remained the only organisations giving legal advice and assistance to poor persons generally; and the only concrete results of the Committee's final report were another circular letter from the Law Society to its members asking them to volunteer to conduct cases under the 'Poor Persons' Procedure' (in 1930 only 567 out of 5000 London solicitors were prepared to conduct cases) and an amendment to the rules allowing free representation under the 'Poor Persons' Procedure' to be retained when cases were remitted to the

County Courts from the High Court[7].

Thus in the 1930's the major provision for free legal help continued to be the 'Poor Persons' Procedure', governed by the 1914 rules as amended. The procedure was used almost entirely for divorce proceedings, and there was continual pressure from the Law Society to extend further the decentralisation of these proceedings. This was opposed by the Bar and by the higher officers of the Probate, Divorce and Admiralty Division, who said that local High Court registrars were treating applications for divorce too lightly and sent a circular letter, demanding a tightening up of proceedings, to District Registries in 1929. Minimal further decentralisation occurred in 1930 as a result of the recommendations of a committee set up the previous year to investigate poor persons' divorce cases; but this did not significantly change the working of the procedure, nor did it do much to alleviate the problems of the almost continual shortage of solicitors to conduct poor persons cases[8].

Apart from High Court divorce under the 'Poor Persons' Procedure', free legal advice and assistance continued to be provided primarily

[7]The case of Cook v. Imperial Tobacco Co. Ltd., (1922) 2K.B.158., had confirmed the suggestion in Chinn v. Bullen, 19L.J.C.P. 42 (1849), that remission of court fees or free representation were not available in the County Courts; as a general principle of practice, and the Finlay Committee recommended no change in this situation.

[8]The committee, appointed in 1929, consisted of 5 representatives, from the Lord Chancellor's Office, the legal profession and the High Court. They sat for a few months only and recommended that divorce jurisdiction be extended to Assizes with extreme caution because of the difficulties involved with the procedure, much of which was unwritten. They listed 15 new District Registries and 8 new Assize towns to be given jurisdiction much less than the Law Society had asked for.

by the 'Poor Man's Lawyers' in the 1930's, although increasing numbers of articles, books and reports argued that this type of voluntary effort was inadequate and that more should be done, at least in the way of organisation, by the state[9]. The fear of 'ambulance chasers' remained[10], as presumably did their practices; but it seems that the 'Poor Persons' Procedure' itself only continued to function at all because the rules were not adhered to and solicitors generally were paid more than merely their out-of-pocket expenses. Payment for barristers was less important as the Bar had for some time used free legal representation as an opportunity for younger practitioners to gain unsupervised experience, a state of affairs which was commented on by the Trades Union Congress, who in 1932 suggested that the 'Poor Persons' Procedure' was little more than an opportunity for less experienced members of the legal profession to practice on the poor[11].

By the late 1930's almost 50% of all divorces were conducted under the 'Poor Persons' Procedure', yet over 50% of applications to bring divorce proceedings using the 'Poor Persons' Procedure' were refused and many more dropped because of lack of funds to pay the required deposit. Divorce jurisdiction was periodically extended to a few more Assize towns, for example to Plymouth, Bournemouth, Wakefield and Stockport in 1938; but the widening of the grounds for divorce by the Matrimonial Causes Act of 1937 resulted in a

[9]See, for example, the change in emphasis exemplified in the difference between two articles in the "Law Times", the first by Wentworth Pritchard in 1935 and the second by Allen Jones in 1938.

[10]See Wentworth Pritchard (1935; P.237).

[11]Quoted in the "Solicitor's Journal" Vol. 76, 18 June 1932.

massive increase in the number of applications under the 'Poor Persons' Procedure', and even the Law Society were forced to admit that the system was not functioning satisfactorily. The Law Society's annual report on the running of the scheme in 1938 noted that many areas of the country had backlogs of cases for which certificates had been granted, but for which conducting solicitors could not be found.

A year after the introduction of the new grounds for divorce a 'strong' committee was appointed to consider the 'Poor Persons' Procedure', with a view to recommending any necessary or desirable changes in the provisions for free legal aid to the poor. The committee was under the chairmanship of Lord Hodson; and, immediately after the announcement of its terms of reference, it received numerous offers of evidence about the problems of the current procedure and suggestions about what should be done. Apart from a few preliminary sessions, however, the Hodson Committee never really got off the ground, after the outbreak of war in 1939; and it was abandoned about a year later.

As during the first war, there was a massive increase in the number of applications for divorce under the 'Poor Persons' Procedure', and the shortage of volunteer lawyers, difficult enough before the war, now became acute. Wholesale reform of the system was planned, but could not be carried out during the war; however, it seemed to be generally agreed that something had to be done. The largest backlog of cases without lawyers to conduct them were applications for representation in divorce from the rapidly increasing number of servicemen and women, and in 1941 the Law Society suggested the possibility of appointing a solicitor full-time in London to conduct

divorce proceedings for people in the services. The basis of the scheme was that the money paid by the applicant as a deposit to cover out-of-pocket expenses, usually £3.3s, should be paid to the solicitor as a small fee for conducting the case. As mentioned above, in spite of the amendment to the 'Poor Persons' Procedure' rules in 1920, solicitors conducting poor persons' cases had for some time been paid more than their mere out-of-pocket expenses from these deposits, as an incentive to continue accepting unremunerated work, therefore, it was argued, this further breach of the rules would not be unprecedented.

It was not accepted that an official scheme should operate in breach of rules of the Supreme Court, and so the rules were amended to allow the scheme to start in January 1942. A solicitor was appointed by the Law Society together with an administrative staff, and all were paid entirely out of the £3.3s deposits paid by applicants. This office soon began to clear away the backlog of service cases in London, proving what many solicitors had known for some time; that divorce cases could be conducted quickly and cheaply, and be paid for by all classes of society, if necessary. However, local 'Poor Persons' Procedure' committees began sending all their cases to London and using the existence of the 'Service Divorce Department' as an excuse to refuse applications from civilians.

Beginning with the army, all the services started running more or less extensive legal advice services for their lower ranks, using legally qualified commissioned officers in weekly or daily advice sessions. From these advice sessions servicemen and women could be referred to larger service, 'legal aid' branches, and eventually allowed to apply to the 'Service Divorce Department'.

The criteria for eligibility for free legal representation by the Divorce Department were changed from those of capital and income to simply those of rank on the grounds that it made the operation of the scheme easier. The scheme had to operate fairly efficiently because it was felt that lack of a legal remedy, especially for marital problems, could lead to a feeling of injustice, which would be bad for morale and, therefore, weaken the country's fighting strength.

However, the 'Service Divorce Department' did not help to relieve the backlog of civilian cases where certificates had been granted for free legal representation for divorce proceedings, but for which there were no 'conducting' solicitors or barristers. Eventually, although stipulating that it should last only for the duration of the war, the Law Society agreed to the establishment of a 'Civilian Divorce Department', operating, initially only in London, along the same lines as the Service Department to conduct those divorce cases for which the local 'Poor Persons' Procedure' committees could not find volunteer lawyers.

The 'Civilian Divorce Department' did help to reduce the backlog of divorce cases, and grew in size throughout the war; in order to finance it the amount of the deposit paid by applicants for legal help was increased several times during the period. However, the Department was always a substitute for the normal 'Poor Persons' Procedure', and even at the end of the war only employed eight full-time solicitors and an administrative staff. Also the Department was restricted to handling divorce cases, and, although these had always constituted the majority of poor persons cases, there were others which continued to come under the 'Poor Persons' Procedure',

or, as was probably the case with personal injury cases, were still taken on by 'ambulance chasers' for a share of the compensation money, or by trade union solicitors for union members in the case of injuries sustained at work.

However, there was no suggestion of returning to the 'Poor Persons' Procedure' after the war, since it was agreed that it had already broken down before. There was general agreement that a new system for providing free legal help for the poor would have to be introduced; a system that did not depend on the charitable instincts of the legal profession. The Law Society and the Haldane Society[12] had both set up working parties to consider possible new schemes, and, after the end of the war, the Government appointed a committee under Lord Rushcliffe to recommend a comprehensive scheme for the provision of legal aid and advice for poor persons.

The Rushcliffe Committee reported in 1945 recommending that a scheme more or less the same as that proposed by the Law Society should be adopted. The scheme would allow lawyers to volunteer to take poor persons' cases, as under the old system; but representation in any courts named in the rules made under the scheme would be part of the aid given; and, instead of out-of-pocket expenses, both the solicitor and the barrister would receive a fee paid out of a fund administered by the Law Society. This fund would be made up of an annual grant from the Government plus money paid as contributions by some of the users of the scheme according to their position on a sliding scale of ability to pay for legal representation.

[12]An organisation comprising lawyers who wished to see certain reforms in the legal system to help ensure greater equality.

This contribution calculated by the National Assistance Board from applicants' information about income and capital, subject to a maximum, beyond which aid would not be available, and a minimum, below which it would be free. The committee also recommended that some provision be made for legal advice for the poor at an official level, possibly by the setting up of centres with full-time salaried solicitors in large cities; and they recommended that representation in criminal cases, although it should not come under a new system, should be organised and remunerated in the same way as in civil cases.

All in all, the recommendations of the Rushcliffe Committee involved a major change in the mode of provision of free legal help for those who could not afford to pay court fees or employ lawyers. Although published at a time when a post-war Labour Government were attempting to rebuild the 'Welfare State', the recommendations of the Rushcliffe Committee were effectively those agreed upon by the legal profession; and, as Heber Smith (1949; P.455) pointed out to the American Bar, the scheme was not "socialistic". In fact, according to the 'Law Society's Gazette' (1949; Vol.XLVI), such a system would be the

> "...profession's protection against any question of nationalisation."

However, for four years nothing was done about the recommendations; and when they were introduced, as a Bill into Parliament in 1949, there were protracted arguments between the Labour back-benchers, who wanted wider provisions and control by an administrative body, and the representatives of the legal profession, who pointed out that lawyers would not co-operate in the scheme unless it complied with their requirements.

Eventually the Legal Aid and Advice Act was passed in 1949, enacting almost all the Rushcliffe Committee recommendations, as first put forward by the Law Society. However, no part of the Act was to come into force until introduced in regulations made by the Lord Chancellor; and it was not until the following year that the first part was introduced, covering litigation in the High Court.

However, even though it did not immediately come into force, the 1949 Act did represent a different approach towards the provision of legal help for the poor, establishing it as a state financed rather than as a charitable activity; and, in expectation of this change, most of the old voluntary organisations closed down. The 'Poor Persons' Procedure' committees were replaced by the new machinery set up under the Act; but also the 'Poor Man's Lawyers' virtually all closed down in anticipation of the setting up of advice centres under the Act, and the Divorce Departments, only intended anyway to last for the duration of war, were gradually dismantled, although the last survived in Newcastle until 1960. Thus for the early 1950's at least there was less provision for legal help for the poor than there had been before the second war.

Scotland 1914-1953:

The 1949 Act also applied to Scotland, replacing the previous provisions of the 'Poor Persons' Roll' under the Statute of 1424, which, although amended by various acts of sederunt[13], had remained the official legal aid scheme throughout the inter-war period.

[13] Acts of sederunt were rules made by the Court of Session, empowered by a Statute of 1532.

It had not been any more widely used than the English scheme, however, 130 cases being brought under it in 1925, for instance, of which 117 were divorce proceedings. In 1937 the Morton Committee on legal aid in Scotland had recommended that a statutory scheme controlled by solicitors be established, a similar recommendation to that eventually made in England by the Rushcliffe Committee.

Legal aid in criminal cases in Scotland had not been affected by the Poor Prisoners Defence Acts of 1903 and 1930 and had continued to be provided gratuitously by the legal profession through the 'Poor Persons' Roll'. The 1949 Act did envisage the establishment of a state financed criminal aid scheme, but the only change which actually took place was an agreement in 1953 to give a Treasury grant of £8,000 a year to be used as a source of funds for solicitors conducting criminal cases for poor persons; and thus, effectively, this service continued to be provided gratuitously until 1964.

In Scotland, as well as in England, charitable organisations closed down in anticipation of the new scheme, and here too the introduction of the Act seemed to result in the profession and the voluntary organisations regarding the provision of legal help for the poor as a problem simply of organisation and assuming, for a while at least, that, provided the organisation was functioning properly, the situation would be satisfactory. This assumption was not really questioned until the mid-1960's.

United States 1917-1951:

The changes in the legal aid schemes in Great Britain during the 1920's, 1930's and 1940's can be interesting compared with the situation in the United States where, during the same period, the

number of 'Legal Aid Offices' had increased little faster than the rise in population. As was the case with the English and Scottish legal aid schemes these offices operated strict indigency standards to determine eligibility, in order to avoid taking potentially profitable work from the private lawyer, and they dealt mainly with matrimonial cases. Since, like the 'Poor Man's Lawyers' in this country, the 'Legal Aid Offices' saw clients before they reached the stage of litigation, a large part of their work consisted of the giving of advice only and, as a result, only 5% of clients received further casework. Even this, however, varied from office to office, and a "test" for successful operation of offices (sic), which calculated success as handling the number of clients dealt with by the hardest working offices, suggested that most offices throughout the country were meeting on average about a third of the 'need'.

In many American cities there was no 'Legal Aid Office', and even in Rochester, where there was, a survey by Koos (1949) suggested that at least 60% of 'middle and lower income' respondents did not know of the existence of the office. Similarly for aid in criminal cases, although there were full-time 'public defenders' employed to represent poor defendants, by 1947 there were only 28 such posts in the whole of the United States. However, merely by securing more charitable or state funds from a seemingly inexhaustable supply, these provisions could be extended, and after the war expansion along these lines was urged[14], with note being taken of the changes being made in Britain as an attempt to catch up to some extent to

[14]For example, Brownell (1951) urged that 'Legal Aid Offices' be opened in all towns with a population of over 100,000.

the superior position in the United States[15]. In the 1950's the work of the 'Legal Aid Offices' was, for the first time, co-ordinated by a central body, the 'National Legal Aid Association', later renamed the 'National Legal Aid and Defender Association' (NLADA), when it widened its concern to cover criminal as well as civil aid. The potentially wide ranging changes in Britain, therefore, were not accompanied by similar reorganisations in the provision of legal help for those considered unable to pay for legal remedies across the Atlantic, and so the 'revolution' in legal aid in Britain remained very much a national phenomenon.

England and Wales 1951-1974:

In Britain itself the changes made by the 1949 Act hardly had revolutionary effects. In 1951, in its first year of operation, the new scheme provided substantially the same legal help as the old 'Poor Persons' Procedure' had done; that is, representation in High Court cases. The only difference was that now lawyers taking the cases were paid a fee for each one[16]; and, out of the 24,146 applications for aid which reached the certifying committees in the first six months of operation of the scheme only 3,749 were refused certificates, as opposed to the 50% who were normally refused under the 'Poor Persons' Procedure', although over 80% of the cases were still matrimonial. Also by the time the scheme had come into operation inflation had ensured that the eligibility limits were

[15] See, for example, the articles on the English legal aid scheme by Heber Smith (1949) and Abrahams (1950) in the American Bar Association Journal.

[16] In these High Court cases lawyers did still contribute to the cost of the scheme to some extent since the rules under the scheme allowed them to recover only 85% of ordinary profit costs.

much lower than those intended by the Rushcliffe Committee, and more like those operating under the old 'Poor Persons' Procedure', with the result that during the first year over half of the cost of the scheme came from contributions paid by applicants not eligible for free legal help and at the end of the year there was a credit of £80,388 in the fund.

For all the broad changes which the Act proposed, it remained, as Sachs (1951; P.145) noted, primarily a statement of principle to be filled in by the arrangements drawn up by the Law Society and the regulations introduced by the Lord Chancellor. The only laymen involved in the scheme were those on the Lord Chancellor's Advisory Committee, who throughout the 1950's pressed for the introduction of advice centres, as mentioned in the Act, to no avail. The Law Society effectively had double control over the scheme, through their overall control of the administration and financing of the scheme, and through their control of the granting of certificates via the local secretaries and certifying committees.

For the first few years after the Act became law in 1950 aid remained limited to representation in the High Court, at a standard of eligibility set by the Rushcliffe Committee in 1945. The Law Society were wary of extending the availability of the scheme to allow aid to people who were never intended to benefit and who might produce 'speculative litigation'; and some of the High Court judges were even more hesitant about recognising the value of subsidised legal remedies; Lord Chief Justice Goddard (Abel Smith and Stevens, 1967; P.331) felt that many applicants were ungrateful and could better be left to defend themselves. The Bar also was concerned to see that the scheme remained limited and especially

that it be kept out of the County Court, where they did not enjoy a monopoly over advocacy.

Eventually, however, in 1955 those sections of the Act allowing legal aid to be granted for proceedings in the County Court and other similar courts were introduced by Statutory Instrument[17]. In 1959, after many recommendations by the Advisory Committee, facilities for providing legal advice were introduced; but not, as suggested by the Rushcliffe Committee, by the setting up of advice centres. Rather, as the Law Society requested, advice was to be given in solicitors' private offices at a cost of 2s.6d. an hour, providing that the applicant satisfied an eligibility test somewhat stricter than that for ordinary legal aid. At the same time the Law Society began a 'voluntary scheme', under which some solicitors would provide advice at a cost of £1 for half an hour to all clients. Both schemes together, however, were much less comprehensive than the legal advice centres envisaged by the Rushcliffe Committee, and possibly did not even come under the empowering S.7(2) of the 1949 Act, which referred to "solicitors employed whole-time or part-time for the purpose".

The legal advice scheme under the 1959 arrangements was never very popular, and at its most successful it provided advice for around 60,000 people a year; an average of three legal advice clients for each solicitor. The Prices and Incomes Board (P.I.B. Report, 1968) estimated that solicitors actually gave over five times

[17] The Act, although passed by Parliament in 1949, did not come into force immediately; the Lord Chancellor was empowered to bring sections of the Act into force as and when necessary, by Statutory Instrument under S.17(2) of the Act.

this amount of free advice normally, without claiming remuneration under the scheme; however, this advice would not necessarily be going to those too poor to afford to visit a solicitor in the first place, for whom the statutory advice scheme was intended. More importantly, advice meant advice, as anything more than oral confirmation of a clients legal position required a certificate for full legal aid or a certificate to pursue a claim, and these required a fresh application to the local certifying committee.

Legal aid for 'claims' cases, i.e. help, under 5.5 of the Act, in pursuing a legal claim as far as, but not including, court proceedings was not made available until 1960. It had a stricter financial eligibility test than ordinary legal aid, and was never much used, certifying committees preferring to grant limited legal aid certificates requiring the applicant to seek counsel's opinion on the desirability of litigation. It was also not until 1960 that legal aid for representation in proceedings before the House of Lords became available.

In fact, 1960 saw quite substantial changes in the somewhat limited aid which had been available under the Act during the 1950's. The financial eligibility limits in the Act of 1949 were those recommended by the Rushcliffe Committee in 1945; but these stable eligibility limits, however, did not take into account the effects of rapid post-war inflation. By 1960 the limits were extremely low and an Act was passed to raise them, and to allow the Lord Chancellor to raise these limits by regulation when again necessary.

Also in 1960, Part II of the 1949 Act, allowing for "fair remuneration" to be paid to lawyers representing defendants in

criminal cases, out of state funds[18], was brought into effect in England and Wales. Thus for the first time all lawyers representing the lower classes in court were to be paid in full for their work.

In addition to these changes in 1960, as from the beginning of 1961 legal aid became available for those Summary Jurisdiction and Quarter Sessions cases specified in the 1949 Act, mainly matrimonial cases in the Magistrates Courts. This meant that, for the first time, and over ten years after it was introduced, the legal aid scheme recommended by the Rushcliffe Committee was more or less fully operational. The Law Society reported that in the year 1961-2 there were 105,224 applications for aid, of which 75,616 were issued with certificates; this was an increase of 159.6% over two years, which was largely due to the changes made in 1960, although there were continuing increases in applications every year after this. About £15 million was received from the Treasury for the running of the scheme in 1961-62 although its total cost was over £31 million; 70.5% of the cases were successful and £27 million recovered for clients in the form of damages, although over 80% of the cases were still matrimonial[19]. In appeal cases the success rate was much lower, around 60%; and, the following year, the Advisory Committee, worried about the increasing cost of the scheme, emphasised the importance of avoiding giving certificates for 'unmeritorious' cases on appeal, which might resemble too closely litigation at the state's expense.

[18]Under the Poor Prisoners Defence Acts of 1903 and 1930, the limited remuneration paid to lawyers representing poor defendants came out of local funds.

[19]Most of the other 20% were personal injury cases, as had always been the case under the previous legal aid schemes.

In the 1950's there had been some criticism of the legal aid scheme, for example, Benenson (1956) argued that, as a public service, the scheme ought to be at least partially controlled by the public, i.e., by laymen rather than solely by lawyers; but, as the scheme was not fully in force, criticism was regarded as premature.

In 1964 a third Legal Aid Act removed the major anomaly recognised in the scheme. Under the 1949 Act, since, by definition, a litigant granted legal aid could not afford to pay court fees and lawyer's costs, it was not usually possible for costs to be awarded against such a litigant if his case was unsuccessful. This meant that an 'ordinary' litigant winning a case against a legally aided litigant would still lose money, because he would have to pay his own costs. There had been no arrangements made for such costs to be paid out of the legal aid fund, but litigation at the expense of 'ordinary' court users suffered much criticism, and the 1964 Act was introduced to allow costs to be paid to successful 'ordinary' litigants out of the legal aid fund. However, in an effort to reduce the cost of this to the legal aid fund, the right to costs was restricted: the unassisted party first had to use S.2(2)(e) of the 1949 Act, under which costs could be awarded in exceptional circumstances against the legally aided party, and if this failed would only then be awarded costs out of the fund only if it could be shown that severe financial hardship would otherwise be suffered and that, in all the circumstances, it was "just and equitable" to make provision for costs out of the fund. Thus the only major reform to the scheme during the 1960's removed, only partially, an anomaly which did not affect the poor litigant.

Major changes in the provisions for legal aid in the United States during the 1960's, however, did provoke a reaction from many British writers and reformers. In 1968 lawyers from both major Parliamentary parties recommended changes in the organisation of legal aid to make legal help for the poor more 'community orientated' the 'Society of Labour Lawyers' even suggesting the establishment of 'Neighbourhood Law Offices' along the lines of those in the United States (Fabian Research Series 273, 1968). Paterson in a report representing the views of the Cobden Trust, entitled "Legal Aid as a Social Service" (Paterson, 1968) argued that the provision of legal aid to the poor was a 'social service', and therefore ought to be made efficient as such through the provision by the state of legal centres giving advice and assistance to the poor, and which were not entirely under the control of lawyers.

However, unofficial criticisms of the legal aid scheme and recommendations that neighbourhood advice centres be set up remained unofficial. In 1966 the 'Advisory Committee' said that new advice centres were unnecessary, because more money could be put into the existing 'Citizens Advice Bureaux'; in a memorandum in 1968 the Law Society said that they were opposed to the establishment of centres, which they claimed would be a radical departure from the concept of legal aid as thus far developed; and two years later one of the Law Society's spokesmen on legal aid published a reply to the Cobden Trust Report (Pollock, 1970), in which he argued that the 'social service' argument was spurious and that the running of the legal aid scheme was a task which could only be done by lawyers. As early as 1966, however, the Advisory Committee had encouraged the use of private funds to support research into the question of

how to provide legal aid for the poor.

During the 1960's there were also some changes in the provision of legal aid in criminal cases. Although "fair remuneration" for lawyers doing criminal aid work had been introduced, in 1960, into England, under the 1949 Act legal aid in criminal cases here was still governed by an assortment of different statutes and regulations, of which the most important was the Poor Prisoners Defence Act of 1930, which permitted trial judges to grant certificates for free legal aid when this was "desirable in the interests justice"; in the Magistrates Courts, however, the certificates could be granted only in "exceptional circumstances". This meant that the cases for which aid would be granted varied enormously from one court to the next. In England in 1963-4 it was calculated that only 14% of defendants tried on indictment were granted legal aid and only 6% of those on summary trial. In the same year, 1964, a committee was set up under the chairmanship of Lord Widgery to investigate and report on legal aid in criminal cases.

The Widgery Committee did not publish its report until 1966, yet, by and large, the report was complimentary to the practices of the courts. It rejected any view that the state owed a duty to provide representation for accused criminals, said that it was impressed with the way the courts exercised their discretion and satisfied that the proportion of refusals of applications for aid was not unreasonably high. However, the committee did recommend that there ought to be a statutory statement of the principles upon which discretion should be exercised and that, in cases tried on indictment, aid ought to be granted in all but exceptional cases. The Widgery Committee felt that criminal aid ought to be contributory,

as legal aid in civil cases was, but that the procedure used to assess the contribution in civil cases was unsatisfactory for criminal proceedings. Eventually, they did recommend that the scheme should become contributory, so that judges, when granting a certificate for aid, to persons who might be able to afford a contribution, would offer the certificate subject to a contribution to be assessed at the end of the case, in certain cases asking for the payment of a sum on account.

At first nothing was done about the Widgery Committee proposals, in spite of exhortations from writers such as Zander (1966), who wanted to implement even wider reforms. However, Part IV of the Criminal Justice Act of 1967 contained provisions for the reform of legal aid in criminal cases along the lines recommended by the Widgery Committee, to come into force the following year when regulations covering the administration of the scheme had been drawn up. As recommended by the Widgery Committee the Act did not take the decision to grant a certificate for legal aid away from the court in criminal cases, and the discretion to grant a certificate only where it was "desirable in the interests of justice" was retained in all courts, except in cases of murder and where the applicant was the respondent in an appeal to the Court of Appeal or House of Lords. In spite of criticism (see: Zander, 1966) the Act made legal aid in criminal cases subject to a contribution, if the judge considered that the applicant could afford to pay towards the cost of his defence, with the requirement of a payment on account if the judge ordered it.

Thus the 1967 Criminal Justice Act reformed and consolidated the provisions for granting legal aid in criminal cases in this country, retaining the discretion of the judge and ignoring any

suggestion of direct provision of aid by the establishment of 'public defenders' or other state officials. This reform of criminal aid was the only major change in the official provision for legal aid in the 1960's. However, unoffical criticism of the scheme was coupled with important changes in unofficial approaches towards the provision of 'legal services' to the poor. Many of the writers, both lawyers and laymen, who were critical of what they saw as short comings in the English legal aid scheme, argued that the example set by the United States in establishing 'Neighborhood Law Centres' was one which should be followed in this country[20]. Their criticism was supported by the relative failure of the statutory advice scheme begun in 1960, which, operating only in solicitors' offices, had never averaged much more than three clients a year for each solicitor in the country. This failure was made more reprehensible by the fact that the 1949 Act had envisaged a scheme to provide local legal advice centres, which was abandoned in 1959 with the introduction of the scheme using solicitors' offices. As had happened at the turn of the century, and, to some extent, again following the example of the United States, lawyers dissatisfied with the state provision for legal advice began to set up voluntary advice sessions in large cities, sometimes linked to the 'Citizens' Advice Bureaux', an organisation of state financed information centres which had first been established during the second war. Towards the end of the 1960's these centres started to proliferate, especially in London where the old 'Poor Man's Lawyer' meetings at such places as Southwark and Toynbee Hall were revitalised, and in July 1970 a full-time

[20]See, for example, The Society of Labour Lawyers (1968), Paterson (1968), Brooke (1966) and Zander (1968).

centre offering a wide range of legal assistance and employing full-time lawyers paid out of charitable funds, along the lines of the American 'Neighborhood Law Centres', was opened in North Kensington.

Such was the general interest in legal aid and advice that charitable bodies, such as the Nuffield Foundation, who gave a grant of £21,950 to Birmingham University, were prepared to finance research into the problem of the 'unmet need' for lawyers' services. In 1971 a voluntary national organisation, the 'Legal Action Group', was formed to stimulate interest in the problem of 'legal services and the poor' and to provide some form of co-ordinating framework for the voluntary efforts. In 1972 they estimated that there were 61 legal advice centres in existence, of which 39 were in London (L.A.G. 1972). Also in 1972 a Private Member's Bill, designed to provide fifty local legal advice centres at a cost to the state of about £1 million, was introduced into Parliament.

Without the support of the Law Society or the Bar, the Private Member's Bill was unsuccessful; but by now there was some official recognition of the fact that the legal aid scheme might be capable of improvement. The Advisory Committee openly encouraged research to pinpoint shortcomings in the scheme and suggest improvements, and began to propose ways in which the scheme might be improved (Advisory Committee, 1969) - a contrast with their earlier concern to ensure that Treasury funds were not wasted. Local law societies had, in several areas, supported the establishment of voluntary advice sessions, and in 1971 the Law Society produced a Bill designed to replace the 1959 advice scheme, which envisaged, in Part II, the establishment of some legal advice centres under the control of the Law Society.

In 1972 the Legal Advice and Assistance Act was passed by Parliament, to come into force when introduced by regulations made by the Lord Chancellor. The Act abolished the old advice scheme and the 'claims' procedure under sections 5 and 7 of the 1949 Act, and replaced them, in Part I, with a scheme under which solicitors could provide up to £25 worth of assistance, excluding representation before a court or a tribunal, without prior approval and then claim back the cost of the work from the fund, providing that, if the client earned between £11 and £20 a week[21], he would have to pay a contribution towards the cost which would be collected by the solicitor himself. Part II of the Act, which provided for the establishment of legal advice centres under the control of the Law Society, was not intended to be introduced until the success of the £25 scheme could be assessed.

The introduction of the new advice and assistance scheme, however, did not result in any decrease in the growth of voluntary and charitable advice centres. In its first eighteen months of operation the 'North Kensington Neighbourhood Law Centre' dealt with 2000 clients, and had severely to restrict the geographical area from which it would accept clients in order to avoid being swamped. After 1972 many more legal advice and information centres opened in cities throughout the country, and in London several more full-time law centres, along the lines of that in North Kensington, began operating, some even receiving government money in the form of grants under the 'urban aid' scheme. The informal reaction of some solicitors has suggested that the £25 scheme is

[21] These limits have been raised annually since then to keep pace with inflation.

not particularly useful, since the amount of work that can be done for £25 is not worth the administrative effort involved in recovering it, a third of the solicitors replying to an L.A.G. survey said that they never sent in the claim form[22]. The result is that some of this advice work may be carried by solicitors for those clients from whom later legally aided work will allow the difference to be made up.

With ever increasing inflation, the income and capital eligibility limits for the legal aid scheme have been raised almost every twelve months in the 1970's, although by no means could they be called generous. In 1972-3 the legal aid scheme, including criminal cases, cost £25,621,038, although only £13,765,801 of this was paid by the state; and in their annual reports both the Law Society and the Advisory Committee suggested that there may be areas in which the scheme could be improved, for instance by providing for representation in hearings before certain tribunals, an extension to the scheme which was envisaged in the 1949 Act and seems likely to be implemented in the near future. In February 1974 a Legal Aid Act came into force consolidating all the previous legislation governing the legal aid scheme into one single statute.

Thus the British legal aid scheme is now well established and the provision of legal assistance through the existing professional organisation is rarely questioned. The scheme provides for legal advice and legal representation to be given free of charge by lawyers in private practice to clients who come below the limits of a

[22]"L.A.G. Bulletin" October 1974, P.235.

financial eligibility test[23] and for the lawyers to claim back the taxed costs of the work done from a fund administrated by the Law Society; this fund is composed of an annual grant from the state plus the contributions paid by applicants falling between the upper and lower eligibility limits. Free legal advice, however, is limited to £25 worth[24] in normal circumstances; and legal representation can only be remunerated under the legal aid scheme if the applicant is assessed to be financially eligible by the Supplementary Benefits Commission, which replaced the National Assistance Board in 1966, and is considered to have a 'prima facie' claim and a reasonable cause for litigating by a legally qualified, full-time local secretary or, in doubtful cases, a local committee of solicitors called by the local secretary[25]. Would be litigants can apply directly to the local secretary for a certificate entitling them to free representation, but such applications are rare and less popular with the secretaries; the majority are prepared by the applicant's solicitor after an initial advice session, a practice which largely accounts for the high success rate of applications (about 80%). The legal aid scheme now operates in all courts in

[23]Those who come between the upper and lower limits, however, are required to pay a graduated contribution towards the cost of their aid into the legal aid fund.

[24]£25 is not a great deal when it is taken into account that the rates for legal aid work are £8-10 an hour at the least.

[25]Applications for certificates for representation before appeal courts must be made to the appropriate one of fifteen Area Committees who use the same criteria in considering applications - and, if they think these have not been satisfied, may refuse to grant a certificate even if the court has given leave to appeal, as was the case in: R. v. Legal Aid Committee No. 1 (London) Legal Aid Area, ex. p. Rondel, (1967) 2 Q.B. 482.

England and Wales and, as mentioned above, it is anticipated that it will operate in at least some tribunals in the not too distant future; in 1972-3 263,579 applications for assistance were received and 204,368 certificates granted in England and Wales.

Scotland 1953-1974:

After the introduction of the 1949 Legal Aid and Advice Act into Scotland replacing the Statute of 1492, the provisions for legal aid in civil cases became the same as those operating in this country and have subsequently been changed in the same ways. As mentioned earlier, however, the situation in criminal cases had not been affected by the Poor Prisoners Defence Acts of 1903 and 1930, and legal aid for defendants was still largely a charitable service provided under the auspices of the 'Poor Persons' Roll'. With the introduction of "fair remuneration" for lawyers representing poor defendants in England and Wales in 1960, however, some sort of conformity was demanded; and in that year the Guthrie Committee recommended the introduction of remuneration for lawyers representing poor accused persons in Scotland.

The situation was eventually changed by the introduction of the 'Legal Aid (Criminal Proceedings) Scheme' in 1964. The scheme allowed for lawyers to be provided and remunerated, in the same way as in civil cases under the 1949 Act, in criminal cases tried on indictment when the defendant was unable to pay the expenses of the case without undue financial hardship, and in those tried summarily when representation was also in the interests of justice in the circumstances of that case. Thus after 1964 the provision of legal aid in criminal cases in Scotland was less restricted than in England;

but in summary cases, at least, it was still only granted at the discretion of the trial judge. However, after the introduction of Part IV of the Criminal Justice Act 1967, the situation in England and Wales became very similar to that in Scotland, and so it has remained since, with aid being granted in nearly all cases tried on indictment.

United States 1951-1974:

After the formation of the National Legal Aid and Defender Association, 'Legal Aid Offices' in the United States continued to increase in numbers and size throughout the 1950's, and, with the full backing of the American Bar Association were now established as the 'official' legal aid scheme. They remained, however, tied to the charitable funds of the local 'community chest' and thus largely under the control of local business interests. By 1961 there were 209 'Legal Aid Offices' in the United States, employing 300 full-time lawyers and an increasing number of 'Public Defender' posts; however, in 1964 only $4 million was spent on legal aid, less than 0.2 per cent of the general expenditure in the United States on legal services[26].

In the early 1960's, however, dissatisfaction with the paucity of provision for legal aid and its domination by the American Bar Association and the 'community chest', was felt by some groups outside of legal administration, who, perhaps influenced by the

[26] Money and hard work were not put into legal aid without any hope of reward, however. By now initiative and hard work in the legal aid area could be recognised by the awarding of the 'Harrison Tweed Award' or the 'Heber Smith Award' (Brownell, 1951; supplement 1961, P.19).

'Civil Rights' movement of the 1950's, wanted to achieve certain social and legal changes on behalf of sections of the lower classes and who found the existing legal aid scheme incapable of assisting in this. Thus scorning the established 'Legal Aid Offices', some groups in the larger American cities set up their own legal help agencies for their clients, attempting to secure more radical solutions to problems by using non-legal help and challenging legal decisions both inside and outside the courts: for example, a community office was set up in New York by the 'Mobilisation for Youth', in the early 1960's. One of the aims of these new offices was to avoid the control by the local bar and local business interests which were felt to be a limitation on the work done by the 'Legal Aid Offices'; but initially such a break was difficult as these interests exercised at least partial control over most sources of charitable funding, through their control of the 'community chests'.

The limitations imposed by this situation were, however, radically altered in 1964, when the Federal Government and the then President, John F. Kennedy, began what they called the 'War on Poverty' controlled by the newly formed 'Office of Economic Opportunity' (OEO). The declared aim of the war was to use new forms of organisation, involving "maximum feasible participation" of the local indigenous population, to provide local solutions to the common problems of 'the poor' and to overcome the apathy and largely psychological base of poverty[27]. It was readily recognised that use of the law might provide a means of solving many of the problems of poverty, and early on there was

[27]The assumption that poverty was largely a psychological state was referred to by Lowenstein and Waggoner (1967; P.811) in an article on the "new wave" of legal services in the United States.

a call from Wald (1964; P.110) for lawyers to join in the war.

The OEO was given the power to provide up to 90% of the funds required for projects which satisfied the aims of the war[28], an offer which attracted many community organisations wanting to provide 'legal services' for groups in various localities. Many centres similar to that run in New York by 'Mobilisation for Youth' were soon opened under the auspices of the 'War on Poverty'. These centres, which became known as 'Neighborhood Law Centres' employed community workers and even members of the local indigenous population, as well as young lawyers to provide wider help than just legal advice and representation, including challenging welfare decisions and bringing 'test cases' to try to change the law in favour of the lower class inhabitants of the area[29]. With most of their money coming directly from the Federal Government, and seemingly with no strings attached to it other than that it be used under the auspices of the 'War on Poverty', the 'Neighborhood Law Centres' were not limited to the somewhat restricted advice and occasional litigation services which the 'Legal Aid Offices', under the shadow of local business interests, had traditionally provided. In fact, as the 'neighborhood principle' expanded, more radical measures were recommended for adoption by the law offices; for example, Cahn and Cahn (1964, P.1321 et seq.) argued that all offices should serve a 'representative

[28] In 1967 the proportion of funds which the OEO could provide was reduced to 80%.

[29] The tactic of bringing controversial cases to try to secure changes in the law in favour of minority groups was one which had already proved successful in the 'Civil Rights' movement of the 1950's.

function' as well as a 'service function'[30], and two years later (1966, P.957 et seq.) suggested that the poor be given their own 'Justice Industry'. In 1967 'Neighborhood Law Centres' received $22 million from the OEO; a sharp contrast to the $4 million spent on legal aid in 1964.

However, although the organised bar was at first reluctant to recognise the work done in the 'Neighborhood Law Centres', they later decided to lend their support to the scheme and succeeded in taking over some offices and securing OEO funds for some of the existing 'Legal Aid Offices' by adapting their organisations to meet OEO requirements. Through their control of the conduct of neighborhood lawyers under the Canons of Professional Ethics, as well as through their direct control of some offices, the bar was able to obtain a measure of involvement in a large number of the 'Neighborhood Law Centres', for instance, Karpel (1969; P.32) describes the control exercised by the New York bar over centres there. Consequently eligibility standards were still used to limit the numbers who could demand help from the new offices; and, although the numbers of 'Public Defenders' were increasing, the OEO would not generally fund projects to provide help in criminal cases. In practice most 'Neighborhood Law Centres' were mainly involved in the giving of advice and the provision of other 'service functions'.

Although they were not as successful in relieving poverty as their protagonists would have hoped, the 'Neighborhood Law Centres'

[30] The 'representative function' was the bringing of 'test cases' and lobbying for legislative changes which characterised the 'Civil Rights' movement of the 1950's, as opposed to the 'service function' of simply giving legal advice and assistance in individual cases.

did represent a significant change in the organisation and financing of legal services for those considered unable to afford them in the United States. The idea of "taking law to the people" by establishing legal offices in poor neighbourhoods specialising in the type of problems experienced in such neighbourhoods, with which lawyers in private practice would not normally come into contact, was one which attracted the support of lawyers in Britain: Zander (1968) and the Society of Labour Lawyers (Fabian Research Series 273, 1968) recommending the establishment of 'Neighbourhood Law Centres' in this country; and the law centre, opened at North Kensington in 1970, modelling itself in many respects upon the American centres.

In the United States, however, the early 1970's saw the beginnings of set-backs to the 'neighborhood principle' of legal aid. Many of the centres run by local bar associations had become very similar to the old 'Legal Aid Offices', and the aim of "maximum feasible participation" of indigenous populations had rarely been very successful[31]. In spite of pleas for a broader approach, such as Cahn and Cahn's (1966; P.957 et seq.) suggestion that the poor be given their own 'Justice Industry', after 1970 the OEO began to withdraw funds from many of the neighborhood law projects and refused to renew many of the grants, which had originally been given only on a yearly basis.

OEO cut-backs did not just affect the neighborhood law centre scheme, as other parts of the 'War on Poverty' were also "slowed down". However, projects funded by the OEO had become the major

[31] For example, Cahn and Cahn (1968) note the case of the Child Development Group of Mississippi, which had strong local support from the black community, but had OEO funding withdrawn as a result of pressure from local business and professional interests.

providers of free legal services in the United States, replacing the charitably funded 'Legal Aid Offices' in many states[32], and, where the cut-backs did not result in centres closing altogether, they did mean a return to dependence on money from local charities and thus also the risk of control by the local interests behind these funds. Many community groups continued to run legal aid services in the large cities, and, unlike the English legal profession, American lawyers will take on cases on a contingent fee basis for clients who cannot afford to pay; but the "slowing down" of the 'War on Poverty' has meant that, instead of there being an increase in the areas for which legal services are provided for those felt to be unable to pay in the United States, there has probably been a decrease in the availability of legal aid in most states in the early 1970's.

In spite of the cutbacks affecting the 'Neighbourhood Law Centres' in the United States, however, it is certainly the case that, in both Great Britain and the United States, some form of free or subsidised legal assistance for persons considered to be unable to pay court fees and lawyer's costs is available to, and used by more people now than at any time prior to the second war, or before. Although there has also been an increase in the number of legal rules affecting the lives of lower income earners in most countries - especially in Britain with its complicated social security provisions -

[32]In a few states there were 'Judicare' schemes providing for subsidised litigation using private lawyers, similar to the British legal aid scheme; but these had never been adopted on a wide scale in the United States.

the legal aid provisions are still used primarily to obtain remedies for matrimonial problems, which have always constituted at least 80% of the legally aided cases in Britain. There can be no suggestion that increased provision for legal aid has followed the increase in the number and scope of laws affecting the lower classes, nor even that greater provision could be seen as a gradual opening up of the legal system to the previously deprived. Nor can the increased provision be seen as the development of a comprehensive policy towards legal aid: the changes in the availability of legal aid both in this country and elsewhere have been too erratic and piecemeal to permit of any claim of gradual development; in fact, as pointed out at the beginning of the chapter, it is only by imputing to past changes a notion of progress towards the current situation that these changes in the availability of legal aid can be seen as a process.

CHAPTER TWO

"A REAPPRAISAL OF THE LEGAL AID PROBLEM"

As suggested in the Preface the purpose of the first chapter was to provide a historical summary of what could be called the 'common knowledge' on legal aid. In so far as this 'common knowledge' treats legal aid as an independent phenomenon, however, and suggests that it is describing the historical development of this phenomenon, it is masking the social base of legal aid and preventing an understanding of aid which could appreciate it as a social product. This chapter will look at the limitations of this 'common knowledge' on legal aid through a reading of the more important legal aid critics and reformers, and suggest that any approach to legal aid which seeks to understand and appreciate its position and possibilities must question such knowledge and look behind it to elucidate the social nature of legal aid and indeed of law itself.

In a discussion of the major writings on legal aid it is possible to point to variations in the approach of writers in terms of their perceptions of the nature of legal aid and their recommendations for amelioration and improvement of its operation; although much of the work is characterised by a similarity of concern over the inability or unwillingness of all sections of society to participate in the use of legal machinery, which will be examined later. Within the similarity of concern differences of degree and emphasis of various aspects of the problem are important particularly in view of their relationship to the different interests and practices of the writers involved, and can be used roughly to categorise the

approaches: not as different theoretical schools, since most of the writing is within the same ideological framework, but simply to demonstrate the different implications of the variations and the fundamental limitations of the overall approach.

Both in this country and in the United States the position adopted by official and semi-official organs of the legal profession towards legal aid has been one of a traditional conservatism: concerned to maintain the status of established institutions through the incorporation of limited changes. Particularly, the profession has been concerned to maintain what it has felt to be its 'independent position'[1] and control over the administration of law. This was evidenced in 1932, at a time when legal aid was provided by professional lawyers as a form of 'charitable duty', by the President of the Law Society (quoted in the "Law Society's Gazette" of February 1932) who pleaded for support from solicitors to ensure the continued working of the 'Poor Persons' Procedure', to make the position of the profession assured; and became apparent again forty years later, after the scheme had become a nationally financed part of some lawyers' work, when Pollock (1973, P.179) demanded that:

> "... what is done (must) neither damage the unity of the profession nor produce abuses that would weaken its function within the community".

The importance of the control of the legal profession over the administration of law is reflected not merely in the attitude of professional writers on legal aid, the powerful position of the

[1] Brownell (1951, P.235) writing about legal aid in the United States puts this quite bluntly:

> "The effectiveness of the service is directly related to the degree of professional independence".

profession can be seen as a major influence on changes in the provisions for legal aid. In a memorandum of 1968 the Law Society opposed the establishment of local law centres arguing that they were a radical departure from the concept of legal aid as so far developed; however, when provision was made for centres to be set up in the 1972 Legal Advice and Assistance Act it had been ensured that, were any to be set up, they would be controlled by the Law Society. And this is the case not only with the British Law Society: in the United States the American Bar Association, although initially opposed to the introduction of 'Neighbourhood Law Centres' financed by the OEO, later endorsed the programme, and, partly through control of necessary local financial resources and partly through control over the activities of the lawyers involved, was able to dominate some centres and ensure representation in others[2]. The comment of the President of the Law Society in England on the apparently substantial changes in legal aid recommended by the Rushcliffe Committee in 1945 is perhaps characteristic of the position and attitude of the legal profession. Quoted in the "Law Society's Gazette" in 1945, he said:

> "The Rushcliffe Committee have adopted entirely the basic principles which we set out in our evidence".

The apparent influence of the legal profession over the scope of changes made in the legal aid schemes is something which will be re-emphasised later. It is important here to note that the attitude which informs this influence has always been closely linked to a concern to protect what are perceived to be the profession's financial interests. It is never economically prudent for a profession geared

[2]For instance, local bar control over neighbourhood law offices in New York is described by Karpel (1969, P.32).

to administering the law in ways which it has developed over centuries, to question the principles upon which that law is administered. This is not to say that extensions in the provisions for legal aid have not been advantageous to the profession: even when the work was 'charitable', out-of-pocket expenses were paid and valuable experience was provided for young barristers and solicitors; and it is increasingly possible now for legal aid work in this country to provide a valuable source of income for a firm of solicitors or a young barrister. However, this value seems to be jealously guarded: for example, the introduction of the £25 advice scheme, by the Legal Advice and Assistance Act 1972, prompted Pollock (1973, P.176) to ask,

> "How will the new scheme work for the ordinary practitioner?"

Although claims for professional control and professional 'independence' are often couched in terms of their importance for the 'public interest', at best this is only the 'public interest' as defined by the legal profession; and there is no guarantee that either this definition or the financial interests of the profession will coincide with the problems of different classes in society[3].

Criticisms of the legal profession's prudent conservatism have been voiced by academic lawyers and by some groups of professional lawyers more concerned to see the scope of the law extended[4]. Although sometimes critical of the profession's self-interest, the major

[3]For instance, matrimonial cases have always comprised at least 80 per cent of legal aid work - this cannot mean that 80 per cent of the problems experienced by people eligible for legal aid are solely matrimonial. Even the types of problems diagnosed in local legal advice centres would suggest otherwise.

[4]See the standpoint taken by the Fabian 'Society of Labour Lawyers' in "Justice For All" (1968).

claim of most of these writers is that the profession has merely failed to appreciate the extent of the problem. If, they point out, the legal services are supposed to solve problems and conflicts in society, then these services should function effectively as "social services", and not be dominated by a legal profession of "independent practitioners for the middle and upper classes" (Paterson, 1968, P.8). This approach requires that non-professionals be involved in the administration of legal aid to ensure that the problems dealt with and solutions provided operate in the interest of everyone and are not of benefit only to the legal profession; and, more generally, it requires that inefficiencies in the legal aid scheme be identified and rectified in order to make it function more effectively. Thus, in 1938, Allen Jones argued that the scheme based on the 'charitable' nature of the legal profession was unreliable and that legal bureaux along the lines of those then found in Sweden ought to be established; more recently Brooke (1966) and Zander (1968) have claimed that limitations in the code of conduct of the legal profession restrict the provision of legal aid and suggested that centres staffed by state-paid salaried lawyers should be set up; and, since then, these two writers, together with Abel Smith (Abel Smith, Zander and Brooke, 1973) have conducted research to find deficiencies in the legal aid scheme and suggested a series of remedies to remove these deficiencies and allow the scheme to meet the need for legal services[5].

A vast amount of literature, concerned with both civil and criminal cases, and emphasising the ineffectiveness of the services provided by lawyers for the poorer sections of the community has

[5]For instance, they suggest (P.226) that much closer links need to be established between legal advisers and local communities.

appeared over the last ten years in this country and in the United States; and the continual ideological pleas have been in some way responsible for bringing about changes in the organisation of civil and criminal legal aid[6]. However, as Morris (Morris, White and Lewis, 1973) pointed out, the defining of the 'legal needs' and 'legal problems' of the poor, used to illustrate the shortcomings of the legal services, is after all only one perception of the social situation, and in such cases is largely a function of the agency to which a problem is referred. An interesting example of the possible varieties of such definitions appeared in an article by Fogelson and Freeman (1968) describing a research project which attempted to find out what social workers knew about the law. The researchers employed three lawyers to code the legal incidents identified in a group of social work cases: two of the coders recognised the same legal incident only two-thirds of the time: and adding all recognised legal incidents together there were found to be legal problems in almost all the cases - a mean average of three per case[7]. If nothing else this research demonstrated that legal problems could always be found if one looked hard enough; and, although their lawyers might not have been very good at this, the writers admitted that,

> "The core of the legal art is the ability to place the situations properly within the correct legal frame of reference". (P.228).

[6]In this country, for example, the Criminal Justice Act 1967 did encourage the wider provision of aid in criminal cases, especially in the Magistrate's Courts; and the Legal Advice and Assistance Act 1972 introduced help in drafting letters and pursuing claims and made provision for the establishment of full-time local legal centres.

[7]It is interesting to note that problems involving property were the least frequent, and in 75 per cent of those recognised the clients were on the defensive. They were on the defensive in two-thirds of all the recognised problems anyway.

Similarly, pursuing the suggestions that improvement of the legal services depends upon increasing the availability of lawyers, Silver (1969) argued that, if the 16.5 per cent of the population of the United States who were poor had as many lawyers, per capita, as the rich[8], then more lawyers would be needed for this 16.5 per cent than existed at that time in the whole of the United States; and she added that, since five times as much effort would be needed to serve the poor, because of their ignorance of the law, this number should really be increased five fold.

It is not surprising to discover that the recommendations recently proposed by the 'social service' lawyers are not new; in many respects they are not very different from the suggestions of the first person to write on the subject of legal aid and the poor, a County Court Judge, who in 1914, advocated the establishment of an official Justice Department, a scheme for lay advocacy, and arbitration in the County Courts (Parry, 1914, P.185). This is less surprising after the discovery that the problems of the poor, which the present services are failing to resolve, are defined by these writers without recourse to the people involved, and thus the solutions can repeatedly be found to be inadequate by further problems being diagnosed.

Particularly amongst American commentators (e.g. Caplovitz, 1967) there has been some recognition that existing legal remedies may even compound rather than solve some problems, especially because of the law's concentration on individualised conflicts. Carlin,

[8]On the grounds, she suggests, that they have at least as many legal problems. It is worth noting here that there are proportionately many more lawyers in the United States than in this country.

Howard and Messinger (1967) pointed out that the 'social service' approach could lead to a "welfare orientation" and "individualised justice": the processing of all disputes by benevolent administrators, who themselves define the individual's social problem and its solution, assuming that the interests of the poor client, which by himself he can neither recognise nor assert, are always in harmony with those of the administrators and the state. Previously Carlin and Howard (1965) had suggested that, at least as regards 'Legal Aid Offices' in the United States, this assumed harmony actually masked the influential positions of local business interests and the local bar, who, by means of their control of the 'Community Chest' and other sources of finance for the Offices, could restrict the advice and representation given to problems where no conflict with their own financial interests was involved. These writers argued that any solution to the problem of legal services and the poor requires a broader approach: for instance, in the tactic of 'Neighbourhood Law Centres' employing social workers, laymen and sometimes even members of the indigenous lower classes, as well as lawyers; and through the commitment to long term solution to local problems by encouraging participation of the local population and providing, as well as 'service functions', 'representative' actions, test cases and lobbies for legislative change.

Although primarily found in American efforts, this type of approach has been adopted by some writers and reformers in Britain. 'Neighbourhood Law Centres' dealing with community problems which private lawyers would not handle have been recommended on several occasions; and now a few centres, modelled in some respects on

United States' examples, are operating in London and elsewhere[9]. White (Morris, White and Lewis, 1973) criticised the legal aid scheme for artificially individualising all conflicts, and argued for an "open society" approach, in which law would play a "dynamic role" representing individuals and interest groups and bringing out conflicts in order that they be adjudicated within a "rule-limited area of open and rational exchange" (P.24). Whilst, in the same book, Lewis suggested: that the approach of the legal profession to the problems of the poor incorporated a "bourgeois notion of individual rights", that legal action was not necessarily always the best solution to problems, and that rights might be better protected by group organisation.

Such a broader approach has, however, always been closely linked to the policies initiated in the 'War on Poverty' sponsored by the United States Federal Government through the OEO. The stated aim of the war, begun in 1964, was to overcome the apathetic psychological base of poverty, thus reintroducing democracy to the poor[10]: Cahn and Cahn (1964, P.1333) noted that,

"At stake is the practicability of democracy".

The seemingly unlimited availability of OEO funds, with few strings attached, and the possibility of using this to set up local law centres under the auspices of the war, certainly permitted the development

[9]Notably the "North Kensington Neighbourhood Law Centre" opened in 1970.

[10]This war on poverty neatly coincided with the United States' war in Vietnam. It helped to direct attention away from this, as well as from other aspects of Federal policy, although perhaps did not do as much as hoped - Silver (1969) suggested that effective legal services might also have prevented riots.

of attempts at a broader approach to legal aid, which would extend citizenship, justice and participation in the legal order to the poor - or, as Lowenstein and Waggoner (1967) more bluntly put it: equal access to the power structure.

However, restrictions have appeared in the apparent freedom which supported this approach. Since 1967 'Neighbourhood Law Centres' have had to find at least 20 per cent of their funds locally, and in many cases this has led to a return to the 'Community Chest', or control by the local bar association or 'Legal Aid Office'. The continued influential power of local interests was mentioned by Cahn and Cahn (1968) who described how certain local groups were able to procure the withdrawal of OEO funds from the Child Development Group of Mississippi, which had strong support from the local black community in 1968. The defeat of the United States in Vietnam and the extension financial crises at home, have seen the withdrawal of OEO funds from many centres in recent years and an official "slow down" in the 'War on Poverty' has begun.

Not only have events such as these cast doubt upon the feasibility of pursuing such a 'broader' approach, which still has to rely upon money from somebody who can withdraw this without question; but the protagonists themselves have questioned the ability of even the most radical schemes to solve the problem of providing legal aid for the poor. Cahn and Cahn (1966, P.939) pointed out that to meet the supposed requirement for representation, in criminal cases alone, in the United States, under the rules in the Gideon and Gault cases[11],

[11] Gideon v. Wainwright, 372, U.S. 335 (1963), In Re Gault, 387, U.S. 1 (1967).

would involve increasing the number of 'Public Defenders' forty fold, at a cost of around $200 million per annum. More importantly than this, however, they claimed that in their zeal to extend legal services reformers had forgotten to ask the question "qui custodiet ipsos custodes?", and went on to argue that justice would never be achieved by merely extending a legal system which was too "cumbersome" and "obsolete" to meet the requirements of a different class. Furthermore they said that the legal system predefined the universe of legal need, and that the legal profession was not interested in changing the structure of the system, and indeed was incapable of doing so.

Throughout this article Cahn and Cahn drew analogies between the legal system and American capitalism: for example, the "Justice Industry" should be redesigned to take account of changes in the nature of supply and demand, production and distribution methods were obsolete and manpower unnecessarily limited; and finally they asked, since the middle class and private enterprise no longer used the law to pursue many of their interests, why should the poor, who anyway could not afford to "invest in justice", be expected to. Rather, they suggested, the poor should be given their own "middle class insurance companies", "real property negotiators" and such like, even their own "Neighbourhood Justice Industry" in the form of a corporation - non-profit making, of course.

Cahn and Cahn appeared to come virtually to the conclusion that, since the legal system was part of the machinery of capitalist society, it could only be equally beneficial to the lower classes if they became capitalists themselves. Their commitment to a legal solution did not permit them to suggest other reactions such as

apathetic ignoring of the law or changing of the social organisation itself, although such reactions might well be more likely to commend themselves to the lower classes, whose interests could presumably only be met by capitalistic organisations if those interests were similar to the interests which such organisations were designed to protect. Once again it is interesting to note that the conclusion seemingly arrived at by Cahn and Cahn is similar to observations made by Judge Parry, who stated that he had always argued that the law was insufficient to help the poor because it was enacted and administered by the rich (Parry, 1914, P. 246).

Thus the differences of approach and emphasis of the majority of writers and reformers have resulted in their recommending different appraisals of the problem of legal aid and different reforms to solve the problem. However, it can be seen that these differences of approach and emphasis are differences of degree only: the major criticism by the 'social service' lawyers of the position of the legal profession is that the latter have failed to appreciate the extent of the problem, and consequently much the same recommendations are made by reformers in the 1970's as were first suggested in 1914. Virtually all of the writers are concerned to ameliorate the position of the lower classes by extending some form of legal services to them, and consequently disagreements are at the level of the tactics required to meet the already perceived problem and not at the level of the conceptualisation of the problem itself.

This similarity of conceptualisation is a function of the fact that most of the writers on legal aid are operating within the same paradigmatic approach towards the law. All assume that

law is independent of any conflicts within society and that there is consensual agreement upon the use of the legal system to provide solutions to social problems. This consensual agreement is based, in the case of the legal profession and the 'social service' lawyers, on the assumption indicated by Carlin, Howard and Messinger (1967) namely that the interests of the lower classes, which they themselves can neither recognise nor assert, are always in harmony with the 'public interest' which the legal profession and the administrators claim to represent, and which the legal system is organised to protect. The 'open society' lawyers are prepared to concede that the British and American social organisations exhibit a variety of conflicts of interest, but the law, which they want increasingly to use to arbitrate between conflicts in a "rule-limited area of open and rational exchange" (Morris, White and Lewis, P.27), appears, to them, to be independent of these conflicts, and in some way neutral and above them[12]. The legal system is taken out of its social context and reified as a functional institution charged with the task of providing solutions to social disputes based upon principles unrelated to the disputes themselves. Conflicts of interest there may be within the social organisation, but these conflicts are an inevitable product of complex society: and are, in fact, functional in ensuring that social institutions are representative of all the groups in the social organisation and in maintaining a system of "checks and balances" on the unquestioned domination of the institutions by any one interest group.

[12]Similar, perhaps, to the way in which the Federal Office of Economic Opportunity appeared to be divorced from the conflicts between powerful interest groups, which were only recognised or studied at a local or state level in the United States in the 1960's. An appearance which has been transformed into a disasterous reality for many 'Neighborhood Law Centres'.

Functionalism is used here, however, in a very general sense to characterise what appears to be the dominant concern of the writers over the functional role of law in maintaining social order, defining problems, preventing domination, and so on. It is not suggested that all of the writers adopt a Parsonian theory of the function and integration of social institutions; their positions are much less developed than this, and seem to be based primarily on an assumed consensus about the role of institutions and the need for existing institutions to continue to fulfill these roles.

As seen, however, this approach can take one of two forms: either a strict consensual form or a 'pluralist', functional-conflict form; but in one form or another it has traditionally dominated the thinking of lawyers and laymen about the working of the legal system in British and American society. Its reification of the legal system as a functional institution to solve social disputes is, as will be developed later, an attractive position for lawyers, and has prevented any questioning of the social bases of changes in the provisions for legal aid, or of the law generally. The provisions for legal aid are thus assessed in terms of their functional effects, and changes suggested if these effects are felt to be insufficient to satisfy various functional prerequisites.

This approach manifests itself in many aspects of the writing on legal aid, for instance, in the total inability to comprehend differences in class interests, and in the confusion and ambiguity surrounding the identity of groups presumed to be outside of the law or requiring legal aid. Most commonly those 'in need' are simply referred to as "the poor", and whether this means those

below legal aid eligibility limits[13], those below the Supplementary Benefit level[14], those earning less than the average weekly wage, or those not owning at least £1,000 worth of stock market shares is, perhaps deliberately, not made clear. Abel Smith, Zander and Brooke (1973) wishing to discover those 'in need' of legal aid used primarily geographical criteria to determine their interest group, electing to study the inhabitants of three of the less salubrious London boroughs; whereas Carlin, Howard and Messinger (1967, P.61 et seq.) suggested that the criterion of 'legal competence'[15] might be used to identify those groups not benefitting from the legal system. The loosely termed class of the poor are identified as an interest group by all writers, largely by negative criteria - they cannot afford to employ lawyers, they do not benefit from many of the lawyers traditional skills, they do not know their legal rights, they do not have sufficient property to have regular need of legal services, they do not have sufficient power to demand rights or changes - and they are usually, presumably, contrasted to the rich, who need and can afford lawyers to look after their property, which the law has been designed to protect, and are in a powerful enough position to ensure that services are maintained to their advantage.

[13] Necessarily a tautologous definition, but one which is consistently employed: for instance, Abel Smith, Zander and Brooke (1973, P.144) compared the type of legal problems diagnosed to the eligibility for legal aid of their respondents.

[14] A group which would exclude some people eligible for legal aid in this country.

[15] 'Legal competence' is the ability to recognise that one has legal problems and to have the confidence and resolve to solve these problems by recourse to the law. This competence is lacking in those who need to benefit from legal aid - not surprisingly, the argument is tautological.

Silver (1969) contrasts the 16.5 per cent of the U.S. population whom she regards as poor with the small percentage who are rich and make fullest use of legal services, suggesting that the 70 or so per cent in the middle do not really have much need of the legal system. This polarisation of the have/have not dichotomy is far from typical of legal aid commentators, however, whose assumptions about the interests which legal services are needed to protect are generally much less clearly thought out.

Carlin, Howard and Messinger (1965, P.58-9) point out that, when "the poor" are allowed to define their own interests, this "weakens the lawyer's capacity to recognize legal rights and seek legal remedies". The inability of the functionalist lawyers to perceive what may be in the interests of members of a different class is demonstrated in an article by Hassard-Short (1941), at one time secretary of the 'Poor Person's Procedure' Committee, who praises the efforts of lawyers to procure "outside of the Poor Persons' Procedure", a limited amount of compensation for the dependants of a workman, killed as a result of an accident.

> "A personal injury case had been settled for a sum of £60, which at the time seemed quite a fair settlement. Subsequently the injured man developed paralysis. The insurance company was approached by the Poor Persons Committee, and notwithstanding the fact that it appeared doubtful if the paralysis was a direct result of the accident, a further payment of £50 was granted by the company. While the cheque was in the post the man died, but the insurance company very generously allowed the widow to have the £50."
>
> (Hassard Short, 1941, P.29)

No appraoch sympathetic to any conception of working class interests as distinct from those of the rich, the law-makers or the insurance companies, could accept such a pittance with the bland complacency

evidenced by the functionalist lawyer. Therefore, only by identifying those interests that the law serves in an unequal society, in terms of a theory which posits the existence of classes with different interests sometimes mutually exclusive in nature, can the position of legal services be assessed. By abstracting the legal system from its social basis the functionalist approach has rendered itself incapable of identifying the interests or needs which that system is in a position to protect, resulting in the vague references made to an undefinable group of those in need, who can somehow be seen to be unprotected.

Another manifest result of the concern with the problem of function is the 'fact gathering', empiricist research which this concern breeds. If the legal system is charged with the task of providing solutions to social disputes, then the chief interest of researchers will be in whether or not it is fulfilling that task. Thus numerous surveys have been carried out to determine, for example, whether sufficient numbers of people are being granted legal aid in the criminal courts[16]. Perhaps the best (sic.) example of this concern, however, is Abel Smith, Zander and Brooke's (1973) massive social survey effort in three of the poorer London boroughs. With the help of research assistants, the authors interviewed a random sample of 2000 respondents, catalogued the work of over 100 advice-giving agencies and produced over 50 tables of statistics to back up their 'findings', that working class respondents had a multitude of "legal problems" for which they were not receiving any legal help - often because the respondents themselves did not identify the incident

[16]For instance, Zander's studies of Magistrates Courts (Zander, 1969 and 1972).

as a "legal problem". They also 'discovered' that only 20 per cent of the lower educational group (as opposed to 76 per cent of the upper) would contact a solicitor with a problem, and that the only occasions when a majority of the incidents in a problem area reached lawyers was when they concerned real property or matrimony.

The 'need' which the Abel Smith, Zander and Brooke survey thus found was a 'need' which all the functionalist lawyers had known was there already; the survey merely spelt this out in statistical tables and types of legal problems, backing up the case for further extension of legal aid within the current framework. In an ill-fated "attitude survey"[17], there is a hint, however, that the problems informing the research might have been of less concern to others: 38 per cent of respondents said that the legal services currently provided were adequate and 48 per cent said that they did not know whether the services were adequate or not; and 65 per cent of respondents expressed unfavourable or non-committal attitudes towards the legal profession generally. This, the only attempt by the researchers to discover the reaction of the perceived class of the deprived to the lawyers and the legal aid scheme, encountered largely apathy and disinterestedness; suggesting the inability of such an approach to appreciate the interests of, or even to communicate with, that section of the community which is not benefitting from the working of the legal system.

Indeed the surveys of legal need have, by and large, always been conducted by and directed towards lawyers, either members of the practising profession or those financially dependent on the

[17] Which was relegated to the Appendix (Abel Smith, Zander and Brooke, 1973, P.248 et seq.).

teaching or reform of law, suggesting that the failure of the law's claims to neutrality and universal applicability may be primarily a problem for this group. Ultimately their material dependence upon the viability of the existing legal system requires that, to maintain the legitimacy of their position, lawyers must assert the universal availability of legal remedies and concern themselves with perceived problems in this availability, and so it is not surprising to discover that the concern with the problems of legal aid lies largely with the lawyers. As seen above this concern, although differently emphasised and appreciated, is always directed at the same problem of the inability or unwillingness of members of the lower classes to use the legal system and the services offered by the lawyers.

Legal aid, the means by which this imbalance is adjusted, is seen as a continual development towards the final solution of this problem: indeed it is regarded as a "deus ex machina", which, if only correctly assembled, will restore equality and legitimacy to the legal system. This conception of changes in the availability of legal aid as being part of a gradual development towards the current system, or towards some projected final goal or solution, which will eventually be reached, is again typical of a functionalist approach, which, because of its concentration on the functional integration of current institutions, is incapable of conceiving of social change except as teleologically producing current institutions or a projected future functional integration of these. The legal system is such an institution and thus legal aid has developed and is continuing to develop to ensure that the system functions equally for all, as the lawyers claim.

There is little evidence, however, that the development of legal aid is approaching this end. Surveys, such as that by Abel Amith, Zander and Brooke, continually discover new deficiencies in legal aid schemes and yet recommend remedies to overcome these deficiencies not substantially different from those suggested back in 1914. The widely proclaimed neighbourhood approach in the United States has shown itself to be subject to the vagaries of federal politics as well as of local politics, and some of its strongest supporters have suggested that unless the lower class can be given their own "justice industry" they will not benefit from the administration of a legal system (Cahn and Cahn, 1966).

However, Cahn and Cahn themselves seem unable to appreciate the fundamental contradiction in their conclusion: and their dilemma, although perhaps more exaggerated, is the same as that present in all the attempts to extend the provision of legal remedies for the problemsof the lower classes, as defined by the lawyers and the legal system. Because of the need to secure their legitimacy and the ideology based on this the writers are unable to appreciate the social nature of the legal aid schemes, and the bases of these in the ideological, political and economic practices of the particular groups introducing and implementing them, rather than in some overall scheme for integration. They can only understand such schemes in terms of their ability to meet the perceived 'needs' of 'the poor'.

If any understanding of the nature and importance of legal aid is to be achieved, which does not merely assess it against these undefined and constantly changing ideological goals, but attempts to reconstitute it as a social product and to locate it within a

particular socio-historical conjuncture, then it will be necessary to avoid adopting the problems and perspectives of lawyers and to look for an approach which will permit the study of legal aid as a part of the social structure.

Morris (Morris, White and Lewis, 1973, P.47) was apparently aware of this requirement, and attempted to set up "a sociological approach to research into legal services". She argued that the soliologist must ask "whose law defines the need?" and "who determines access to services?", and pointed out that social change was only brought about by groups in their own interests and that not all groups have equal power to effect social change. She went on to say that the role of the lawyer was a mystifying one, being concerned to reconstruct his client's cases so that they did not threaten the norms of society; and that in order to escape the perpetuation of the lawyers' definition of legal need, one should look at differing perspectives. At the same time, however, she seemed to display a concern to ameliorate the problems of legal aid, suggesting that the gap between various definitions should be reduced and that legislation should bring about wider social change; but, in spite of this confusion of concerns, any attempt to adopt a 'sociological perspective' is immediately suspicious, if only because approaches within sociology are so diverse; and, to some extent, suspicions are confirmed since Morris does not seem to get much further than the conclusion that it all depends upon which perspective is adopted.

As mentioned, however, most of the writing produced by lawyers on legal aid has been firmly within a functionalist paradigm, a paradigm which is in keeping with the lawyers need to secure legitimacy, because it emphasises the importance of the legal system as an

integral and independent part of the social organisation. Furthermore, as suggested, a functionalist approach is incapable of perceiving the interests of the lower class other than as defined by the functional institutions[18], and directs attention towards a continuing redefinition of those interests in order to ensure that a demand is there to be met. The desire to avoid the concerns produced by the perspectives of the lawyers and the inability of functionalism to explain social change or social conflict, requires, not the selection of any other approach at random, but the search for an explanation which can take account of change and conflict. Rather than taking reified social phenomena as a beginning from which integration is developed, such an explanation must treat these as end results of particular social processes and seek to identify the constituent parts of these processes in order better to understand the nature of the phenomena themselves.

It is not, however, sufficient here to identify one important element involved in the production of legal aid, for instance the legal profession, and attempt to explain the constitution of legal aid through an understanding of this element, for instance through a sociology of the profession[19]. The initial attraction of such an approach is that the sociology of the professions appears to constitute a body of theoretical knowledge about the development of professional institutions and their links with the actual relationships between professionals and clients, which can be applied to legal aid in order to explain the particular relationships in this

[18] A position which is, of course, based on a tautology.

[19] Although this approach does appear to have been attempted: see the unpublished paper given by Whetton (1973) to the third Socio-legal Group Conference at Manchester.

area. However, most of the writing on the sociology of the professions is of little help in understanding the relationships established by the legal profession, since, as Johnson (1972) puts it, this work is largely confined to studies attempting to define the special attributes of a profession or to produce a "checklist for measuring the degree to which an occupation is professionalised". Johnson himself goes on to argue that in order to understand the importance of the professions it is necessary to abandon the notion of professionalism altogether and return to (Johnson, 1972, P.18)

> "The attempt to understand professional occupations in terms of their power relations in society - their sources of power and authority and the ways in which they use them".

Johnson suggests that these 'power relations' can be studied by concentrating upon the way these relations affect the relationship between professional and client, and develops a three fold typology of this professional control: Collegiate, where the professional group determines the nature of the services provided: Patronage, where the client determines this; and Mediation, where it is determined by a third party[20]. Johnson's typology does not assist in an understanding of the importance of the legal profession in producing legal aid; in fact, quite the reverse since it suggests that only by studying the relationship involved in the legal aid situation can we understand the legal profession itself. The typology does not permit the consideration of other social elements which may be decisive in determining the nature of a professional institution and its relationship with its perceived client group, nor does it

[20]The legal profession, he suggests, would fall largely into the first type.

help to explain how or why professional groups may be in a position of power and authority within the social structure and in what ways this position and the ideological practices dependent upon it determine the nature of the professional institution. Elliott (1972, P.136) warns that,

> "Professional ideas on what should be done, based on their particular knowledge and expertise, should not be regarded as absolute claims but as relative to the profession in question and its place in the social structure."

This is not just a warning against adopting the problems of the profession and their own definition of themselves, but also against studying the professions as independent groups within society, capable of determining their own relationships and ideologies.

Thus rather than identifying the legal profession as an important element in the production of legal aid, and seeking to use a study of this element to discover its effect in determining the nature of legal aid, it is necessary to realise that this element itself is a social product, which can only be understood in relation to its position in the social structure and its social constituents[21]. The legal profession is affected by its own ideology and the ideological limitations imposed by its position in the social structure and its conflicts with other groups and other classes; by its needs to secure financial security for its members; and thus ultimately by the changes in the economic relations within the social structure, on which this security and these relationships are based. These factors influence the nature of legal aid through the profession's involvement in the legal aid schemes, and it is this involvement and its interconnection with the practices of other groups in creating

[21] Including its involvement in the production of legal aid.

legal aid which must be studied in order to determine the social nature of aid and fully to understand its character and its limitations.

Furthermore this understanding must avoid the problems of legitimacy pre-given in the position faced by lawyers writing and working on legal aid, and the defining of the interests of all in the terms prescribed by the administrators or controllers of the legal system. Also it must avoid the teleological notion of social change adopted by the functionalists; and the simple causality presented by those who wish to pin their hopes for explanation upon a 'sociological' appreciation of the individual elements apparently involved in the production of legal aid, such as the legal profession. What is required is rather an explanation which seeks to locate the social basis of the phenomenon of legal aid in the variety of practices historically involved in its formation, treating these in their structural position within a particular historical conjuncture and taking account of the differences and conflicts of interest between different classes and groups in that structure.

Such an explanation, however, would be, in all its different aspects, an exposition of the structural configurations of the society itself in that particular period and would properly constitute a massive undertaking. But the framework informing such an explanation, a framework which owes much to the theoretical work of Marx[22] in discovering and elaborating the interrelationships of the major elements, can be used to begin a partial understanding of legal aid in a particular historical conjuncture, by looking at the operation

[22]Particularly the methodological insights revealed in the 'Grundrisse' (1973) and incorporated in the analysis presented in 'Capital' (1970).

and interrelation of its major determinants and their immediate social position. This framework does not attempt to define the interests of all in the terms prescribed by the dominant institutions of any particular period; but posits a social structure in which there are different definitions and conflicts of interest, conflicts based, ultimately, upon the different economic positions of social classes and the resultant need to secure and legitimate these positions or to change them. It does not suggest that it is economic factors which determine all social configurations: Poulantzas (1973), for instance, has pointed out that political and ideological differences also may produce different fractions, categories and strata within classes, whose different interests may at times conflict or at other times coalesce into alliances, even across classes: he gives the example (Poulantzas, 1973, P.41) of the categories of the bureaucracy or the intellectuals, whose role in ideological apparatuses places their immediate interest outside of their class position. However, it does accept that the political, ideological and economic practices of different groups (a term which will be used to encompass Poulantzas' different examples of fractions, categories and strata) will be mutually exclusive differences of interest which, in the last instance, will represent different class positions.

Neither does this framework treat social change teleologically or attempt to explain it by establishing causal links with pre-existing factors. It treats all social phenomena as the result of the inter-relationship of the social factors comprising them, none of these being the sole causative factor, but all together acting as the structural cause for the existence of the phenomena; and the strength of the explanatory power of the framework lies in its ability to

display the effect of these structurally interconnected factors as the social phenomenon under scrutiny. In other words the structural interrelationships of events produce a social phenomenon which is explained theoretically by disclosing the nature of the phenomenon as the social effect of the structural situation. In a full appreciation, of course, this phenomenon is the society itself and thus the explanatory value of the theory is in its ability to demonstrate the effect of all the elements as the society, at any given moment. In this undertaking, however, only legal aid is being discussed, and this is only a small part of the society; consequently only a partial understanding is available.

This partial understanding must also be limited to a particular historical conjuncture; the changing relationships of social factors over time do not allow for a full history to be developed in a relatively limited piece of work. Furthermore the understanding gained of any particular historical conjuncture cannot act as an immediate guide for action in the current situation - any action must be undertaken with a full awareness of the problematic within which it is situated and the aims which it has in mind: the theoretical understanding of a social phenomenon within a particular conjuncture may assist in the development of these; but it cannot simply dictate a solution based on them.

Thus it is necessary to concentrate on one particular period and look at the interaction of the practices of different groups, and different classes, in creating the phenomenon of legal aid. The period chosen is that falling roughly between the two world wars, that is the 1920's, 1930's and early 1940's, continuing into the second war because those factors of importance immediately before

the war continued to be of importance during it, but were changed in certain illuminating and important ways, laying the foundations for the legal aid scheme which was to develop after the war. This period was the period of the transition of welfare schemes in this country from the philanthropy of the 19th century to an acceptance of the 'need' for and preparation of state financed schemes giving claimants automatic entitlement to benefits, which were eventually introduced after the war. In relation to legal aid, particularly it was the period in which the first real expansion of the provision of legal help for the lower classes took place: beginning officially in 1914 and leading eventually to the failure of philanthropy and the acceptance of the 'need' for state payments and automatic entitlement, again finally introduced after the war. Consequently it can be seen that there was a change from an attitude of charity towards the lower classes to one of the entitlement to benefits; and this political, ideological and economic background is very important for an understanding of the legal aid problem today.

Therefore in the following two chapters it is intended to discuss, with reference to the period of the 1920's, 1930's and early 1940's, the positions and practices of the groups involved in the production of legal aid and the class situation underlying this, and to look at the interrelationship of these in producing the effect of the social phenomenon of legal aid and the ways in which this interaction and its effect in producing legal aid in turn changed these positions and practices. Although it is not a total explanation of legal aid, this discussion should clear the way for an understanding of the social nature of aid and the bases of the problems and contradictions surrounding it during this period, and afterwards, to be developed.

CHAPTER THREE

"The Creation of Legal Aid 1920 to 1942 - The Protagonists"

As suggested in the last chapter, any appraisal of legal aid must take account of its creation as the product of the practices of different groups within a class society, within particular situations of conflict. These practices can be seen to be relatively autonomous of each other and of underlying socio-economic structures; that is to say that they are not in any immediate sense determined by socio-economic changes, but that at the same time such changes must produce conflicts which in an uneven and fluctuating way will have to be recognised by and incorporated within various practices. It may be fruitful, in understanding the effect of this process, to emphasise the different levels of practice already referred to - economic, political and ideological - any one of which might be dominant at any particular time, although obviously all are inter-dependant. To attempt a total explanation of the interdependence of the various levels of practices of various groups and their ultimate dependence upon major contradictions and struggles is naturally beyond the scope of this piece of work, although it is within such a structure that its more limited aims are situated.

These more limited aims are to look at the interests of relevant groups as expressed and implied in their practices and to draw out important elements and relationships within these, in so far as such were effective in the creation of legal aid; and at the same time to look at the converse of this, the effect of the process of the creation of legal aid upon the interests and practices of proximate

groups. Therefore this chapter is concerned only to look at relevant groups and identify the interests of such groups and changes in these throughout the period; the final chapter will concentrate more upon the embodiment of these interests within legal aid and the effect of changes in legal aid upon them. The most important group which might have appeared to be concerned for the operation of legal aid in this period was the official representative of 'national policy', the government in Parliament.

The change in the nature of the government after the first world war, gaining power in an election involving a wider section of the population and faced with war-time promises to find solutions to some of the more pressing problems of poverty, might have been expected to make ministers and M.P.'s more concerned with legal changes. Especially in the early post-war years the government had to placate militant working class demands inside as well as outside Parliament, and yet bolster up existing institutions against feared economic crises. In his book on "British Social Policy", Gilbert (1970 pp 19-24) notes the fear of the Lloyd George Government of "revolutionary spirit" and the need to back some form of social reform. However, "welfare services" were strictly maintained within their original limited scope without endangering existing private interests, for example, those of the private insurance companies, who were given much power in the State insurance schemes for health and unemployment. It would be mistaken, however, to assume that the various governments were actively concerned as major protagonists, throughout the changes in the 'welfare services', even during times when these limited measures were subject to the catastrophic demands resulting from the poverty of the 1920's and 1930's. The brunt of

these demands was increasingly born by social workers and other agencies charged with administering 'welfare'. Gilbert suggests (1970, P.307) that issues of social reform were not discussed in the Parliamentary forum, that it was felt by many M.P.'s to be squalid and boring to discuss social reform and that consequently decision making and control tended to reside at a different level.

In so far as legal aid was a 'welfare service' (and as will be seen there is little precedent for seeing it as such in the inter-war period) it remained similarly very much on the periphery of party political issues of the day. Difficulty was experienced in getting M.P.'s with sufficient knowledge and interest simply to sit on the Finlay Committee in the 1920's. No legislation concerning legal aid was passed during this period; and questions in the House of Commons were rare, usually coming from legally qualified M.P.'s, and always answered by the Attorney General with statements prepared by the Lord Chancellor's Office; which generally suggested that the matter was already in hand, but in the hands not of the Ministers but of the civil servants in the Lord Chancellor's Office (or in criminal cases in the Home Office).

However, this is not to suggest that Parliamentary activities were irrelevant to the creation of legal aid. Government departments, although not directly influential, were important in putting economic, political and ideological limitations upon potential changes, particularly via the mediation of the Lord Chancellor's Office. Of obvious importance here was the role of the Treasury, who, as controllers of public resources, could sanction or destroy many aspects of a public scheme. Thus one can identify the interests of the Treasury in reducing the cost of any financial commitment to legal aid and

opposing any scheme which would be likely to commit large amounts of public money to a state run benefit on a permanent basis.

The rules governing the 'Poor Persons' Procedure' introduced in 1914, had envisaged the provision of a government grant towards the expenses of the Poor Persons Committee and the running of the scheme, but once the rules had come into operation the grant was not forthcoming. The money which was used to finance the scheme at this stage, came from the deposits of up to £5 or £15[1] paid by applicants before they could be granted a Poor Person's Certificate in matrimonial cases; the money was controlled by the Treasury, and at their request paid into the Pay Office to be withdrawn by the Poor Persons Committee, not as needed, but only at the conclusion of each individual case. When control of the scheme was passed to the Law Society in 1926, a grant of £4,500 was made to them by the Treasury to cover the cost of the changeover and the running of the scheme for the first year[2]. After a Law Society estimate that they had only used about £3,800, the Treasury proposed to give only £3,000 for the next year, and, in spite of much disapproval and pleading by the Law Society and the Lord Chancellor's Office, refused to revise this figure, insisting that the grant was only being made on a temporary basis until the difficulties of the changeover had been sorted out.

Perhaps the clearest example of the limitations and controls

[1]Under the 1920 rules £5 was the maximum deposit for divorce petitions; £15, reduced from £20 after much discussion with the medical profession who carried out the examination in non-consummation cases, was the maximum for nullity suits.

[2]The money was late: it was due in April 1926 and by July the first £500 had still not been paid.

set by the Treasury over legal aid, however, was the report of the Government Actuaries Department to the Lord Chancellor's Office made during the sitting of the Finlay Committee, after the suggestions of a 'legal benefit' scheme similar to the national health scheme had been referred to them. They pointed out that employers were already complaining about the cost of health insurance and that any further contribution was impossible, especially if it would involve litigation between the poor or against the employers. They also introduced ideological arguments to back up their economic prescriptions: how could the money be distributed to a private profession? and if people felt entitled to money would they not go to solicitors with all kinds of unjustified problems? They also requested that the Lord Chancellor's Office should come to any other feasible solution. This is not to suggest, however, that the Treasury were opposed to any form of financial support for legal aid: they were prepared to allow that deposits held by local law societies on behalf of poor persons claiming certificates were not taxable and were prepared to support the Service Divorce Scheme in 1942, although it would mean slightly less money being received in court fees; but their extreme reluctance to accept any form of permanent state expenditure on legal aid was a very important factor in conditioning decisions made about its scope.

Other government departments also occasionally approached the Lord Chancellor's Office on specific issues concerning legal aid. In 1931 the Foreign Office was faced with the problem of a poor Englishwoman unable to pursue a legal claim in Belgium, and contacted the Lord Chancellor's Office to see if some agreement could be made between the two countries concerning legal aid. A treaty was eventually

signed securing reciprocal availability of poor persons' litigation schemes[3], although in 1924 the Lord Chancellor's Office had expressed itself disinterested in foreign conventions and "hypothetical advantages elsewhere".

As can be seen the influence of the government, where this was relevant at all, was used primarily through the Lord Chancellor's Office, and in this respect the importance of this office was immense. However, as well as representing the locus for Parliamentary interests, the Lord Chancellor's Office during the inter-war period operated as the central mediatory agent for other interests concerned in the production of legal aid. It should be noted that this is not simply a function of the fact that the Lord Chancellor's Office files provided much of the raw material for this study: the fact that important correspondence with other major agencies is contained within these files is an indication in itself of the importance of the Office. In over twenty years there was obviously more than one Lord Chancellor, tenure of the office changing hands several times; but most of the work within the Office was done, not by the Lord Chancellor, but by permanent under-secretaries, and the incumbents of these posts remained secure in their positions throughout the period.

Particularly influential in this respect was the senior civil servant in the Office, Sir Claud Schuster, who throughout the 1920's, 1930's and 1940's was the primary intermediary between the various groups concerned with legal aid as well as an active protagonist himself in the creation of aid. It seems that one of the major

[3] More advantageous to the British than to Belgians.

concerns of the Lord Chancellor's Office was to resolve conflicts between other groups and to attempt to maintain some sort of coherence in political, economic and ideological practices within legal administration generally. For example, after the report of the Second Lawrence Committee, Schuster wrote to Lawrence noting the difficulties of obtaining a unanimous report, and remarking how the solicitors on the Committee had been instrumental in winning over the support of the Law Society and the profession. In return Lawrence thanked Schuster for "running" the Committee well and ensuring that the barrister on it was brought into line - albeit at the last minute.

Part of the power inherent in the mediatory role of the Lord Chancellor's Office stemmed from its position as the state body responsible for legal administration, on the civil side. This was a permanent situation, independent of the power accorded to the Office by different governments or the referrals made to it by other state organs, or external groups. It meant, for example, that it was the Lord Chancellor's Office which made the official decisions as to whether or not committees should be set up to investigate possible changes in the legal aid provisions, and also determined who would sit on those committees and who would give evidence to them. The Office also drew up the terms of reference of the committees and translated their reports into changes in the rules governing the availability of legal aid.

Obviously the initiative for these activities did not come merely from within the Lord Chancellor's Office; many of the decisions made represented the interests and suggestions of various other groups and individuals. The setting up of the First Finlay Committee to investigate criminal legal aid was put to Schuster in the form

of a demand from the Magistrates Association, particularly by a woman J.P., Gertrude Tuckwell, whilst the Second Lawrence Committee was still sitting; Schuster promised to establish the committee, although he did not expect anything to come of it. At the time when the Second Lawrence Committee was set up the divorce court judges and barristers were worried about changes in the divorce procedure which might be brought about by expanded legal aid, and it was made clear to the committee that the Lord Chancellor would not accept the extending of divorce jurisdiction to the County Courts. The case of Treasury refusal to sanction any legal insurance scheme has already been mentioned; this immediately became Lord Chancellor's Office policy.

It would, however, be a mistake to see the Lord Chancellor's Office in its mediatory role as a passive agency for translating various interests and ideological claims into political decisions, the Office both created its own further ideological interests and modified the interests informing the original claims. In the early 1920's the possibility of a legal help scheme financed and controlled by the State was suggested to the Office. This was initially used as a threat to try and coerce further co-operation and voluntary effort out of the Law Society, by claiming that it would mean authoritarian control and would result in incompetent and speculative solicitors establishing themselves and making money out of the scheme. After the control of the 'Poor Persons' Procedure' had passed to the Law Society, there was continuing awareness of the possibility of using state money to finance individual lawyers taking poor persons' cases, but this proposal was still used by the Office primarily as a threat to the profession. However, as other solutions became

less immediately effective the possibility of state finance remained; by 1938 Schuster had suggested it confidentially to the President of the Law Society for comment, and by 1942 he recognised it as the only major alternative and pointed out its necessity to the Treasury. Thus the proposal that state money be used to finance the work of lawyers taking poor persons' cases had originally been used as an ideological tool with which to extract further effort from the legal profession but now had become a major part of the Lord Chancellor's Office's ideological prescriptions for the legal aid scheme.

In such a context the statements of the Lord Chancellor's Office became the predominant rationality within the ideology of legal aid, and a major determinant of the form in which other groups expressed their position, thus effectively determining their interests. Whilst the Finlay Committee was sitting in the mid 1920's, Schuster prepared a memorandum on the state and prospects of civil legal aid to complement a similar memorandum on the criminal side produced by the Home Office. The memoranda were written to clear up the situation for committee members and others involved, and to allow "false accounts" and exaggerated recommendations to be assessed in their proper perspective.

The memorandum prepared by Schuster is interesting in itself as a statement of the Lord Chancellor's Office's ideological position at this time. Demands for divorces, increased by the war, were identified as the major cause of the problems in a scheme not prepared for such a massive demand. The County Courts, admitted Schuster, were primarily a debt recovery agency used against the working class by an increasingly important credit system, which had to be allowed to work freely, unhampered by any delays which might be caused in the

County Courts if poor litigants were represented by lawyers. The lower classes, he pointed out, were only worth suing in the County Courts for debts, it would be pointless to sue them in the High Court because of the higher costs here, which could not be recovered from a poor person, and thus when using the 'Poor Persons' Procedure', which was only available in the High Court, they were usually plaintiffs and, as such, ought to be dissuaded from litigating for fear that they might use this privilege as an instrument of oppression. Similarly he felt that, although some of the legal advice available to the working class under trade union schemes and 'Poor Man's Lawyer' Centres might be useful, the provision of too much legal advice ought to be avoided as this would lead the poor to exaggerate their rights and create false grievances.

These ideological propositions were accepted, of necessity, by most of the other groups involved in the production of legal aid; and, as mentioned, were the yardstick against which false accounts were to be measured. Their importance was not due to the fact that the Lord Chancellor's Office was uniquely able to dictate the format of legal aid; but that because of its position as state body and prime mediatory agency, the propositions made to it could, along with other demands, be translated into a more coherent ideological framework and attain a general authority beyond that of their individual protagonists and supporters.

This form of the autonomy of the Lord Chancellor's Office can also be seen in the appointment and operation of the committees, set up to investigate certain problems in the 'Poor Persons' Procedure', and particularly in the status of the chairmen of these committees. These committees acted as the official face of the mediatory role

played by the Lord Chancellor's Office, and like the Office itself incorporated and reflected various interests and yet at the same time structured and conditioned the expression of these. The chairman, always a High Court Judge, was in effect appointed by Schuster; but not as a choice from many, rather as the selection of the one obvious person qualified and experienced enough to undertake the duties involved. Although four major committees reported in the 1920's and 1930's, there were only two different chairmen, Lawrence and Finlay; and their involvement in the production of legal aid went much beyond their official duties as chairmen. Even after retiring from chairmanship, because of the work involved, Lawrence continued to be in close correspondence with Schuster in connection with various problems which arose in the running of the 'Poor Persons' Procedure', and was asked by Schuster to assist in drawing up the rules to amend the scheme in accordance with the recommendations made by the Finlay Committee in 1928, a task obviously reserved for those distinguished in the field.

The other members of the committees were appointed jointly by the chairman and Schuster according to a fairly well-established formula and representing the major interests involved: two barristers, two solicitors, one Treasury official, one Home Office representative,

one M.P. from each party[4], one woman[5] and Schuster himself. Apart from the two areas of difficulty, the selection of members for the committees followed a similar procedure to that of the selection of the chairman: Treasury and Home Office representatives were sent by their Ministries, solicitors chosen in consultation with the Law Society from those prominent in previous official dealings concerning legal aid, and barristers chosen for similar reasons by the chairman, who himself already a High Court Judge.

The terms of reference of the committees, obviously crucially important in controlling the types of questions to be explored and evidence to be submitted, were decided by the Lord Chancellor's Office, usually by Schuster and the Lord Chancellor himself. This operated both at an official and an unofficial level: for instance, whatever was said officially, it was noted that the Second Lawrence Committee "knew" that the Lord Chancellor did not want Divorce Jurisdiction to be extended to the County Courts. The evidence to be heard was also effectively determined by the Lord Chancellor's Office,

[4]During the appointment of the Finlay Committee, Schuster expressed doubts about the possibility of finding a Labour M.P. with sufficient knowledge and capability to take part. He was right, the Labour M.P. and the female member, Dorothy Jewson, over whose appointment similar difficulties were expressed, refused to concur with the memoranda and Treasury evidence and submitted a minority report, suggesting further-reaching changes - obviously they did not have the right kind of knowledge and capability.

[5]This was an innovation for the Finlay Committee and one which caused several problems. No-one suitable could be found, especially with fears such as that expressed by Leeson of the Magistrates' Association that the attitudes of some women might "run to crankiness"; and eventually the choice of a Labour Party member, Dorothy Jewson, had to be counterbalanced by ensuring that one of the lawyer members was also an M.P., so that there would be two Conservative M.P.'s on the committee as well as two Labour. Dorothy Jewson was also noted for her interest in birth control and similar feminist issues.

who first asked those considered important whether they would like to give evidence, and also received other evidence submitted, thus being able to control what went to the committees and in what form. The day to day running of the committees was carried out by secretaries from the Lord Chancellor's Office and meetings were held in rooms provided by the Office. The records of the interviews conducted by the Finlay Committee suggest that most of the questioning came from Schuster and the chairman, and that certainly the direction of the questioning was determined by these two. It was once more Schuster, in conjunction with the chairman, who prepared the first draft reports of the committees; and these reports always formed the basis of the final report, except, of course, for the minority report of the two dissidents on the Finlay Committee.

Thus, although providing an official face for debate over different interests, the committees remained very much a part of the mediating machinery of the Lord Chancellor's Office, the chairmen themselves becoming affiliated to this machinery both during and after their service on the committees. Much is said about the nature and working of the committees by Lawrence's expression of gratitude to Schuster, after the sitting of the second committee of which he was chairman, for "running" the committee well and getting Bayford (a barrister) "into line" at the last minute.

Such was the position of the chairmen of these committees, that, although they were High Court Judges, their practices concerning legal aid were more closely affiliated to their role as representatives of the supposed neutrality of the Lord Chancellor's Office. Thus they could not be seen as representing the particular interests of the courts and the judiciary. In fact, in many ways the position of the

courts and the judiciary was very different to that of the Office, often they attempted to put a block in the way of changes which otherwise the Office might have been prepared to support. The 'Poor Persons' Procedure' was only available in the High Court and was effectively used only for divorce cases; this divorce procedure was originally only available in London, partly because the judiciary[6] felt that such important decisions concerning marital status should be controlled and limited by the strict operation of a well-established procedure. In 1928 after the suggestion that divorce jurisdiction should be extended to some Assize Courts in undefended cases, the President of the Probate, Divorce and Admiralty Division, wrote to the Lord Chancellor remarking that collusive divorces[7] were already becoming a scandal and that the procedure ought to be tightened up, thus by implication not favouring the extension of these procedures to inexperienced District Registrars when problems were already being experienced in the Principal Registry over poor persons' divorce cases. In fact, when jurisdiction was extended to some Assize Courts, the District Registrars were invited to London to watch the Principal Registry at work, at the request of the President of the Probate, Divorce and Admiralty Division.

The position of the judiciary in regard to legal aid was partially dependent upon the different situations in the different levels of

[6] Primarily the divorce judges in the Probate, Divorce and Admiralty Division, and the Principal Registry which prepared the divorce cases in London.

[7] Collusion, a ground for refusing divorce, occurred where both parties agreed to divorce and attempted to rig up a situation which would give one of them legal grounds. Obviously this was a risk in cases where the petition for divorce was undefended. However, this was the situation in over 90% of the total petitions.

courts. A Poor Persons' Certificate would exempt the applicant from paying High Court fees[8], for other litigants, however, these fees were still prohibitively high, sufficient to ensure that every year a profit was made by the court on fees. The County Courts, sometimes claimed to have been set up as tribunals for the lower class, also charged heavy fees, effectively excluding lower class litigants. Prominent members of the Law Society, quoted in the Law Times (Harrington Edwards, 1928, P.236), were amongst those who felt that the County Courts did provide a service for the poor, for instance Mr. Dennis Herbert (London),

> "A poor person could generally do his work in the County Court without any professional assistance".

However, this was not the attitude of Parry, a County Court Judge, who in his book on law and the poor (Parry, 1914, P.25) pointed out that he was aware that the County Courts were merely debt collecting agencies; nor that of Schuster, himself, who in his memorandum to the Finlay Committee on civil legal aid stated that the County Courts had always been debt collecting agencies with the poor as defendants, and that, as such, they were vitally important for the operation of the credit system. Indeed the statute which introduced the County Court system in 1846 had originally been called an "Act for the Better Recovery of Small Debts".

The Magistrates' Courts, although primarily concerned with minor criminal offences, had made claims to be the traditional advisors to the indigenous lower classes. In 1888 the Law Journal had noted,

> "The practice of resorting to a Court of Summary Jurisdiction when it is presided over by a stipendiary magistrate for legal advice is one

[8] As already mentioned Poor Persons' Certificates were effectively used only for divorce petitions during this period.

> that appears to be growing in favour with a certain class of people. It is natural that poor persons....should look up to his worship as something more than the judge of a criminal Court and should treat him as a trustworthy, confidential family advisor".
>
> (Law Journal, 1888, P.470)

and, in evidence to the first Finlay Committee, the Chief Metropolitan Magistrate claimed that magisterial legal advice was still providing a satisfactory form of advice for the poor, as well as helping to enhance the authority of the magistrate. Certainly in the evidence submitted to the Finlay Committee by the magistrates and the prison governors there was little feeling that injustice occurred in these courts through a lack of legal aid, although they are not unanimous in this and do not say what was meant by "injustice".

Not surprisingly the High Court, particularly the Probate, Divorce and Admiralty Division, was primarily concerned with maintaining control of divorce jurisdiction and keeping it within strict procedural limits. Members of the Principal Registry felt that cases in the provinces were rushed through too quickly and too cursorily; and those registries in the provinces which already had jurisdiction, such as Birmingham in 1929, were worried about further extension and cases not being dealt with with complete efficiency in new areas. In 1938 when the Law Society were seeking even wider divorce jurisdiction at Assizes, and jurisdiction in ordinary, as well as poor person's cases, the President of the Division was again opposed to this and was told by Schuster that, in the face of a crisis, opposition to expansion must be determined, for obvious reasons. These reasons were basically the same ones as previously mentioned, that the procedure was difficult and must be strictly controlled especially in ordinary cases where property may be involved, and were given by the President

in a reply to the Law Society. The outcome was the extension of jurisdiction in poor persons' cases to four more Assize towns. Needless to say, the members of the High Court did not express such a concern for discrepancies arising in other areas of the legal aid scheme. The President of the Probate, Divorce and Admiralty Division, was aware that the practice of not taxing expenses in cases where a deposit of under £3.33 was paid by the applicant had allowed some disreputable solicitors to make small profits out of poor persons' cases, but he felt that the Law Society was also aware of this and that it was their problem.

The concerns and practices of the County Courts in the production of legal aid in this period are less important; they were rarely directly involved, partly, of course, because the 'Poor Persons' Procedure' was not available in the County Courts. As mentioned above there was strong opposition from the Lord Chancellor, amongst others, to the extension of divorce jurisdiction to the County Courts, and so the question of their involvement was virtually closed. In the few non-divorce, poor persons' cases which could be remitted to the County Courts there was a minor problem; and, in conjunction with the Council of County Court Judges, Schuster and Finlay agreed early on in the later sittings of the Finlay Committee that if a poor person's certificate had been granted in such cases it should remain available in the County Court, but that the barrister concerned should be given the option of giving up the brief. Other than this the Council of County Court Judges was adamant that there be no extension of legal aid to the County Courts; it would make their task impossible if too many cases were defended, and anyway where the poor could already afford to pay there was no justification for turning

the courts into a "soup kitchen".

Similarly the interests of the Magistrates' Courts were largely irrelevant. Their claims to have been the legal advisors to the lower classes are difficult to substantiate, since there does not appear to be much evidence of this activity other than the statements made by a few Metropolitan magistrates.

Although the terms of reference of the Finlay Committee covered the question of aid in Magistrates' Courts, Schuster had stated before the committee began sitting that there was no hope of a solution to this question, particularly as the voluntary effort of the profession was already at full stretch. Those magistrates consulted were convinced that there was no injustice under the existing system of no representation; as the Chief Metropolitan Magistrate stated in his evidence to the committee, it was not in the "interests of justice"[9] to allow defendants to waste time elaborating defences when they were obviously guilty. However the Magistrates' Association felt that in some difficult summary cases legal aid may have been useful in helping to clarify the case, and that in such cases it would be pointless asking the accused to reveal his defence before granting aid[10]. There was a suggestion in other evidence submitted to the Finlay Committee that aid may have been desirable in the civil matrimonial cases heard in the Magistrates' Courts, especially bastardy cases, but it was

[9]The test for the court to use in determining whether to grant legal aid in High Court criminal cases was whether such aid would be "desirable in the interests of justice".

[10]This again was the existing rule under the 1903 Poor Prisoners Defence Act; it would be pointless in these cases because it was the nature of the defence which needed clarification.

again pointed out that application for certificates and elaborate hearings would greatly prolong hearings, whose major advantage was their simplicity. Again the attitude of the magistrates was that, except in "exceptional cases", aid was not necessary in the Summary Courts, indeed that it would be a positive drawback[11].

Thus the lower courts, though not entirely irrelevant, were less important than the High Court in the construction of legal aid during this period, their major involvement being merely to confirm existing views that aid was not necessary in such courts.

At least until 1926, when control of the 'Poor Persons' Procedure' was passed to the Law Society, the administrators of the scheme in the Poor Persons' Committee constituted another important body with interests in the availability of legal aid. Being concerned with the day to day running of the scheme, the Committee was often first to become aware of its many faults and contradictions. This awareness, however, often provided a bone of contention with other groups more concerned with the ideological success of the scheme: for instance, in 1923 the Law Society, believing that there had been a decrease in divorce cases since the war which would eventually solve the problem of pressures on the scheme, refused to believe figures produced by Hassard Short, secretary of the Poor Persons' Committee, showing 1064 cases on the files awaiting a solicitor. The effect of such disagreements was that the Poor Persons' Committee came to be regarded as pessimists and bureaucrats rather than a party with an interest in

[11]The 1930 Poor Prisoners Defence Act, passed after the Finlay Committee had reported, made aid available in the Magistrates' Courts in "exceptional circumstances" to be decided by the Magistrates; and removed the requirement upon the defendant to disclose his defence when applying for help.

the future of legal aid. However, because their position in a direct sense represented the political expediency of the scheme, the contradictions in this position did provide a major source of economic, political and ideological change for the other groups involved. Thus it was in response to the shortages of volunteer solicitors revealed by Hassard Short in 1922 and 1923, that the Law Society sent its circular letter to members stressing the need to pull together for the "honour of the profession" and to justify privileges; and that Schuster used the threat[12] of state finance to try to coerce solicitors into making this effort.

When control passed to the Law Society, the Poor Persons' Committee was, naturally, disbanded; but, being the only people capable of handling the real administrative problems of the scheme, its officers did not disappear. In fact they moved, virtually 'en bloc', to the Law Society and for the first few years, at least, continued to be paid by the Treasury, only now with the money coming to them as employees of the Law Society instead of directly from the State to them as civil servants as in the past. The running of the scheme did not change substantially once it was in the hands of the Law Society, as its administrative problems obviously remained very much the same. Thus the outlook and practices of the officers continued to be different from those of the Law Society, and of the other groups, and continued to provide conflict and force change: for instance in 1935 Hassard Short again reported a backlog of cases in the London area, which prompted the setting up of a committee to consider further extensions of divorce jurisdiction at Assizes.

[12]Later to become a real alternative.

[12]Later

The administrators of the 'Poor Persons' Procedure' were not the only group within the Law Society with interests different from those of the higher officials of the society. The Law Society may have formally represented the interests of the solicitor's branch of the legal profession[13], but these interests were quite often far from homogeneous and there are even cases of open conflict between the positions of the central Law Society in London and those of provincial law societies, which will be referred to later.

Throughout the country this period was one of consolidation for solicitors, consolidating the professional position which had been assured by the strength of the Law Society, the reforms of property law and the securing of important monopolies[14]. Certainly conveyancing was becoming increasingly lucrative and important even at the expense of lawyers' "traditional business and commercial concerns" and there was little need for even average solicitors to look around for new work. Thus most solicitors entirely ignored litigation in matrimonial and personal injury cases, virtually the only areas of law which directly affected the lower classes[15]. Many solicitors were fairly explicit in their expression of dislike for such work, for example, in 1929 a Kent solicitor in the local law society wrote to point out that many poor persons' cases were turned down as "not the right kind of business".

[13]It certainly in no way represented the very different interests of barristers.

[14]For a fairly brief note of these developments, see Abel Smith and Stevens (1967, Ch.8).

[15]Directly affected them, in the sense that it was not possible to get a divorce or compensation for injury without recourse to law.

At the beginning of this period much legal work, including divorce work, could only be done in London; thus one third of the solicitors' profession worked in London, often doing work as agents for large provincial firms. Needless to say this branch of the profession was particularly powerful and influential in the Law Society, and, like the officers of the High Court, very concerned with the strictness of procedure and the good repute of the law, since it was the concentration of these qualities in London which gave these solicitors their status. The interests of these London solicitors, often expressed in the official practices of the Law Society, were often distinctive and very different from the practices of provincial lawyers, both the successful and less successful ones. In the area of poor persons' cases this was evidenced in the different attitudes to extension of divorce jurisdiction - provincial solicitors being fiercely in favour of maximum extension, and London solicitors, who benefitted from the agency work in ordinary divorce cases from areas where there was no local divorce, being indifferent or even hostile to such moves.

For the most part, however, indifference to poor persons' cases was not confined to London; the majority of successful solicitors did not want to be concerned with the marital problems of the working class. Many solicitors, in evidence to the Lawrence and Finlay Committees, pointed out that the vast majority of lower class work was done by a small group of solicitors. These solicitors, less well-off than their illustrious colleagues, often ran very precarious businesses with a rapid turnover of one-off cases, and thus were much better suited to the type of work involved under the 'Poor Persons' Procedure': in 1920 one solicitor claimed that he could conduct

1000 Poor Person's cases a year for a cost of around £5 a case plus expenses. In 1925 a Wrexham solicitor complained of the unfairness of this burden of poor persons' cases falling on the poorest branch of the profession, but gained little solace from the Law Society who often castigated these solicitors for making money out of the poor[16], although it was really the legal system itself and the unethical practice of using contingency fees on which these solicitors survived[17]. The line between these poor persons' solicitors, and the 'speculative solicitors' and bogus 'legal aid societies'[18] outlawed by the Law Society was very thin if it was there at all; for instance, in 1933 when the Law Society attempted to add a clause to a Road Traffic Bill attacking 'speculative solicitors' by limiting costs in accident cases, one solicitor wrote to Schuster complaining that they had gone too far, had over-estimated the number of 'speculative solicitors' and made it difficult for ordinary solicitors to get decent costs.

It is difficult to see what immediate threat the poor persons' solicitors and 'speculative solicitors' posed to the Law Society, certainly they made money out of the legal system in accident cases and it was admitted in 1940 that they had also always made more than merely their expenses out of the money paid as deposits in divorce cases, but this was not money which would otherwise have gone to the respectable solicitor. It was rather the threat to the ideology of

[16] No doubt they were afraid of how suspicious the charitable scheme would look if the same work could be done for almost the same cost without the appearance of charity.

[17] For the Law Society to point out this, however, would be even more damning, since it would involve an admission that the legal system could be exploited to finance 'unlucrative' work.

[18] See Chapter 1, P. 9.

detachment and neutrality from all but honourable, individual clients, (to which successful solicitors could happily subscribe) provided by the practices of these solicitors, which the Law Society, comprised largely of solicitors from the upper end of the profession, felt it necessary to challenge. In many other ways the Law Society, although responsive to the requests of provincial law societies for example, failed to represent the interests of all solicitors, often favouring some at the expense of others, and this must always be remembered when discussing the importance of the legal profession and the Law Society in the creation of legal aid.

The Law Society was a very important body in the creation of legal aid during this period. In commanding a monopoly over the administration of legal remedies to the populace, the Law Society obviously came under a duty to maintain the legitimacy of the viability and universality of the legal system. This was implicit in their repeated requests for volunteer solicitors to ensure the success of the charitable 'Poor Persons' Procedure' and thus to maintain the privileges and status of the profession; and explicit, for example, in suggestions that all lawyers should pay a contribution towards the expenses for the few solicitors who conducted poor persons' cases, thus ensuring that the burden fell equally on a profession which benefitted equally from the carrying of the burden. Also any scheme to provide free or subsidised legal remedies for the lower classes was forced to enlist the co-operation of the legal profession because of its powerful control over the administration of the legal system and its virtual monopoly in representing qualified lawyers.

In this situation a voluntary scheme was the most obvious solution since it did not involve the intervention of the state in the running

of the legal system and did not disturb current professional practice. Furthermore control of the scheme by the Law Society was recognised to be necessary, since effectively they already controlled legal administration and would only co-operate in a legal aid scheme in which they also exercised a fair measure of control. The need to maintain the support and goodwill of the Law Society for the scheme to continue was often admitted: in drafting the final report of his committee Finlay himself admitted that it was pointless making recommendations which did not have the support of the Law Society; and a year or two later the Secretary of the Law Society stated that it was only goodwill within the profession which had kept the scheme going up to date.

Many members of the profession knew that the running of the scheme could be made easier if certain changes were made, and the Law Society was forced to accept the need for at least some of these changes. Thus they pressed for an extension of divorce jurisdiction to the County Courts or the Assizes, against the wishes of the Courts and the Lord Chancellor's Office. Schuster had always made it clear that County Court divorce was impossible, but throughout the inter-war period jurisdiction in divorce cases was extended to more and more Assize towns. At the beginning of the second war, when lawyers were no longer taking poor persons' divorce cases, the Law Society decided to support a scheme whereby one or two solicitors were paid small sums out of the deposits to conduct divorce cases as the only solution to the problem of collapse of the 'Poor Persons' Procedure', a scheme which they, along with most other interested parties, had

previously opposed, but which now went through almost immediately[19].

Thus the Law Society could ensure that the interests of the profession were incorporated into the legal aid schemes, although in doing this they were often politically and economically opposed to other groups. Over the extension of divorce jurisdiction they were opposed by the courts, the barristers, the Lord Chancellor's Office and even some of the solicitors based in London who gained from agency work; and, over payments for running the scheme, they were opposed by the Treasury, the barristers and the Lord Chancellor's Office.

Also, in order to maintain credibility in the scheme to their members and other important groups, they were forced into official attempts to minimise the problems and contradictions in the scheme; for example, in 1923 they confidently predicted that the backlog of cases reported by Hassard Short would be solved by the decrease in the number of applications for divorce which had supposedly been taking place since the war[20]. This meant that those directly experiencing the short-comings and contradictions of the scheme were a source of embarrassment and conflict to the Law Society: so later in 1923, when Hassard Short confirmed the backlog of cases, they openly stated that they refused to believe him; and, in the late 1930's when provincial law societies in South Wales became so swamped

[19]It was at this time that the Law Society admitted that they knew that poor persons' lawyers had always taken small sums from the deposits in order to make the scheme economically possible for them.

[20]The backlog did not disappear, and eventually resulted in control over the scheme being passed to the Law Society in 1926.

with cases that they refused to operate the scheme, the Law Society replied by stressing again the professional duty to run the scheme and the fear of a government department taking over if it failed.

The Law Society's attempts to maintain professional confidence and interest in the scheme continued throughout the inter-war period, with many circular letters intended to coerce volunteers being sent to all solicitors. However the continual shortage of solicitors and backlog of cases is noted many times: in 1923 Hassard Short predicted collapse of the scheme within months; in 1926 the shortage led to control of the scheme being passed to the Law Society; in 1928 the Law Society requested a lowering of the financial limits to reduce the number of cases, in 1935 they requested a greater discretion in refusing certificates; and in 1939 they reported a severe shortage which got worse after the war started. This need to maintain confidence in the operation of the scheme is linked to the Law Society's close connections with the Lord Chancellor's Office, which were usually backed up by personal friendships between Schuster and the secretaries and chairmen of the Law Society. Throughout the period there was an almost constant correspondence between these parties, and it is from this correspondence that most of the Law Society's clearest policy statements come.

It is possible, however, to find evidence of the different positions of provincial law societies or individual lawyers either in correspondence directly to the Lord Chancellor's Office or in published material. Many provincial law societies wrote to the Office expressing support for the scheme but raising local problems, such as the need for divorce at Assizes nearer their area. Several articles

appeared in the national and in the legal press; for example, Harrington Edwards (1928) praised the scheme but said that more money was needed, especially for advice and representation in the County Courts, where he knew from experience that it was often necessary[21].

Many of the individual lawyers working in the legal aid scheme were lawyers working in 'Poor Man's Lawyer' centres in London or one of the large provincial cities, who were primarily concerned about the lack of facilities and finances for these; they felt that these could be improved if the Law Society were to take them over and provide some money. Although they were not often directly involved in the debates surrounding the production of legal aid, the position of these 'Poor Man's Lawyer' centres as the only other means whereby poor people could obtain legal help during this period is important, particularly as the centres were sometimes quoted as examples of what the official scheme could be, or ought to be doing. The 'Poor Man's Lawyer' centres were entirely unofficial and usually controlled and run by an individual, philanthropically inclined, lawyer. Most of the centres were in London and elsewhere the service was, to say the least, patchy; services were often confined to advice as to legal status only or perhaps the writing of a letter or two, and many centres opened on only one evening a week.

In spite of their limited scope the centres were felt to be something of a threat by some lawyers: they were criticised for helping clients who could afford to pay ordinary lawyers' fees, or for referring clients to certain solicitors who charged lower fees

[21]The reaction of the Law Society was to doubt the validity of Harrington Edwards' factual statements, and to point out that the existing scheme had already been shown to be quite satisfactory.

for these clients and were thus accused of being 'speculative solicitors'. There was thus some antagonism towards them and opposition to any take-over by the Law Society or the Government; but by 1926 the Lord Chancellor's Office had resigned itself to the necessity of supporting any voluntary effort, and, although there was no question of providing any finance or administrative backing, the centres were given some recognition and encouragement in the final report of the Finlay Committee and were listed in the appendix.

It can be seen that many of the different activities of particular solicitors were not represented in official Law Society practices, and that often the interests of the individual solicitors who dealt with poor persons were very different from those of the Law Society. The economic security of these firms was in no way as definite as that of the large London firms, and thus their concern for organisational changes in the provisions for legal help for the poor was more immediate, although, at the same time, many of them made some money and gained a lot of valuable experience from poor persons' cases.

This divergence of interests between the official representative body and the individual members of the profession was similarly very much in evidence in the other branch of the legal profession. With its monopoly of representation in the High Court secure, the Bar was reckoned to be generally very strong in the inter-war period, and as always was politically well organised to protect this security. Thus it was opposed to reform of the divorce procedure, and to its extension to Assizes, since this would involve travelling to the provinces, and obviously it was strongly opposed to any extension of

County Court jurisdiction[22]. Concern was also expressed by some barristers that poor persons who could afford to pay for lawyers were being allowed to use the scheme, although it was admitted that this was primarily a problem for the Law Society, since it was mainly solicitors who were losing business.

However, then the 'Poor Persons' Procedure' was very useful for the younger and less experienced members of the Bar; it provided them with work when they could get no other work, and gave them valuable experience which could be seen and judged by those who mattered. In order to protect these advantages, the Bar was opposed to the setting aside of special days for poor persons' cases, since this would mean that those conducting them would not be seen; and it was opposed to the payment of fees for the conducting of cases, since this would turn poor persons into fee-paying clients and it would mean that young barristers conducting their cases would have to be supervised[23]. Thus, for example, in 1913 the Law Journal (P.710) noted that the new Poor Persons' Rules were having to be redrafted to prevent the possibility of barristers recovering even expenses, and in 1925 Schuster admitted that this was done at the request of the Bar and on behalf of its younger members.

Because of the valuable, unsupervised experience which the 'Poor Persons' Procedure' provided for barristers at the beginning

[22]The Bar's monopoly of representation did not extend to the County Court, and barristers did not like working in them as it did little for their reputation; under the 1926 rules they secured the right to drop poor persons' cases which were remitted to the County Court.

[23]They did not have to be supervised if they were not getting paid for the work, and thus the poor persons' cases provided an easy form of training for the Bar.

of their careers, there was never a shortage of barristers to conduct cases during the inter-war period. However, after the second war had started, the number of younger barristers looking for work began to decline; there was still a large number of barristers 'in practice', but these men were established figures who did not need any free experience and would not take poor persons' cases, especially as in such cases the brief could not be returned. It was the backlog of these cases resulting from this severe shortage of barristers willing to take them which was one of the major causes of the introduction of the Service Divorce Scheme for the duration of the war[24].

The divergence of interests over poor persons' cases between the younger and older members of the Bar, however, was less important a factor in the formation of legal aid than were the splits within the solicitors' branch of the legal profession. This was partly due to the greater overall cohesion of the Bar, with much smaller numbers and with no real threat being posed to those at the top by the less dignified activities of those at the bottom so that, at times, all were prepared to act to protect the practices of some; and partly due to the lesser importance of legal aid to the Bar in economic and ideological terms, since the 'Poor Persons' Procedure' was not a burden and barristers did not claim to deal directly with the whole of the society, but with only such clients as were referred to them by solicitors. This is not to say that the views of the Bar were not heard - they were often heard first and were always represented on committees; but for most of the period they were less pressing and therefore less important.

[24]Under this scheme special rules allowed for briefs to be returned by counsel without reason.

It was the legal profession, the courts and the Lord Chancellor's Office who were the main participants in the making of decisions concerning the 'Poor Persons' Procedure', and thus the major parties involved in the production of legal aid during this period. However other elements within the controlling class were involved to some degree in the economic, political and ideological problems which surrounded legal aid, by virtue of their interest in the administration of the legal system as a universally available source of remedies; their concern was directed towards the success of the 'Poor Persons' Procedure' in order to achieve this. Obviously the amount of influence wielded by some of these groups was rather limited, but their different interests were often important in exposing further contradictions within the schemes.

Non-professional lawyers and the legal journals were much less concerned with the problems of legal aid and legal help than is the case today; major developments in the legal system and in legal practices were to be found more in the areas of property law reform and consolidation of monopolies. Various philanthropically inclined individuals did attempt to get their views heard, however, both through direct correspondence and published material. One could hardly identify a coherent ideological or political position in this material, partly on account of its paucity alone: for instance, there were only three or four books published, either by lawyers, such as Parry's earlier book (Parry, 1914) and the Left Book Club edition of 1938, which made tentative links between legal disability and class inequality ('Barrister', 1938); or by closely concerned laymen with legal backgrounds such as Gurney Champion (1926). The Left Book Club edition and another book six years earlier by an equally

anonymous solicitor ('Solicitor', 1932), though purportedly from different political stand points, made similar pcints about the advantages of the legal system for the rich and the need to face up to the problems of inequality, although the solicitor was more optimistic about what could be done to solve those inequalities, since he appeared to put the blame for many of the problems on the Magistrates[25].

Gurney Champion's book was much more emotional and far reaching, pointing out fairly clearly the ideological fears that obviously governed the legal aid issue but were left unsaid by other protagonists. Law, he said, was necessary to avoid revolution, and, without justice for all, the seeds of communism and anarchy would be sown; or, at least, denial of justice to the lower classes would cause them mental worry which would lead to a "loss of production"[26] (Gurney Champion, 1926, pp. 3 and 4). Backed by a 'pressure group' consisting largely of established members of religious organisations, Gurney Champion also attempted to persuade the Lord Chancellor's Office of the need for more drastic action. However, even if the reasons for his fears were well-founded, the tenor of his solutions did not prove acceptable, especially, for example, his suggestion that the government introduce a "Poor Persons (Honesty) Bill, 1925" admitting that it was not implementing the Magna Carta and was therefore openly denying justice to a section of the populace.

Generally, however, the legal media were more than willing to

[25]Who were not qualified to administer law and were therefore making a mess of it.

[26]Loss of production would be almost as damaging to those in power as revolution itself.

provide ideological support for the legal aid scheme. In 1932, after the T.U.C. had suggested that the 'Poor Persons' Procedure' was used as a cover to allow inexperienced lawyers to practise on the poor, the Solicitor's Journal (1932, P.25) strongly denied this pointing out how much money in damages had been recovered for the poor in poor persons' cases, and reminding readers that "everyone knew" how often eminent lawyers appeared for the poor[27]. Also both the Law Journal and the Solicitor's Journal carried laudatory, if brief reports of the Law Society's annual conferences on the 'Poor Persons' Procedure'.

Some other charities and non-legal pressure groups were also concerned about the contradictions within the legal aid scheme and attempted to sway political opinion to a more liberal position, either through direct action, such as the running of 'Poor Man's Lawyer' centres, or by publishing opinions and giving evidence to committees. Thus, for example, Gertrude Tuckwell, a prominent magistrate; Margery Fry; and the Howard League for Penal Reform protested in the 1920's about imprisonment without proper trial and suggested that aid should be available in all courts. It appears that these pressures were instrumental in persuading Schuster to initially set up the Finlay Committee to investigate possible extensions of criminal aid[28].

Other organisations had less power, however, and their voice was heard only when giving evidence to the committees. Their recommendations usually tended to be rather similar: for instance, calling

[27]Even if everyone did know this, they were certainly reluctant to put it down on paper for others to read, no other references to it could be found.

[28]Although, as mentioned, Schuster was convinced that nothing could be done about this.

for more state money and intervention to extend the scheme, or even a state-run scheme with 'public defenders'[29]; and could be seen to be informed by a fairly homogeneous ideological framework of Fabianism[30] and welfare statism. The Salvation Army and the Federation of Residential Settlements both felt there was a need for a wide ranging enquiry into the availability of legal aid, although the settlements themselves, however, did not really have a coherent policy (the secretary of the Federation resigning in 1924 because of the failure to achieve this). However at least one of the major settlements, Toynbee Hall, was prepared to go as far as to recommend a state insurance scheme to provide aid for the lower classes. The London Council of Social Services was much less radical suggesting only central control of 'Poor Man's Lawyer' centres and more state money to help in the administration of these; and the National Council of Social Services further endorsed this, arguing that social workers should be used in conjunction with other voluntary efforts, to improve the provisions for legal advice[31].

However, when actually giving their evidence, the lesser importance attached to the interests of these groups could be seen: Schuster more or less told those recommending state schemes, that legal aid

[29]State-paid lawyers as in the United States to represent those who could not afford to pay private lawyers.

[30]A political ideology dominated primarily by support for a gradualist transition towards some sort of social or socialist democracy.

[31]Increasing involvement of voluntary social workers in state organised social service schemes was a feature of the expanding 'social services' of the 1920's and 1930's, a development which was politically and ideologically similar to the history of the legal aid scheme and paved the way for some of the changes of the later 1940's see Woodroofe (1962, P.144 et seq.).

must remain voluntary and that no state money would be forthcoming. The Charity Organisation Society and the British Legion were asked to give evidence to the Finlay Committee, but did not bother, perhaps aware of the little influence they would have; Gertrude Tuckwell did not give evidence on the assumption that she knew Schuster would follow her suggestions; she was obviously unaware of the amount of influence she had [32].

During the second war military concerns obviously became important in determining the nature of legal aid, at least in as far as aid concerned the services. A memorandum from the Army to the Lord Chancellor's Office in 1940 pointed out the need for legal help, especially for financial and marital problems, to prevent a weakening of morale and the loss of "good soldiers"[33]. The Army were also concerned that in applying for legal aid their soldiers should not be labelled as "Poor Persons" and requested that for the services eligibility for free legal help should be by rank and not by income[34]. The Army could draw upon voluntary advice from qualified officers and they organised this into a fairly well structured scheme; but their need for morale led them to demand a "comprehensive" advice and divorce scheme, which was eventually set up in 1942.

The Army were the major protagonists for organised service legal

[32]Schuster made no reference to her requests and they are not reflected in the final report.

[33]The Army seemed quite convinced that marital and legal worry were sure to produce worse soldiers. .

[34]The ranks which they suggested should be eligible received pay higher than the previous income limits, thus indirectly, and perhaps unintentionally, they were recommending a substantial extension of the provisions for legal aid.

aid schemes and were in fairly close contact with the Lord Chancellor's Office. The Navy and the Air Force were less outspoken about the need for help and more reluctant to contribute towards any general service scheme originating from the Army, they claimed that the needs of their servicemen were very different, and they were initially quite obstructive to War Office attempts at amalgamation. Finally, however, the Service Divorce Scheme did cover all three services; it was a direct product of the demands made by the War Office for more comprehensive provision of aid, and it was set up with the support of the Lord Chancellor's Office, Schuster being greatly involved in the planning and structuring of the scheme[35].

This reinforcement of the continued importance of the Lord Chancellor's Office as a mediator and innovator in determining the structure of legal aid throughout this period, serves as a suitable reminder that, although many groups were concerned economically, politically and ideologically with the operation of legal aid, not all of these concerns were idential nor were they all equally widely accepted and implemented. Particularly relevant to this point was the close correspondence which could be seen between the legal profession and the Lord Chancellor's Office which often effectively resulted in the rejection of any propositions which did not have their joint approval. Inequality of power and influence, however, did not change the fact that a number of different groups were involved in different ways in the creation of legal aid during the 1920's, 1930's and early 1940's and it will be seen how the foundations for the legal aid schemes were directly and indirectly a product of these disparate

[35]The War Office congratulated Schuster for all the work he had done in setting up the scheme and suggested that he was really responsible for its inception and birth.

interests and practices.

Obviously the consideration of activities given here is very much one-sided in that it only looks at the interests and practices of powerful groups. Certainly, as mentioned in the previous chapter, it is only for these groups that the failures of the universalistic ideology of the legal system are a problem and legal aid therefore a necessity. However, to assume from this that the concerns of these groups over this problem are determined in a vacuum would be a fundamentally serious error. Naturally, and in many cases explicitly[36], the need to preserve the universalistic ideology of the legal system resulted from a fear that the lower classes would readily see a partial legal system to be a tool of oppression and exploitation, although this was an ideological problem which extended beyond the operation of the legal aid scheme or the legal system.

The attitudes and activities of the lower classes were the major dynamic in producing changes in the economic, political and ideological structure of legal aid, just as much as of any national scheme. The unarticulated demands of disunited classes did not appear in published material or official documents; but the continual and rising demand for divorce from these classes was the major cause of concern for the profession and the Lord Chancellor's Office and even the limited demand for accident compensation was sufficient to produce a split in the legal profession between those who could and those who could not afford to ignore such cases.

In spite of the importance of the lower classes, however, it is not possible to deal here in detail with their position in relation

[36]For example, Gurney Champion (1926) and 'Solicitor' (1932).

to legal aid; partly because of the disunity and lack of articulation amongst the working class especially as regards the effects of the operation of the legal system; partly because the powerful groups concerned with legal aid did not perceive the actions of the lower classes as anything more than a latent threat; and partly because of the limited nature of this project, already referred to. In the next chapter the relationships between the groups involved in the creation of legal aid and the demands of the lower classes will be discussed somewhat more fully in relation to the changes in the legal aid scheme. But it is perhaps interesting to note at this point that there was only one reference to the users of the 'Poor Persons' Procedure' in all of the Lord Chancellor's Office's files: the reference was made by Lawrence in 1928, after he had retired as committee chairman and after control of the scheme had been passed to the Law Society. He was urging the Lord Chancellor's Office to keep quiet about the £14,000 left over from the deposits paid by applicants for Poor Persons' Certificates, which, largely through ignorance, they had not claimed back; he feared that the release of such news might reduce the faith of the poor in the operation of the scheme; but in other respects he thought that the "truth" was that the poor persons themselves seemed quite contented with the rules as they stood. This "truth" shows how little those concerned with the creation of legal aid were aware of the situation of the lower classes and of their response to the ideological claims made by the administrators of the legal system.

CHAPTER FOUR

"THE CREATION OF LEGAL AID 1920 TO 1942 - THE STRUGGLE"

Writing about the growth of welfare services at the end of the nineteenth century Woodard (1962, P.316) noted that their introduction at this time was not just an arbitrary ideological decision suddenly to attempt to alleviate hardship, but rather was linked to the development of capitalist industry and the social organisations that accompanied it; he said,

> "Poverty did not become a problem until industry's maximum output could not be maintained without more consumers."

He was referring primarily to the period of the 1870's and 1880's, the time when the Poor Law was seen to be partly inadequate, and philanthropic groups began to administer other forms of assistance to the poor. It was also the time of the first 'Poor Man's Lawyer' centres in the newly-formed settlements in London, and of the first extension of the 'in forma pauperis' procedure for centuries. To suggest such a straight forward economic determinism as Woodard's statement implies, that welfare services were a direct product of industrial demands, is obviously to over-simplify a much more complicated social process; for example, the changes in London during this period are much more fully dealt with by Stedman Jones (1971). However, this statement does indicate the need to see the interests of different groups, including those involved in the production of legal aid, within the context of the social and economic organisation of society and the practices of different classes within that organisation.

As pointed out at the end of the previous chapter, it is the responses of social classes and fractions to ecoromic, political and ideological problems and contradictions which provide the force for change and creation in society. This is the case for legal aid in the 1920's and 1930's just as much as for any other social phenomenon. To deal in detail with major economic, political and ideological contradictions within which the changes in legal aid are situated would, as pointed out in Chapter Two, involve a systematic analysis of the society itself, a worthwhile but far too weighty task to be attempted here; but, it is pertinent and useful to discuss the dominant contradictions of this period, at least in so far as they can be seen to be fairly relevant to the creation of legal aid. Particularly it is useful to demonstrate from this how these are linked to the interests of the different groups involved in legal aid and become utilized and adapted by these groups, perhaps creating problems for them, perhaps being employed in response to problems posed by others. Thus it seems wise to include a discussion, albeit much abbrieviated, of the economic, political and ideological problems which dominated the inter-war period, particularly those aspects which are relevant to the creation of legal aid.

It is generally well known that the 1920's and 1930's were a period during which most capitalist economies experienced a sharp and prolonged recession. Furthermore in Britain this crisis was more serious for the population as a whole than that of the 1870's and 1880's referred to above by Woodard (1962), this was partly due to the greater involvement of the lower classes in consumption and thus in the wider repercussions of overproduction. In order to stimulate growth it was necessary to create more demand, and one of the effects

of this for the working class was the increased extension of credit to them. It was as a result of this that the collection of debts through the County Courts became so important and had to be made efficient, a factor which was well known to those in control of the courts: thus Schuster pointed out in his memorandum on legal aid in 1926 that the smooth functioning of the credit system was very necessary and that the use of legal aid in the County Courts would disrupt this smoothness and ruin the credit system. It was as debtors that many working class families first came into contact with the law, and this was increasingly the case throughout this period; thus the effects of the operation of this aspect of the legal system were spread widely throughout society. Another effect of debt, of course, was to put family structure very much under strain; coupled with unemployment and consequent shortages of essentials it may have had a disastrous effect on many homes, thus perhaps increasing the demand for divorces.

Unemployment was very much a product of economic crisis, and at times in the 1920's and 1930's it reached massive proportions in this country: over two million out of work, up to twenty per cent of the work force. This naturally forced crucial changes to be made in the social services and welfare provisions. The Poor Law was still in existence after the first World War, but it had not effectively survived the pressures put on it both economically and ideologically at the turn of the century and was of little importance at this stage. The pre-war Liberal Government had introduced unemployment benefit, although this originally only covered a few workers in selected jobs. The Lloyd George Government extended this to more workers; but as unemployment continued to be the most pressing political problem of

recession, benefits had continually to be expanded and adapted, usually at a desperately late stage and with insufficient knowledge and funds, simply in order to placate the Labour movement (see Gilbert, 1970, P.70 et seq.). The Labour Governments, although at first more keen to extend welfare schemes, soon found that they were hampered just as much as the other parties by the refusal of the Treasury and other major financial interests to endorse the provision of adequate funds; and by the 1930's the unemployment benefit scheme, politically the most important limb of the welfare services, was not able to cope effectively with the demands placed on it.

This eventual collapse of the unemployment benefit scheme was echoed in other welfare services, including legal aid; and it forced political changes to be made, these being reflected initially in the appointment of the Beveridge Committee to review the whole of the welfare services. In a period of crisis the demands placed on the welfare services were massive, much more than the ill-thought out and partial schemes could cope with; and yet in such a crisis it was very necessary for the schemes to work, or at least appear to work, because of the fear of the working class taking things into their own hands if their problems became too acute. As early as 1920 the Cabinet admitted that,

> "the Communists are gaining converts: the facts relating to unemployment are indisputable and they form a powerful weapon for attacking the capitalist system."
>
> (in Gilbert, 1970, P.77)

Faced with the economic contradictions of overproduction, the welfare schemes seemed doomed to failure, yet this failure was denied or displaced for most of the period since it would have been politically disastrous for those in power to admit its reality.

Thus it can be seen that political practice was very much tied to the economic situation. Not surprisingly, the fears of working class unrest and revolution subsided somewhat in the later 1930's - the crisis had continued for some time and there had been no revolution, the failure of the general strike had been a severe setback for the Labour movement, and two Labour Governments had given the movement the impression of power without actually changing anything substantial. In spite of the influx of Labour M.P.'s, Parliament in the 1920's was still composed largely of lawyers[1] and businessmen, whose concerns were still largely those of property and industry. The post war Lloyd George Government was very aware that malnutrition, bad housing and low wages were important issues for a much increased electorate with war on its mind; but it could hardly afford both to 'solve' these problems and to appease its members' concern with their propoerty interests. Thus by the time of the early 1920's, the Directorate of Intelligence was employed full-time in keeping some control over revolutionary organisations, and the Government retained its political power and the support of the majority in the Commons by pledging itself to seek retribution against Germany and to carry through limited social reforms. Of course the social reforms gradually became more and more limited as public money became shorter and economic problems loomed larger.

Apart from being economically problematic, however, social reforms were not taken seriously by politicians throughout the inter-war period. Gilbert (1970, P.307) suggests that social reform was not an issue in Parliamentary circles, where it was felt to be

[1]At the time of Lloyd George's Government 102 M.P.'s were legally qualified.

"squalid and boring" to discuss poverty and housing shortages; decisions on such issues were much more likely to be taken at a lower level, i.e., by full-time civil servants in Government Departments, and merely confirmed in the Ministerial corridors. This can be seen to be the case with the unemployment benefit scheme which throughout the period was never really given a full political reconsideration, but merely propped up and adapted by a series of stop-gap measures introduced to solve particular crises. The political development of legal aid can be seen to fall very much into this pattern also.

This political situation was reflected in the position of the Labour Party Governments which were caught in the centre of the contradictions surrounding social reform. By their attainment of power the Labour Governments may have done much to placate the Labour movement; but they could never be given any support in government by the other parties unless they abandoned their reformist platform. Furthermore, they could not carry through reforms on their own; they needed public money and the support of established financial interests and these were not available for far-reaching social reform[2]. Any Government expenditure was continually limited, and thus, for example, when in 1931 the Labour Government was forced to cut unemployment benefit payments by ten per cent, this measure immediately resulted in the withdrawal of the support of the Trade Unions and led, within months, to the collapse of the Government.

The political see-saw between enforced social reforms, stemming mainly either from a fear of revolution and unrest or from a Fabian

[2]Gilbert (1970, P.169 et seq.) notes the control exercised by the Bank of England, in conjunction with the Opposition, over the Labour Government in 1931.

or Labour reformist social conscience; and, on the other hand, a power structure, which in a period of economic decline wanted to conserve resources through traditional outlets, was characteristic of the dilemmas faced during this inter-war period. It is evidenced also in the decisions made about housing policy, with Rent Act control leading to shortages and lack of public money restricting building; and, of course, in the case of legal aid. And the contradictions here were particularly exemplified by the position of the Labour Party, which was able to command enough support to become the Government and yet was unable to do anything once in power. These contradictions dominated the political situation throughout this period.

By the mid-1930's welfare benefit schemes in their semi-charity, semi-entitlement form had more or less all broken down and within the Departmental Offices[3] plans for reconstruction had already been established. The political vehicle for the decisions to reconstruct was the appointment of the Beveridge Committee to reconsider the structure of the welfare services, which officially confirmed commitment to the need for reforms. When reforms were introduced after the second war, they were not intended, of course, to remove the contradiction between social change and the need to limit public expenditure, but merely to reorganise the basis on which public expenditure was made and to allow for its increase when this would be possible.

During the period of the 1920's and 1930's, however, the necessary reorganisation did not take place; and thus the frequent crises and collapses in the welfare services had to be continually justified and legitimated. In order to do this, it was necessary to attempt to

[3]Where, as mentioned, the major decisions were taken.

placate revolutionary and reformist feelings by stressing the availability and success of existing welfare services. This was the ideological approach with which the administrators attempted to conceal evidence that it was not feasible to make these schemes workable.

Writing about the growth of social work in Great Britain and the United States, Woodroofe (1962) is forced to discuss the ideological tenets of the welfare services. She argues that the "rags to riches" myths of United States democratic ideology were much less powerful in this country, and thus social responsibilities were more readily admitted. This can be seen particularly in the influence of Fabianism, which, although only achieving any direct political recognition on the left of the Labour Party, did to some extent force general ideological acceptance of the need to sponsor some positive form of assistance for the lower classes, at the expense of those in more privileged positions. Woodroofe suggests that, during this period, this had the effect of forcing an ideological transition from private philanthropy to organised assistance; a transition which was seen by some as the "quiet revolution" which Lloyd George had suggested could take place in a "constitutional country".

In spite of the Majority Report of the Poor Law Commission 1905-9 coming out in favour of private charity, the Poor Law had effectively been on the decline since the late nineteenth century. Also the impact of Freudian psycho-analysis on social work ideology was on the increase after the turn of the century, perhaps more so in the United States, but was not without significance here, requiring that the dominant assumptions about individual responsibility be

re-assessed. However, the economic crisis produced a need for schemes which minimised the time spent analysing the individual needs of clients and could deal with massive demands for help on the basis of simple entitlement to benefit; and this need forced changes in a social work ideology concentrating solely on the individual either as in need of encouragement or treatment.

This factor contributed towards the ideological shift from paternalistic, and necessarily limited[4] private philanthropy towards a position more amenable to the notions of automatic entitlement and services run on a state basis - notions which, however, only achieved political acceptability after the Beveridge Report and the Second World War, and after the total collapse of the limited, privately-run, schemes of the inter-war period.

Social workers in many different kinds of agencies were as ready as some of those involved in legal aid to admit the ideological links between their concerns and existing social practices, and their fear of radical change. In 1927 the Charity Organisation Society[5] suggested that,

> ".... the only real antidote to Bolshevism is good casework"

which can be compared to the statement made by a Solicitor (1932, P.80) in a book about legal aid five years later,

> "I am a Conservative in politics. Those who wish to retain our institutions must reform them. It is the revolutionary party that profits by abuses."

[4] Necessarily limited, because it was generally assumed by social service agencies that, if those in need were given too much help, they would become lazy and learn to rely entirely on handouts.

[5] Quoted in Woodroofe (1962, P.55).

Even the more extreme and Fabianist welfare radicals, who demanded equal rights and redistribution of wealth fitted quite well into the ideological requirements of Governments, being able to placate the Labour movement by administering relief and benefits primarily to the most powerful and demanding groups amongst the lower classes[6].

Writing of the history of social services, Woodroofe (1962, P.205) has suggested that their task was,

> "Accepting the existing framework of society - it is mobilising the community's resources to promote the well-being of all individuals."

It can be seen that, throughout the 1920's and 1930's, this was an ideological tenet which was very influential in determining dominant attitudes towards practices within all welfare services, including the administration of legal aid. Of course the available economic resources and the existing political framework did, as mentioned above, impose severe limitations upon the realisation of this ideological goal, and upon the ability of this ideology to conceal and control the contradictions between the existing framework and the well-being of all individuals within it. The effects of these limitations can be seen especially clearly in the changing nature of legal aid.

The concerns of the groups involved in the production of aid during this period, as expressed in the interests and practices discussed in the previous chapter, can be seen to demonstrate the influence of these dominating perspectives. The effects of this can be understood by looking at the major themes produced by these interests and practices, their inter-relationships and their results in producing, upholding and changing the phenomenon of legal aid.

[6] In the case of welfare these were the unemployed; in the case of legal aid, those demanding divorces.

These themes will not be dealt with in any chronological order; the purpose of the first chapter was to give an overview of the chronology of changes in the availability of legal aid, and to treat this part of the analysis in a strictly temporal sequence would give a spurious picture of continuous, coherent development and interplay, which would be of no explanatory value. Historically it can be seen that forces do not follow a gradual, even development[7], but rather proceed in an uneven fashion, different forces being dominant and determinate at different times and some effecting little change over long periods. Thus in the production of legal aid it can be seen that some factors remained more or less stable and dominant throughout the period, some changed much in the light of other factors and other changes, and some had only brief prominence; but that altogether their inter-connectedness and their relationship to the structural form of legal aid at any given moment were the conditions which made for the development of aid up to the Second World War.

Not surprisingly, the economic power wielded by the Treasury was of great significance in determining the form and extent of legal aid. Every official committee appointed to investigate aid during this period had a representative from the Treasury on it; and Gurney Champion (1926, P.144) was so bold as to suggest that this indicated a desire directly to limit the commitment of any public money to the legal aid scheme.

It was the failure of the fund, which it was intended to establish

[7]As argued earlier, to suggest this would be to project teleologically the current structure as the conscious goal of past changes.

after 1915 with the support of money from the Treasury, to provide for the out-of-pocket expenses of solicitors conduction cases for poor persons under the rules introduced in 1914, which effectively ensured that these rules in their initial form would collapse; and that as a result of this collapse the rules would be rewritten in 1920 placing the scheme, officially at least[8], upon a basis of private charity throughout. Direct control exercised by the Treasury can be seen on several occasions: under the rules introduced in 1920 it was they who decided how the money paid as deposits by applicants should be dealt with; and in 1938 when large amounts of money, collected as deposits and abandoned by applicants after their cases had been dealt with, were in the possession of provincial law societies, it was the Treasury who decided that these funds were not taxable and could be invested. The influence of the economic control of the Treasury could also be seen at the time when control of the 'Poor Persons' Procedure' was handed over to the Law Society: the Law Society required a grant of money from the Treasury to cover administrative expenses and £4,500 was given for the first year; but, when this was not fully used, the Treasury reduced the next years' payment to £3,000 despite strong protests from the Law Society and the consequent need for economies to be made.

As suggested at the beginning of this chapter, the Treasury, the Bank of England and the powerful financial interests in the country during this period would never agree to a welfare scheme involving

[8]Unofficially solicitors conducting poor persons' cases continued to collect some money for their out-of-pocket expenses from the deposits paid by the applicants before being issued with certificates. This activity was eventually admitted by the Law Society in 1940, and became the basis for the financing of the official Service Divorce and Civilian Divorce Schemes during the second war.

uncontrollable state payments, and this limitation can be seen to be very important for legal aid also. When such a scheme was suggested in some of the evidence given to the Finlay Committee, the Government Actuaries Department was quick to exercise control, pointing out in a direct communication to Schuster that any form of national legal insurance scheme was not on; that the employers, protesting already about health insurance, would take no more; and that some other solution would have to be reached. This kind of financial proscription was obviously crucial in forcing legal aid to take the form of a private charity throughout this period; and, when it was politically and ideologically impossible to carry on in this form towards the end of the 1930's, it was the Treasury who were the first to be told, by Schuster after the start of the Second World War, of the need to reconstruct the 'Poor Persons' Procedure' on a new basis after the war.

The limitations imposed by this national economic policy dominated the form of all welfare services and legal aid, and, although it does not appear so in the literature or in the communications on the subject, were a major stumbling block in the way of any attempt to put legal aid on a different footing, or any ideological move towards automatic entitlement to assistance in enforcing legal rights. Elsewhere the dominating influence of economic proscriptions over the form of legal aid can be seen in the important effects of the economic position of the major personnel involved in the operation of the legal aid scheme, the legal profession.

As was discussed in the previous chapter, the major concern of the bulk of the legal profession at this time was the consolidation and development of newly-won monopolies over litigation and conveyancing.

Thus for the aspiring member of the profession it was not economically prudent to be concerned about extending legal services into much more dubious areas; in fact, this might very well be positively detrimental, because by lowering the status of his clientele the solicitor also effectively lowered the status of his 'practice'. There are reports in letters to the Lord Chancellor's Office of solicitors turning down divorce cases because there was "not time to touch it" or it was "not our kind of work".

The need to deal primarily with prestigious, elitist cases, however, was more acutely felt by the top London solicitors; as mentioned in the previous chapter, some of the weaker provincial firms could not afford to adopt such high aims. For these firms legal services for the lower classes were worthwhile, even necessary work - one solicitor based in Doncaster wrote to Hassard Short, Secretary of the Poor Persons' Committee, in 1922, pointing out that this type of work was not distasteful and could be done quite cheaply. Obviously the suggestion that a legal 'practice' could be based on lower class work was a threat to those firms concerned to show that the important task was to consolidate property work, and so some of the solicitors doing work for the lower classes were labelled as 'speculative solicitors'. There is certainly some evidence of solicitors, sometimes calling themselves legal aid societies and collecting subscriptions on a weekly basis, doing work for the lower classes for small fees. However, the major criticism made of these lawyers by the Law Journal (1912, P.49) was that they were not philanthropic; and Gurney Champion (1926, P.33) was forced to admit that whilst 'speculative solicitors' definitely exploited the poor nothing positive could be proved against them whilst Jackson (1940,

P.256) admitted in 1940 that they did get valuable results.

Eventually the Service Divorce Department showed that poor persons' cases could be dealt with efficiently and cheaply by lawyers working on a full-time basis, once the need was admitted. But full-time paid work for the lower classes in the inter-war period would have meant sacrificing other developments for the legal profession, and so this form of legal aid was not acceptable to them, nor was the possibility, explored by the 'speculative solicitors', of conducting the cases at a fee and for a profit.

For both branches of the profession a scheme based on private charity was financially much simpler and considerably less threatening. For the Bar it had obvious advantages in the form of free, unsupervised training for young barristers, an interest which was secured in the rules introduced in 1914 by the stipulation that on no account should fees or out-of-pocket expenses be paid to barristers conducting poor persons' cases. For the solicitors private charity allieviated the necessity for adapting 'practices' to cope with different cases and clients, and allowed the successful firms to ignore poor persons' cases, so that the burden of the 'Poor Persons' Procedure' fell on a few firms, who often did much other lower class work and were perhaps close to being 'speculative solicitors'.

Thus, even in 1938, when the 'Poor Persons' Procedure' had admittedly collapsed, and Schuster suggested possible reforms of legal aid to the Law Society, the idea of extending divorce jurisdiction was willingly accepted, but the suggestion of paying small fees to solicitors conducting poor persons' cases rejected as strongly as ever. The inter-relationship between the economic position of the

legal profession and their ideological stance concerning legal aid was of considerable importance during this period. Elliott (1972, P.132) has suggested that professional ideologies are belief systems "through which the practitioners make sense of their work experiences". Without going into a detailed discussion of the relationship between ideology and practice, it can be seen that the ideological approach adopted by the legal profession during this period was very much based upon the requirements of their financial position.

The representatives of the Law Society, the major ideological spokesmen for the legal profession, had always insisted that legal aid should be based on private philanthropy. As referred to above, they were prepared to insist on this even after such a scheme had collapsed and led to protest action by solicitors in South Wales, and the Lord Chancellor's Office had officially recommended the payment of fees to lawyers as a possible solution to the problem. Even when criticising the scheme as fulfilling only a part of the need for legal aid and attacking the Law Society for its unquestioning self-confidence, Harrington Edwards (1928, P.236) clearly stated that the procedure should be kept on a philanthropic basis.

Quite often, however, the professions' ideological opposition to fees took the form of opposition to suggestions that it could not carry the burden of the legal aid scheme, which it was sometimes admitted was part of the payment which had to be made for the advantages gained from administering the legal system. Thus in evidence to the Finlay Committee the Sussex Law Society pointed out that "it was in the profession's own interests to show that the scheme could work"; and, in response to Harrington Edward's suggestion (1928, P.234) that the current scheme was only meeting two and a quarter per cent

of the need for legal aid, Gregory, a Law Society spokesman, said that the work was done,

> "for the honour of the profession and to show the world at large that solicitors had some regard for people other than themselves",

and added that the scheme had been a great success (Harrington Edwards, 1928, P.236). In 1932 when the T.U.C. alleged that the 'Poor Persons' Procedure' was used to allow inexperienced lawyers to practise on the lower classes, the Law Society again replied that,

> "everyone with experience of the courts knows how frequently eminent and experienced barristers appear gratuitously in poor persons' cases"
>
> (Solicitors' Journal, 1932, P.25)

To its own members, who refused to carry the burden in honour of the profession and its privileges, for instance, the South Wales Law societies in the 1930's, the Law Society, in stressing the professional duty, coupled with it the threat of take-over by a Government Department if the charitable scheme were to fail.

The Law Society's ideological opposition to a State Department is quite important here: obviously, if the 'Poor Persons' Procedure' was a professional duty, then to have it controlled by a Government Department would weaken the profession immensely, since control over a part of private practice would seriously undermine the profession's independence and financial security. Thus Poole, at one time chairman of the Law Society, reminded the annual provincial meeting (Allen Jones, 1938, P.300) that Government control of the 'Poor Persons' Procedure' at the beginning of the century had nearly wrecked the scheme, thus enlisting the profession's ideological support for continued philanthropy at a time when the scheme was again collapsing and the Lord Chancellor's Office was considering

paying lawyers to do poor persons' work.

It is in the light of this ideology, which dominated the profession's attitude towards legal aid throughout this period, that later suggestions that legal aid was a 'social service' and that as such it was unprecedented for it to be controlled by a private profession should be judged. Such suggestions would be the antithesis of the way in which aid was viewed by the Law Society and the Lord Chancellor's Office, the dominant ideological spokesmen on the subject, for whom it was logical, desirable and necessary for the scheme to be controlled by the profession in order for it to survive in the only acceptable form. Not surprisingly acceptance of professional control continued even after both the Lord Chancellor's Office and the Law Society had accepted the need for a state financed legal aid scheme.

However, the burden of private charity was not carried willingly by all members of the profession. Towards the end of the sittings of the Finlay Committee, the Secretary of the Law Society put it to Schuster that the profession needed more encouragement, and that the Lord Chancellor's Office and the courts really ought to "pat us on the back a little more" to ensure their continued support for a scheme which gave them little thanks for the work they did. This suggestion that there was not full agreement within the profession to support the existing scheme is to some extent masked by the general ideological statements of the Law Society. Obviously the necessary ideological cohesion of the profession did not reflect the different ideological standpoints of all of its members, and these, particularly in relation to the general ideology, were important in shaping the form of legal aid.

For many solicitors poor persons' cases were an embarrassment, "not their kind of work", and were thus ignored. Therefore the real burden of operating the 'Poor Persons' Procedure' fell on a few solicitors, who were often aware that they were doing the charity work for the whole profession without getting any credit for it[9]. Many of these solicitors did a great deal of other legal work for the lower classes, largely one-off cases with a rapid turnover which did not assist the financial security of their business, and as a result of this their ideological position, where it achieved any widespread recognition, was linked to their different economic background and their practical involvement with the legal aid scheme. Indirectly this ideology represented the pressures and contradictions of the operation of the scheme and thus constituted an important force for changes, especially of a small-scale, administrative nature.

On many occasions these solicitors complained that since they were having to do a great deal of divorce work it would help if this could be made easier, preferably by allowing it in the County Courts, or if not at least extending it to all Assizes. In 1929 one solicitor wrote to the Law Society praising them on their running of the scheme, but pointing out that since they were doing this work for the Lord Chancellor could he not be persuaded to make it easier. In the 1930's the solicitors in Cardiff and Swansea felt so strongly that they were being swamped by poor persons' cases and that the scheme needed reforming that they rebelled against the Law Society's official complacency and finally went 'on strike', refusing to take any poor

[9] In written evidence to the Finlay Committee a Wrexham solicitor argued that it was unfair that the poorest branch of the profession should do all the charity work, whilst conveyancing and property lawyers never bothered.

persons' cases. Although this constituted a severe threat to the Law Society's ideological front, it was obviously politically inexpedient for them simply to give way to such a blatant threat. They, in turn, threatened the South Wales Law Societies with the possibility of state control if the scheme could not be made to work, and attempted to minimise the political importance of their revolt. However, in that year, 1938, divorce jurisdiction was extended to more Assize towns, as requested by South Wales; and the following year the 'Poor Persons' Procedure' was admitted to have collapsed and the possibility of paying lawyers to conduct poor persons' cases was being broached, also as requested by the South Wales societies.

It is no surprise to discover that the professional ideology of lawyers was not homogenous, and yet it can be seen that open conflict between differing ideological viewpoints was very much the exception. The interaction between the strictly independent, private philanthropy platform of the top solicitors and the Law Society in London, and the hard-pressed, more practical demands of the small local firms, however, constituted an important source of pressure for the adaptation of legal aid and the manipulation of it to justify existing practices.

The economic and ideological positions of the Law Society were so decisive in determining the nature of legal aid during the 1920's and 1930's, and indeed since then, partly because of the political power afforded by the position of the Law Society. In Parliament lawyers have traditionally been over-represented as a professional group, and, for instance, in the Parliament of 1920 there were 102 lawyers, who were not afraid to use their political position in their own interests. More importantly, however, since the Law Society was the only official body representing trained lawyers in the country

any scheme for the administration of law involving lawyers had to enlist their support, and thus largely conform to their demands. Thus the legal aid scheme was based upon the existing 'private practices' of the legal profession and did not threaten their ordinary business[10].

Apart from its general structure, however, the Law Society was often very much involved politically in bringing about particular changes in legal aid, related closely to the profession's position of power and knowledge as implementers of the scheme. The rules drawn up from the recommendations of both the Lawrence Committees only came into operation when agreed to by the Law Society, and the rules drawn up after the Finlay Committee were amended by the Law Society. Divorce jurisdiction was extended to many Assize towns throughout the 1920's and 1930's to please the Law Society. In 1935 the Law Society requested a change in the rules to allow them wider discretion to refuse applications for poor persons' certificates, and this was immediately done.

Further involvement in the creation of the rules governing legal aid was ensured by the powerful political position of individual members of the Law Society, who were often close friends of Schuster and other members of the Lord Chancellor's Office staff. Just before the setting up of the Second Lawrence Committee which recommended passing the control of the 'Poor Persons' Procedure' to the Law Society, the society's president had asked Schuster to regard favourably the position of the Law Society. In 1938 the then president, Reginald

[10] Where it did they were quick to drop the embarrassing poor persons' cases, as noted above.

Poole, felt confident enough to ask for a meeting with the President of the Probate, Divorce and Admiralty Division to discuss the future of the legal aid scheme; and later on in the same year when Schuster was considering reconstructing the scheme his "good friend Reggie Poole" was quickly told of the proposals.

Generally, Law Society approval was sought for all rules likely to affect the operation of the 'Poor Persons' Procedure', and quite often the society themselves were asked to draw up the rules. On the collapse of the 'Poor Persons' Procedure' and the commencement of the second war, it was to the Law Society that Schuster turned, and it was they who were the instigators and organisers of the Service Divorce Scheme, demanding changes in the rules so that the scheme could be made to work; and later on of the Civilian Divorce Scheme also, providing the first official full-time legal service by salaried lawyers for the lower classes in this country.

The position of power provided by the cohesive practices of a professional organisation gave the Law Society the political weight to be able to limit the legal aid scheme to their demands and where necessary to force changes to be made in it. But the Law Society was never in a position to be able simply to dictate the format of legal aid; for instance, they had always claimed that it would be desirable to have divorce jurisdiction in the County Courts or, at least, in all District Registries of the High Court and resolved several times to push for this to be implemented, yet it was made clear that Schuster would not allow County Court divorce. Only very slowly was divorce jurisdiction extended to a few Assize towns and then only in undefended poor persons' cases.

The political power of the Law Society, like any political power, was only useful if it could be wielded at the correct time and at the decision-making level. As discussed at the beginning of the chapter, welfare and social policy questions were not really a Parliamentary issue at this time, and this was even more so the case for legal aid. None of the political parties had any distinctive policy concerning legal aid, and consequently changes in Government were of no real importance. Very occasionally there was a question in the House of Commons concerning legal aid, which was usually the product of a particularly articulate poor person persuading his local M.P. to take up his case in the House and which tended to take the form of "why is something not being done?" and was answered by the Attorney General with a statement prepared by the Lord Chancellor's Office, which always pointed out that the matter was in hand and something was being done. The result of this was that the effective decisions about the nature of legal aid were taken at civil service level, and thus, as discussed in the previous chapter, the Lord Chancellor's Office was of crucial importance. It was this office which had official responsibility for the administration of the legal system, and so the legal profession had to act through the Office, as did the courts. They were responsible to the Government, through the Lord Chancellor himself, but the Office was actually controlled by permanent civil servants with much experience of the procedures of political debate.

The importance of the political practices of the Lord Chancellor's Office are thus obvious. It was they who set up and ran the Committees, which investigated the 'Poor Persons' Procedure' during this period, and through which the official decisions of the Office were made;

and, although many different political opinions were aired on these committees, it is clear that overall control was exercised by the representatives of the Office in leading the questioning of witnesses and drawing up the draft for the report. But, not only did the Office control through its mediation between other interests, it was also politically strong enough to initiate and carry through changes, which were opposed by other interests. When the Hodgson Committee was set up in 1938 on the collapse of the 'Poor Persons' Procedure', it was given a clear indication from Schuster, who had always been aware of the possibility of paying state money to solicitors if the voluntary scheme failed, to consider a change of this nature; and, by the time the Rushcliffe Committee had been set up to replace the Hodgson Committee after the second war, a scheme of this nature had already been accepted by the Office as the only solution and other groups were forced politically to accept it[11].

Although it was partly because of the lack of political importance attached to legal aid in Parliament, that the Lord Chancellor's Office was able politically to control the structure of legal aid; any permanent body entrusted with the responsibility for administering something like the legal system was certain to become the political centre of the production of legal aid. The political centre, however, had to take account of the interests of other parties if it was to ensure the continuation of the structure which guaranteed it its political position. In a letter to the Mayor of Aldershot in 1940, rejecting his suggestions of possible improvements in the legal aid

[11]For instance, the Treasury, who had already strongly opposed any scheme which would commit the expenditure of state money on a permanent basis, were told of the need to reconstruct the scheme along these lines after the war.

scheme, Schuster pointed out that the Lord Chancellor was continuing to consult those who were most likely to give him helpful advice. Obviously the Lord Chancellor's Office had to refer to other groups and sometimes follow their demands; but this letter underlines the fact that the Office could always choose from whom it was to receive advice and whether or not it would follow it.

Largely because of its politically powerful position, the Lord Chancellor's Office also became an important centre for ideological debates about the status and future of legal aid. The political decisions made in the Office naturally prescribed limitations upon ideological statements about what the nature of legal aid ought to be; for instance, as early as 1920 Schuster had made it clear, unofficially, that the Office would not allow divorce jurisdiction in the County Courts[12], and after this it was generally agreed by those involved in debates over the extension of legal aid that representation for poor defendants was not necessary in the County Courts and would even disrupt the simple, efficient procedure in those courts.

Through this kind of predetermined agreement the Lord Chancellor's Office was in a position, more or less, to set out the dominant ideological approach towards legal aid, although always in the knowledge that this would be an approach which would be largely accepted by the legal profession. Examples of this can be seen in the memorandum on civil legal aid prepared by Schuster before the commencement of the Finlay Committee, stating, for instance, that the poor should be dissuaded from litigating by limiting availability of legal aid in order to prevent them from using litigation as an

[12]The 'Poor Persons' Procedure' was used almost entirely to obtain divorces.

instrument of oppression; and that, although free legal advice was desirable, it too ought to be limited and very carefully controlled to prevent the poor adopting aggravated false grievances. In fact, the status of the memorandum itself gives an indication of the ability of the Office to dictate ideological prescriptions. It was drawn up by Schuster to set the position on civil legal aid right and to ensure that "scrappy and ill-informed" evidence could be properly assessed; and, although it was officially only intended for circulation to members of the Finlay Committee, it contained many statements which appeared elsewhere throughout the period, and did, of course, form the basis of the committee's final report.

The importance of ideological statements about legal aid from the Lord Chancellor's Office went beyond merely the limitations laid down by the Office itself; by its acceptance and approval of the demands and arguments of other parties the Office could also give the appearance of official truth to these ideological positions. Thus the Office could both confirm the validity of ideological statements about legal aid and determine the nature of future statements by requiring that they fit into this; examples of this can be seen in the official and unofficial practices of the Office. In the report of the Second Lawrence Committee the independent, controlling position of the Law Society was affirmed; it was agreed that there was a moral obligation on the legal profession to ensure the successful operation of the 'Poor Persons' Procedure' in return for their monopoly over the administration of legal services; and it was pointed out that there was evidence that the profession would be able adequately to discharge this duty. At the same time, however, the Lord Chancellor's Office staff were unofficially preparing a way

for the involvement of Government money or control if the private scheme were to fail: at first the possibility of control by a government department was used as a threat to the Law Society to coerce further voluntary efforts out of it, a threat which was readily accepted and used by the Law Society to coerce its members into volunteering; but as voluntary effort failed to keep the scheme going this threat became to be regarded as more of a real possibility, and by 1938 the idea of paying state money to solicitors conducting poor persons' cases had been more or less agreed upon within the Office and was being put to other parties in the form of proposals for reconstruction[13].

Although perhaps dominated by the official position represented in the statements emanating from the Lord Chancellor's Office, wider ideological debates about the nature of legal aid and the possibility of changes in it did take place during this period, albeit mainly amongst lawyers and other associated groups. Sometimes contradictions within the ideology surrounding legal aid would be exposed in these debates, perhaps forcing changes to be made in the scheme, perhaps merely pushing the ideological commitments towards legal aid a little further in one direction or another.

As early as 1914, Parry, a County Court judge, published a book on the subject of law and the poor (Parry, 1914) casting severe doubts upon the feasibility of the legal aid scheme. However it seems that

[13]The continuing political and ideological power of the legal profession can be seen here, however, in effectively securing the abandonment of the other possibility of the state control of the legal aid scheme; and when direct payment was introduced after the second war, control of the scheme remained in the hands of the Law Society with no other body in anything more than an advisory capacity.

his critical cynicism was a little too radical to achieve general ideological acceptance. The same is largely true of two important books published anonymously in the 1930's. The second, published by the Left Book Club ('Barrister', 1938) opened with the sentence,

> "There can be no true justice in a capitalist society"

but then went on to lay most of the blame for the lack of justice upon the limitations of the 'Poor Persons' Procedure', the activities of 'speculative solicitors', and the inexperience of magistrates. Although the other author ('Solicitor', 1932) claimed to be "a conservative in politics", he made similar criticisms of the legal aid scheme, and seems to have been similarly ignored by the other major protagonists involved in the production of legal aid.

Some published material did, however, come much nearer to expressing important trends and contradictions, and consequently providing for change in the perceived nature of legal aid. Harrington Edwards (1928), praised the work done by the profession and supported the voluntary effort; but argued that, by dealing only with divorce petitions and other High Court actions, the 'Poor Persons' Procedure' was, in fact, only meeting two and a quarter per cent of the needs of the lower classes for legal services[14]. Representatives from the Law Society replied that this was a gross misrepresentation of the operation of the scheme and that the author ought to pay more attention to the creditable recommendations of the Finlay Committee (Harrington Edwards, 1928, P.236), thus suggesting that although praise and minor

[14] This, he argued, was because the procedure was only available in the High Court; and the vast majority of cases concerning poor persons occurred in lower courts, for instance, over sixty-two per cent in the County Courts.

criticisms were in order, it would be wrong to suggest that the legal aid scheme was useless, and that it could be seen from an official source that this was not so.

Wentworth Pritchard (1935), in an address to the Law Society Annual Provincial Meeting, praised the work done by the 'Poor Man's Lawyer' centres, thus officially bringing them the ideological recognition which the Finlay Committee had recommended would be politically useful in 1928. Three years later, on the same occasion, Allen-Jones (1938) extended the discussion of 'Poor Man's Lawyer' centres and suggested that their work could be expanded by the setting up of advice-giving legal bureaux, perhaps even state financed, as in Sweden[15]. Further ideological support came in 1941 from an article written by the administrative officer in charge of running the legal aid scheme throughout the 1920's and 1930's who, although he was particularly well aware of short-comings in the operation of the 'Poor Persons' Procedure', which by this time was in a state of collapse, said that the facilities were greater than was ordinarily realised and that the scheme ensured that everyone without means could obtain justice (Hassard Short, 1941, P.27).

Some non-lawyers were involved in challenging and changing ideological attitudes towards legal aid. Of particular interest here is the work of Gurney Champion (1926), who emphasised the need to avoid "anarchy and revolution" or "loss of production" which a failure to provide legal aid could lead to, and suggested that mere advice was

[15]It is interesting to note that by 1938 the possibility of state money being provided for the legal aid scheme was no longer out of the question, as it had been earlier; in fact the Lord Chancellor's Office was seriously considering it as a solution to the problems experienced by the existing scheme.

sufficient to solve the problems of most people - the poor, he said, would be "relieved and happy at advice alone" (Gurney Champion, 1926, P.20). He also stressed the need to secure the involvement of social workers in legal aid schemes, an ideological position which acquired much support from elsewhere as the ambit of social work expanded and began to influence the ideology of welfare services. The links between ideological statements about the nature of legal aid, and the changing ideology of welfare services generally have already been mentioned; they were not just co-incidental, but rather were attempts by writers like Gurney Champion to raise questions about legal services and push further the barriers of ideological debate. Thus the Charity Organisation Society and the National Council for Social Services were occasionally in communication with the Lord Chancellor's Office, and, although aware of the weakness of their political position in a legal department, did try to demand a greater involvement in the legal aid scheme, particularly involvement in any facilities established for the giving of legal advice[16].

The National Council for Social Services, the London Council for Social Services, the Salvation Army, the Settlements[17] and the 'Poor Man's Lawyer' centres all gave evidence to the Finlay Committee, although they had not given evidence to either of the two Lawrence Committees or been involved in previous discussions of legal aid. They pointed out how much the lower classes were affected by increasing social legislation and how much legal advice was needed by those likely to be covered by these rules, and even recommended that state-

[16]This was one area, however, which Schuster ensured remained as an unofficial, voluntary activity of minor importance.

[17]Particularly Toynbee Hall.

run advice schemes involving social workers be set up. These suggestions were, of course, rejected more or less immediately by Schuster, but they did widen the scope of the debate about possible alternatives and sowed the seeds for issues which could be raised again at a later date. Consequently many more social work agencies were asked to give evidence to the Rushcliffe Committee on legal aid after the second war and were even able to secure the establishment of the Lord Chancellor's Advisory Committee on legal aid as part of the new legal aid scheme introduced in 1949, a permanent body upon which their voice could be heard in debates about legal aid[18].

Thus it can be seen that the trends in social service ideology towards legal rights; automatic entitlement; full-time and trained workers instead of philanthropy; and advice as well as assistance were issues which were raised within the ideological discussions of legal aid also; and, although they were not immediately acceptable to the dominant parties involved in the production of legal aid, they did provide for the possibility of future changes, at a political and economic level as well as within the ideology.

It was noted in the previous chapter that, apart from the High Court judges and registrars in the Probate, Divorce and Admiralty Division, the courts were not very much concerned with legal aid during this period. They did, however, have some political importance, since it was they over whom the Lord Chancellor's Office had official jurisdiction and from whom it gained much of its power; and there was

[18]As has been seen in the last few years, the Lord Chancellor's Advisory Committee can be a very important spokesman in discussions on legal aid ideology and can be a powerful force for changes in the scheme. In 1974 it suggested that legal aid should be available for representation in tribunal hearings.

a fairly close relationship between the major judges and registrars and the staff of the Lord Chancellor's Office. Thus, for instance, Schuster would sometimes seek the approval of the President of the Probate, Divorce and Admiralty Division before acting, as when they agreed in 1938 to put up a concerted, reasoned front in opposition to the Law Society's demands for wider divorce jurisdiction.

It was largely because of the ideological fears of the courts that divorce jurisdiction was initially so limited anyway: because the granting of a divorce was of such social significance, they argued that the procedure providing for it needed to be strictly controlled, which was possible only if divorces were carried out solely in London. Once this position had been abandoned, they argued that where the registrars had undergone a detailed training, and pointed out on several occasions that lax procedural practices were allowing collusive divorces to go through and thus creating a public scandal, undermining 'public confidence' in the law and in the institution of marriage. Thus they were continually demanding a tightening up of procedural safeguards and a ban on the further extension of jurisdiction, demands which the Lord Chancellor's Office, as officially responsible for the operation of the court system, was virtually forced to accept, although, as has been discussed, fears of the imminent collapse of the 'Poor Persons' Procedure' required the Office to put pressures on the Probate, Divorce and Admiralty Division to relax its proscriptions a little, from time to time.

It was clear that the Magistrates and County Court judges did not want the procedure in their courts slowed down and disrupted by the legal representation of poor litigants. They indicated to the Lord Chancellor's Office on several occasions and in evidence to the

Finlay Committee, that they did not think that legal aid was necessary in their courts, an ideological position which Schuster accepted immediately, and incorporated into his important memorandum on civil legal aid, thus clearly establishing it as the official ideological attitude. The Magistrates Association did suggest in their evidence to the Finlay Committee that there were a few exceptional cases where legal representation would be useful in helping to clarify the defence being relied upon by a defendent unable to afford a lawyer himself, and in the Poor Prisoners Defence Act of 1930 this request was put into operation by a change in the rules governing criminal legal aid, allowing it to be granted by magistrates for summary cases in "exceptional circumstances" where they felt it "desirable in the interests of justice", without the previously existing requirement that the defendent be asked to disclose his defence before a certificate could be granted.

Therefore, although not of a continuing, major importance, the courts were involved in determining the nature of legal aid, particularly through the political power they exercised by dictating overall limitations upon acceptable changes to the Lord Chancellor's Office; and also, as a result of this, through their ideological role in creating and restricting the 'need' or lack of 'need' for legal services.

Another theme which influenced the production of legal aid not by continually structuring it, as was the case, for example, with the economic and ideological power wielded by the legal profession, but by directly dictating demands upon it at a particular time, was the political power of the military during the second war. Shortly after war broke out, the War Office established a fear for the morale of the troops if divorce was not readily available; an acceptance

of the need for legal advice to keep the ranks happy[19]; and an agreement to change, and in fact considerably extend, the eligibility requirements for the 'Poor Persons' Procedure' in order to avoid the stigma of labelling the ranks as 'poor persons'. Furthermore the political power which they wielded, as the leaders of the fighting forces during war-time, and exercised through the Lord Chancellor's Office, was sufficient to procure new legal aid schemes to meet these ideological requirements within a matter of two years, bringing about changes in the availability of legal aid much more far-reaching than anything which had been achieved in that direction in the previous twenty-five years.

Although it was the Law Society who were officially responsible for the setting up and running of the Service Divorce Scheme, it was quite clear that it was a legal aid scheme restricted to servicemen and women, a fact which demonstrated the political, and ideological strength of the War Office, in being able to command the first full-time state legal aid scheme with automatic entitlement, a scheme which although it had been mentioned, threatened and perhaps even seriously considered had never actually been officially countenanced in the period up to the second war. Also it was the War Office, primarily through the Army, who put into operation the first official legal advice scheme to work in conjunction with the legal aid scheme. Schuster had been instrumental in deciding the format for this scheme and in drawing up official proposals for it, but it could hardly be seen merely as a product of the political initiative of the Lord Chancellor's Office; for instance, the Navy and the Air Force

[19] A 'need' which Gurney Champion had had little success in getting accepted fifteen years earlier.

initially operated entirely different schemes which they had drawn up, and were reluctant to accept uniformity throughout the Services, when requested to by the Office.

Therefore, although it might not appear to be a factor which would be much involved in the creation of legal aid, it can be seen that the political power of the military establishment was for a short, but important, period a major force in vastly restructuring legal aid and reconstructing its ideological boundaries.

So far discussion in this chapter has concentrated upon the major economic, political and ideological themes which have been shown to determine the nature of legal aid in this country during the 1920's, 1930's and early 1940's. Operating within the context of the social situation outlined at the beginning of the chapter it has been demonstrated how legal aid was a product of the interaction of these different factors emanating from within the position of power of different fractions, categories and strata of the ruling class. What has not been explored is the relationship of these demands and these powers to the position of the intended recipients of these charitable welfare services, the lower classes, particularly the poorer sections of the working class. Nor has it been questioned why, having established an acceptable format for legal aid largely determined by the more powerful of the dominant groups, it should have been necessary for these groups continually to accept changes, adaptations and even expansions of the scheme throughout this period.

One way to approach a discussion of this is to consider one other theme from within the interaction of the ruling groups concerned with legal aid, a theme which will lead to the addressing of these problems,

at least at a limited level of analysis. This theme is the political position of the administrators of the legal aid scheme, who up until 1926 were a small Government Department, the Poor Persons' Committee, and after that time were a group of employees in the Law Society[20]. Although apparently having little political or economic importance, Hassard Short and the other administrators were a constant source of pressure and embarrassment to those involved in the operation of the legal aid scheme and often provoked the necessity for reaction to the problems of the availability of legal aid.

Throughout the inter-war period there are notes in the Lord Chancellor's Office files from Hassard Short referring to the shortage of solicitors prepared to take poor persons' cases, to the backlog of applications awaiting certificates or conducting solicitors or to the possibility of the scheme finally collapsing. In mid 1922 he warned that the scheme might be paralysed by December; in 1923 he said that he feared its imminent collapse if something was not done; in 1929 he said that the cases awaiting solicitors in London were becoming congested[21]; in 1935 he said that there was a backlog in London again; in 1940 he reported that there were 1600 cases awaiting solicitors to conduct them and in 1942 noted that this number had increased to somewhere near 10,000. Other groups tended to brush over these predictions of doom and at times even flatly denied them, as the Law Society did in 1923; but eventually the predictions always

[20]In fact virtually the same people, who under the control of the Secretary of the Poor Persons' Committee, Hassard Short, moved over to the Law Society when control of the scheme was passed to them.

[21]At this time most of the divorce cases, i.e., most of the total number of cases, were still heard in London.

provoked a reaction and a change in the scheme to try and deal with them.

This was not simply because Hassard Short's reports were made from a position of power which commanded a response on the part of the other groups involved; but because these reports were effectively the form in which the unarticulated and unorganised reactions of the mass of recipients of the legal aid schemes was made known to, or rather ideologically presented to the ruling groups concerned with legal aid. As mentioned at the end of the previous chapter, the only direct reference to the interests of these lower classes in the official and unofficial correspondence dealing with legal aid was Lawrence's remark to Schuster in 1928 that the poor persons themselves "seemed quite contented with the rules as they stood", a remark made from a position of manifest ignorance.

Not surprisingly the lower classes were in no way directly involved in assessing the value of legal aid to them; determining a response based on this assessment; and communicating this to the relevant portion of the ruling class so that the legal aid scheme could be adapted to fit it. As was discussed in chapter two, the availability of legal aid was not a problem for them, and so they were not consciously concerned with seeking a solution to it; and at the same time those involved in creating legal aid were not concerned to seek the advice or opinions of the lower classes - partly because of a realisation that they would have nothing to say, partly perhaps because of a fear that anything they might say would expose the basis of the scheme and partly, of course, because the channels for communications did not exist.

However, any scheme which was designed to provide justice for the lower classes, even if this was only a promise on paper made within legal ideology, was destined to invoke some sort of reaction from them, albeit merely in the form of a tacit rejection of the limited and useless justice offered; and, not surprisingly, this is largely what did happen. Thus, for instance, in 1926 there were just over 3000 applications for legal justice through the 'Poor Persons' Procedure' from the millions of people eligible, an average of much below one case per qualified solicitor a year. Virtually all of the applications were for divorces, since having got legally married one could only reverse the procedure by court action with legal representation. Other forms of legal services purportedly provided by the profession were much less imperative: applications for Poor Persons' Certificates for actions to claim compensation, where trade unions or insurance companies may have been able to help, numbered only in tens, and apart from these there was virtually nothing.

There appeared throughout this period to be an almost total and explicit lack of interest on the part of the lower classes in the problems encountered by a legal system, which claimed to contain universally available services and yet effectively wanted to continue serving the powerful property interests which had given it its income and its security. And yet, in spite of this, their much restricted, heavily selected and severely means-tested demand for divorce was sufficient to provide a continuous series of crises in the solutions adopted to these problems by the administrators of the legal system. These crises forced a repeated rethinking of the political, ideological and economic bases of legal aid by those concerned with it, resulting in the move from a scheme based on an extremely paternalistic, private

philanthropy[22] to the official admission of the need for a scheme of direct state financing for all lawyers doing work for those who could not afford to pay, a scheme which eventually began to be realised in 1951, is still the basis of legal aid today and promises to be so for the foreseeable future.

[22]Which was ignored by the more successful solicitors who did not even want to dirty their hands this much.

CONCLUSION

As was stated in the Preface it was not the purpose of this study to contribute policy recommendations to an ongoing debate about how to solve social problems. Had this been the case then this conclusion would probably contain a concretisation of the problem, as defined, and a prescribed course of action designed to resolve it - with a reminder that the value of the suggestions could be proved in their implementation and operation. It has been shown, however, that suggestions such as this can only solve their problems in a very limited way, and can be seen to be inadequate not just in action, but by the redefining of the problem so as to permit another solution. It was demonstrated in Chapter Two that this kind of functionalism is theoretically incorrect and that the inconclusiveness of the studies carried out within it stem from its false assumptions that the societies in which it is applied are harmonious and have clearly defined problems which are capable of solution.

This study did not start from such assumptions and did not attempt to provide a solution to a problem. Rather it treated the formation of problems themselves as problematic and tried to identify for whom the problems existed and why they took the form they did, by looking at the practices and concerns of those in positions of power as definers. Certainly different formulations of the legal aid problem can all be seen to occur within the justifying role of legal ideology, a practice which concerns lawyers in particular; and lawyers are the main protagonists in debates about the extent of the availability of legal aid. Thus this study has explicitly concentrated upon the activities of lawyers in producing and changing

legal aid.

Disclaiming any concern with problem solving does not, however, remove political importance from this, or indeed any work. Nor is any spurious neutrality intended or achieved. By adopting a position outside of legal ideology and using a clear theoretical approach, which sought to identify and explain the production of social phenomena, it was argued that policy solutions to problems in legal aid are inappropriate to a situation in which the legal system is predominantly designed and used by only one part of society; and that, as lawyers benefit from this existing role, it would be misguided idealism to expect them to re-organise their concerns and make basic changes in this, if indeed they would be able to do this were they to try. This argument is not to be proved in practice - it is in itself a part of practice. As an intervention in an ideological debate, an attempt to try to direct that debate towards a fuller appreciation of the social situation with which it is concerned, its success can be assessed from the value of the analysis in clarifying its object. As stressed at the end of Chapter Two, although it is only a partial explanation situated within an explanatory framework which has not previously been used to examine legal ideology, the utility of this study lies in its ability to explain.

In the light of this it may be worth reviewing the major themes discussed and their importance in a reappraisal and understanding of legal aid. After an outline of the chronology of changes in aid; a 'common knowledge' such as employed by other writers on the topic, the study focussed on the production of legal aid in a particular period. This period was the 1920's, 1930's and early 1940's, and it is especially important because the basis of legal aid as it operates

today was formulated at this time, whilst other important social changes in analagous fields were taking place. By the early 1940's it had been accepted by all the major protagonists that a state-financed legal aid scheme, run by the Law Society, should be introduced after the war.

There has been no suggestion made that there is any single cause of the changes in legal aid, or indeed that causality operates in such a unilinear way. Certainly there has been no suggestion of the economic determinism from which some would-be Marxist studies suffer. Rather it has been contended that different practices, which can be categorised as economic, ideological and political, can be seen to have been relatively autonomous and through their interconnections to have produced social phenomena not entirely dependant on any one of them; ultimately the structure of these interconnections is one dominated by economic needs, and, where these needs produce antagonistic classes, by the antagonisms between these. Legal aid is produced by the interaction of the different practices of different groups, which themselves are dependent on basic conflicts; this production is explored in detail in the third and fourth chapters.

The different groups involved in the production of legal aid were, to a greater or lesser extent, dependent on the continued operation of the legal system, and thus were concerned to avoid any contradictions which might bring about its destruction. Legal aid is one of the vehicles used to overcome these contradictions. The dependence of the legal profession on the current operation of the legal system was obvious and the particular example of the large London solicitors was only one demonstration of the attitudes resulting from this. These firms would not even take poor persons' cases since these would

reflect badly on their other work and would use up time which could wisely be spent in other pursuits. The major official duty of the Lord Chancellor's Office was to ensure the continued successful operation of the legal system, and so their position was clear. The courts, being part of the legal system, could hardly but support their own existence, for example the Principal Registry of the Probate, Divorce and Admiralty Division of the High Court was very concerned about the proper form of divorce pleadings, and opposed to certain changes because of this. Although some writers in the inter-war period were critical of legal aid the majority were concerned about its success and stressed its good points. Perhaps less dependent upon the particular form of the legal system, these writers nevertheless derive their 'raison d'etre' from the operation of laws, about which they are the purveyors of knowledge.

Two other important protagonists were less directly dependant upon the continued existence of the legal system; the Treasury and the War Office. Both represented other aspects of government, which, in order to maintain their own position, had, at times, to rely upon the operation of the legal system. Having defined divorce as a problem of morale for the troops, the War Office needed the legal system to provide this, without at the same time classifying its lower ranks as paupers or shaking their faith in the law. At a time of economic crisis and when increasing demands were being made on state expenditure, the Treasury was very concerned to see the legal system operate as cheaply as possible and certainly without any major changes which would involve committing large amounts of money on a permanent basis - as the Government Actuary said in 1926, the employers were already protesting about payments for unemployment insurance, they would not

tolerate more state benefits.

The problems shared by these groups were very much those of the official operation of the legal system rather than the effects of this operation on the lower classes. In all the material encountered there was a noticeable paucity of references to the recipients of the legal aid scheme, in fact the only one which appeared in the Lord Chancellor's Office files, a reference by Lawrence in 1925, demonstrated a complacent ignorance of the disadvantages experienced by the lower classes in obtaining legal justice. In spite of this, however, it was the conflict between a legal system primarily beneficial to the ruling class and the unarticulated demands of the lower classes for some form of legal restitution (mainly divorce) which provided the structuring determinant for changes in legal aid. It was within this structuring determination that the practices of the various groups of the ruling class produced and changed legal aid, and the particular form it took at any one time can be seen to be the result of the interaction of the important aspects of these practices.

One clearly important factor was the political power of the Treasury; although the suggestion of a state financed legal aid scheme was unwelcome to other protagonists, it was the Treasury's emphatic refusal to commit any state funds to legal aid on a permanent basis which ensured that such a scheme was never seriously considered during the period of the 1920's, 1930's and early 1940's. Furthermore this political power was not wielded in any secretive way, the report of the Government Actuary clearly spelt out the prohibitions and the reasons for them. This is perhaps less true in the case of other factors which were in many ways more important in governing the context in which decisions about the changes in legal aid were made. Legal aid

was the product, in a large part, of the economic position of the legal profession; a position based firmly on the tenets of 'private practice' and opposed, therefore, to any suggestions of state aid, salaried lawyers or any kind of control by users. Not surprisingly the ideological practice of the profession was very much concerned to explain and justify this economic position stressing, for example, the need to have independent lawyers and a voluntary scheme. Particularly at the national level professional ideology openly supported a scheme based on private philanthropy in spite of the enormous difficulties faced throughout the period in maintaining this; and even secured the passing of control of the scheme to a professional body, the Law Society. The profession's self-justifying ideological practice was further supported by the powerful political position it enjoyed, especially as regards the legal system and legal aid. As mentioned in Chapter Three, the Law Society, the official representative body of the majority of the legal profession, was in constant communication with other influential bodies and its chief personnel occupied positions of personal esteem and favour. Both officially and unofficially the representatives of the legal profession always knew what was going on and were consulted about all issues.

The political power of the legal profession was closely linked to the important political role of the Lord Chancellor's Office, which like the economic position of the profession was an important factor not merely in the making of decisions, but also in governing the situation in which decisions were made. The activities of this office clearly demonstrate the power accorded to particular individuals within the structure of government, the permanent civil servants who were not politically answerable as were Government Ministers. The

The power exercised by Sir Claud Schuster over the production of legal aid during the 1920's, 1930's and 1940's was certainly greater than that exercised by any other individual, and, although it would be naive to suggest that the nature of legal aid was simply a function of his personal whim, his organising role was certainly strong enough to prevent any other interest being able to dictate changes. The political position of the Lord Chancellor's Office also made it the central agency for prescribing the ideological framework within which debates concerning legal aid were to be conducted, for example Schuster's memorandum about civil legal aid was the statement against which other false accounts were to be assessed. However, in spite of this piece of individual initiative the activities of Schuster and the Lord Chancellor's Office as a whole were not generally creative; and the role of the office largely exemplifies the way in which different interests and practices were brought together, changing each other and themselves, and emerging eventually as the official form of legal aid. Charged with the administration of the legal system the office's official role was one of mediation, and the way in which this mediation produced legal aid was a central feature of the operation of the legal system.

If legal aid were simply a product of the co-operation of different groups of the ruling class, however, then, once having decided upon the form which this was to take, there should be no reason for these groups to continually change and adapt it, as they did throughout this period. Of course aid was not simply a product of the coalescing of such interests - it was produced to justify ideologically the operation of the legal system, which was primarily concerned with property and ruling class interests, by giving the

appearance of making equal access to the legal system available to the lower classes. Since this could not really be done without fundamentally changing the legal system, and by implication also the society in which it operates, the supporters of legal aid were continually faced with an internal contradiction, which would be heightened if the lower classes actually tried to use the limited remedies available to them on anything approaching a regular basis. During this period the only use made of the available remedies was to obtain a very limited number of divorces; but this was sufficient to provoke a series of crises in the scheme, which forced those involved with its production to change and adapt it in order to continue the appearance that it was meeting the ideological goals of availability which they set for it. One could hardly say that this fluctuating and highly selected demand for divorces was a conscious part of class struggle; but it did reflect indirectly the demands of the lower classes, particularly the most numerous poorer working class, which were in conflict with the operation of the legal system, and so forced the production of justifications and legitimations of this operation in the form of legal aid.

This legitimating role of legal aid is still apparent today, and an awareness of it permits an understanding of the social nature of legal aid which cannot be provided by the social surveys of functionalist lawyers, which merely extend the ideological importance of this role and further its contradictions. The question to be faced is not whether or not legal aid should be made more widely available; but who is it who is asking that question and in whose interests are its answers formulated.

BIBLIOGRAPHY

Abel Smith and Stevens, 1967, "Lawyers and the Courts" (Heinemann)

Abel Smith, Zander and Brooke, 1973, "Legal Problems and the Citizen" (Heinemann)

Abrahams, 1950, American Bar Association Journal, "The English Legal Assistance Plan : A Description of its Machinery"

Advisory Committee, 1969, Report of the Lord Chancellor's Advisory Committee on the "Better Provision of Legal Aid and Advice" (H.M.S.O.)

Allen Jones, 1938, Law Times, Oct. 22, "Legal Aid for the Poor"

Althusser, 1969, "For Marx" (Penguin)

Althusser, 1971, "Lenin and Philosophy and Other Essays" (New Left Books)

Aubert, ed, 1969, "Sociology of Law" (Penguin)

Balbus, 1971, Monthly Review, "Ruling Elite Theory and Marxist Class Analysis"

'Barrister', 1938, "Justice in England" (Left Book Club)

Benenson, 1956, "The Future of Legal Aid" (Fabian Research Series)

Bennion, 1970, "Tangling with the Law" (Charles Knight)

Black, 1969, Village Voice, April 1, "Lawyers of the left : A crisis of identity"

Blumberg, 1967, Law & Society Review, 1 : 2, "The Practice of Law as a Confidence Game"

Borrie, 1970, New Law Journal, Nov., "Making Justice Available to All"

Borrie and Varcoe, 1970, New Law Journal, Oct., "Legal Aid in Criminal Proceedings - A Regional View"

Bradway, 1942, Journal of Comparative Legislation, 25, "Legal Aid Work in the United States"

Briar, 1966, California Law Review, 54, "Welfare from Below : Recipients View of the Public Welfare System"

Bridgwater, 1904, "The Poor Prisoners Defence Act 1903" (Butterworths)

Brooke, 1966, New Society, March, "Why Not More Legal Help?"

Brooke, 1970, Modern Law Review, 33, "Report of the Committee on Legal Advice and Assistance"

Brooke, 1972, New Law Journal, July, "Information and advice Agencies"

Brooke, 1973, New Law Journal, March, "The Demand for Legal Services"

Brownell, 1951, "Legal Aid in the United States" (Greenwood)

Cahn and Cahn, 1964, Yale Law Journal, 73, "The War on Poverty : A Civilian Perspective"

Cahn and Cahn, 1966, Notre Dame Lawyer, 41, "What Price Justice : The Civilian Perspective Revisited"

Cahn and Cahn, 1968, Harvard Law Review, 81, "The New Sovereign Immunity"

Caplovitz, 1967, "The Poor Pay More" (Free Press, Macmillan)

Carlin and Howard, 1965, U.C.L.A. Law Review, 12:2, "Legal Representation and Class Justice"

Carlin, Howard and Messinger, 1967, "Civil Justice and the Poor" (Russell Sage)

Carr-Saunders and Wilson, 1933, "The Professions" (Clarendon Press)

Chambliss and Seidman, 1971, "Law, Order and Power" (Addison Wesley)

Chester, 1972, Sociology, May, "Divorce and Legal Aid : A False Hypothesis"

Cohn, 1943, Law Quarterly Review, July, "Legal Aid for the Poor"

Conservative Political Centre, 1968, "Rough Justice" (C.P.C.)

Consumer Council, 1970, "Justice out of Reach" (H.M.S.O.)

Coote, 1973, Guardian, Jan. 29, "Bringing the Beast to the People"

Corcoran, 1973, Law Teacher, 7:3, "Legal Aid - A Developing Need"

Dahrendorf, 1958, American Journal of Sociology, "Out of Utopia"

Dworkin, 1965, Modern Law Review, 28, "The Progress and Future of Legal Aid in Civil Litigation"

Egerton, 1945A, Law Quarterly Review, 61, "Historical Aspects of Legal Aid"

Egerton, 1945B, "Legal Aid" (Kegan Paul)

Elliott, 1972, "The Sociology of the Professions" (Macmillan)

Elliott, 1973, Sociological Review, 21:2, "Professional Ideology and Social Situation"

Finlay Committee, 1928, Final Report on "Legal Aid for the Poor" (H.M.S.O.)

Fogelson and Freeman, 1968, "Social Casework and Legal Knowledge" in Wheeler et al (ed.) "Controlling Delinquents" (John Wiley)

Foster, 1973, Modern Law Review, 36, "Location of Solicitors"

Freeman, 1975, "The Legal Structure" (Longman)

Friedmann, 1972, "Law in a Changing Society" (Penguin)

Friedmann and Macaulay, 1969, "Law and the Behavioural Sciences" (Bobbs Merrill)

Garfinkel, 1956, American Journal of Sociology, 61, "Conditions for Successful Degradation Ceremonies"

Gibson, 1970, Family Law, "The Effect of Legal Aid on Divorce in England and Wales"

Gilbert, 1970, "British Social Policy 1914-1939" (Batsford)

Gillers, 1971, "Getting Justice" (New York)

Goodman and Rabinowitz, 196, Yale Law Journal, 64, "Lawyer Opinion on Legal Education : A Sociological Analysis"

Gouldner, 1973A, "Anti-minotaur : The myth of a value-free sociology", in Gouldner, "For Sociology" (Penguin, Allen Lane)

Gouldner, 1973B, "The sociologist as partisan : Sociology and the welfare state", in Gouldner, "For Sociology" (Penguin, Allen Lane)

Gurney Champion, 1926, "Justice and the Poor in England" (Routledge)

Haldane Society, 1940, "The Law and Reconstruction" (London)

Hall, 1974, "Deviance, Politics and the Media", in Rock and McIntosh (ed.), "Deviance and Social Control" (Tavistock)

Harrington Edwards, 1928, Law Times, Oct. 6, "The Poor and the Law"

Harris, 1969, Guild Practitioner, 28:4, "You don't have to love the Law to be a Lawyer"

Hassard Short, 1941, Journal of Comparative Legislation, 23, "Legal Aid for the Poor"

Hazard, 1965, Social Problems, Law and Society Supplement, "Reflections on four studies of the Legal Profession"

Hazelrigg, 1972, Social Forces, 50:4, "Class, Property and Authority"

Heber Smith, 1917, "Justice and the Poor" (Arno)

Heber Smith, 1949, American Bar Association Journal, "The English Legal Assistance Plan : Its significance for American Legal Institutions"

Hillyard, 1971, Law Society Gazette, Jan., "Legal Assistance Schemes and Local Law Societies"

Honore, 1970, "Social Justice" in Summers (ed.), "Essays in Legal Philosophy" (Blackwell)

Jackson, 1940, "Machinery of Justice in England" 1st Ed. (Cambridge University Press)

Jackson, 1967, "Machinery of Justice in England" 5th Ed. (Cambridge University Press)

Jackson, 1971, "Enforcing the Law"(Penguin)

Jacoby, 1940, Harvard Law Review, 56, "Legal Aid to the Poor"

Johnson, 1972, "Professions and Power", (Macmillan)

Johnstone and Hopson, 1967, "Lawyers and their work" (Bobbs Merrill)

Karpel, 1969, Village Voice, Jan. 12, "Defending the Poor : Lawyer as Hangman"

Katz, 1961, Social Casework, 42, "The Lawyer and the Caseworker : Some Observations"

Keeton, 1942, Law Quarterly Review, April, "The Problem of Law Reform after the War"

Kirchheimer, 1961, "Political Justice : the use of legal procedure for political ends" (Princetown University Press)

Kirk, 1972, Social Work, 17:2, "Clients as outsiders : theoretical approaches to deviance"

Koos, 1949, "The Family and the Law" (Survey of the Legal Profession)

Lachinsky, 1963, American Sociological Review, 28, "The Careers of Lawyers in Law Practice and Legal Institutions"

Lasswell, 1958, Western Reserve Law Review, March, "The Value Analysis of Legal Discourse"

Law Journal, 1888, September 8

Law Journal, 1912, January 27, "Legal Aid for the Poor"

Law Journal, 1913, November 8

Law Journal, 1913, December 13

Law Journal, 1914, April 25, "Legal Assistance for the Poor"

Law Journal, 1914, June 13, "The State and the Poor Litigant"

Law Society Gazette, 1932, February, No. XXIX

Law Society Gazette, 1946, P.128

Law Society Gazette, 1949, No. XLVI

Law Society Gazette, 1973, February 28

Law Society Gazette, 1974, April 15

League of Nations, 1927, "Legal Aid for the Poor" (Geneva)

Lefcourt, 1971, "Law Against the People" (Vintage Books)

Legal Action Group Bulletin, July 1972 to date

Legal Action Group, 1972, "Legal Advice Centres - an explosion?" (Legal Action Group)

Lewis M., 1972, Modern Law Review, "Litigants in Person"

Lewis O., 1967, "La Vida" Introduction (Panther)

Lowenstein and Waggoner, 1967, Harvard Law Review, Feb., "Neighborhood Law Offices : The New Wave in Legal Services for the Poor"

Lukes, 1974, "Power : A Radical View" (Macmillan)

Maguire, 1923, Harvard Law Review, "Poverty and Civil Litigation"

Mankoff, 1970, Social Problems, "Power in Advanced Capitalist Society"

Marx, 1970, "Capital" Vols. 1,2 and 3 (Lawrence and Wishart)

Marx, 1973, "Grundrisse" (Allen Lane)

Marx and Engels, 1970, "The German Ideology" (Lawrence and Wishart)

Matthews and Oulton, 1973, "Legal Aid and Advice" (Butterworths)

Mayhew and Reiss, 1969, American Sociological Review, 34, "The Social Organisation of Legal Contacts"

Meacher, 1972, "Legal Aid and Advice (Local Legal Centres) Bill" (H.M.S.O.)

Merricks, 1972, New Law Journal, Sept. 28, "Quebec's New Plan"

Merton, 1968, "Social Theory and Social Structure" (Free Press)

Morris, White and Lewis, 1973, "Social Needs and Legal Action" (Martin Robertson)

National Council for Civil Liberties, 1972, "Legal Advice and Assistance Bill 1972 - a critique" (unpublished)

New Law Journal, 1973, Feb. 15, "Legal Aid - Income Limits"

New Law Journal, 1974, May 2, "Legal Aid"

Nicholas, 1967, Studies on the Left, "Hegelion Choreography and the Marxist Dialectic : Proletariat and Middle Class in Marx"

Nicholas, 1968, New Left Review, 48, "The Unknown Marx"

North Kensington Neighbourhood Law Centre, 1972, "Annual Report"

Ollman, 1968, American Journal of Sociology, "Marx's use of class"

Parker, 1962, American Bar Association Journal, 48, "The Development of Legal Aid in England and Wales since 1949"

Parry, 1914, "The Law and the Poor" (Smith and Elder)

Paterson, 1968, "Legal Aid as a Social Service" (Cobden Trust - Butterworths)

Plant, 1970, "Moral and Social Theory in Casework" (Routledge and Kegan Paul)

Pollock, 1969, Law Society Gazette, March, "The Future of Legal Aid in England"

Pollock, 1970, Law Society Gazette, June, "Legal Aid as a Social Service - the Cobden Trust Report"

Pollock, 1973, Solicitors' Journal, March 9, "Legal Aid : The New Advice Scheme"

Polsky, 1967, Hustlers, Beats and Others (Penguin)

Poulantzas, 1969, New Left Review, 58, "The Problem of the Capitalist State"

Poulantzas, 1973, New Left Review, 78, "On Social Classes"

Prices and Incomes Board, 1968, Report on the "Remuneration of Solicitors" (H.M.S.O.)

Quinney, 1970, "The Social Reality of Crime" (Little Brown)

Quinney, 1972, Issues in Criminology, "The Ideology of Law"

Quinney, 1973, "Critique of Legal Order" (Little Brown)

Rainwater and Pittman, 1967, Social Problems, 14.4, "Ethical Problems in studying a politically sensitive and deviant community"

Reader, 1966, "Professional Men" (Weidenfeld and Nicholson)

Reichstein, 1965, Social Problems, 13.1, "Ambulance Chasing. A Case Study of Deviance and Control within the Legal Profession"

Rex, 1961, "Key Problems of Sociological Theory" (Routledge and Kegan Paul)

Rheinstein, ed., 1954, "Max Weber on Law In Economy and Society" (Harvard University Press)

Rippingale, 1973, "Public Information Services in Sheffield" (unpublished)

Roach and Roach, ed., 1972, "Poverty" (Penguin)

Rock, 1973, "Deviant Behaviour" (Hutchison)

Rueschemeyer, 1964, Canadian Review of Sociology and Anthropology, Feb., "Doctors and Lawyers : Some Comments on Professions"

Rueschemeyer, 1973, "Lawyers and their Society" (Harvard University Press)

Runciman, 1966, "Relative Deprivation and Social Justice" (Penguin)

Rushcliffe Committee, 1945, Report on "Legal Aid and Advice in England and Wales" (H.M.S.O.)

Sachs, 1951, "Legal Aid" (Eyre and Spottiswoode)

Samuels, 1965, New Law Journal, Sept., "Legal Aid and the Successful Unassisted Litigant"

Samuels, 1972A, Modern Law Review, 35, "The Legal Advice and Assistance Act 1972"

Samuels, 1972B, New Law Journal, Aug., "The Scheme and An Appraisal"

Samuels, 1973A, Solicitors' Journal, March, "Legal Aid, the Statutory Charge"

Samuels, 1973B, New Law Journal, March, "Costs in Legal Aid Cases"

Sanctuary, 1973, Law Society Gazette, Feb., "Advertising Legal Aid"

Sargant, 1967, New Law Journal, Oct., "Legal Aid in Criminal Appeals"

Schur, 1968, "Law and Society : A Sociological View" (Random House)

Schwartz and Skolnick, 1970, "Society and the Legal Order" (Basic Books)

Selznick, 1959, "The Sociology of Law" in Merton et al (ed.) "Sociology Today" (Basic Books)

Selznick, 1963, Vanderbilt Law Review, "Legal Institutions and Social Control"

Silver, 1969, Journal of Urban Law, 46, "The Imminent Failure of Legal Services"

Skelly Wright, 1969, New York Times, "The Courts Have Failed the Poor"

Smith, 1973, New Law Journal, Nov., "A National Legal Service"

Society of Labour Lawyers, 1968, "Justice for all" (Fabian Research Series)

Sociological Review Monograph, 1973, "Professionalisation and Social Change"

'Solicitor', 1932, "English Justice" (Routledge)

Solicitors' Journal, 1932, June 18, LXXVI.25

Solicitors' Journal, 1974, April 13

Solomon, 1972, "The New Left and the Welfare State" (unpublished)

Soni, 1958, Journal of Social Sciences, 1, "A Sociological Analysis of the Legal Profession"

Stedman Jones, 1971, "Outcast London" (Clarendon Press, Oxford)

Stone, 1964, "Legal Systems and Lawyers Reasoning" (Stevens)

Sudnow, 1965, Social Problems, 12, "Normal Crimes"

Suffrin and Bridges, 1971, New Law Journal, Sept., "Statutory Legal Advice in Birmingham"

Summers and Barth, 1970, "Law and Order in a Democratic Society" (Charles Merrill)

Taylor, Walton and Young, 1973, "The New Criminology" (Routledge and Kegan Paul)

Thomas and Mungham, 1973, Law Society Gazette, 70, "The Cardiff Duty Solicitor Scheme"

Turk, 1969, "Criminality and the Legal Order" (Rand McNally)

Vann, 1973, New Law Journal, Feb., "Legal Aid Act 1964 : Some Recent Developments"

Wald, 1965, "Law and Poverty" (U.S. Printing Office)

Walton and Gamble, 1972, "From Alienation to Surplus Value" (Sheed and Ward)

Wentworth Pritchard, 1935, Law Times, Oct., "Poor Man's Lawyers"

Whetton, 1973, "Solicitors as Professionals, Bureaucrats and Businessmen" Paper given to Third Socio-legal Group Conference at Manchester (unpublished)

Widgery Committee, 1966, Report on "Legal Aid in Criminal Proceedings" (H.M.S.O.)

Wills, 1959, Los Angeles Bar Association Bulletin, "The Public Image of the Lawyer : A Private Poll"

Wood, 1959, Social Problems, 7.1; "Professional Ethics among Criminal Lawyers"

Woodard, 1962, Yale Law Journal, 72, "Reality and Social Reform : the Transition from Laissez-faire to the Welfare State"

Woodroofe, 1962, "From Charity to Social Work" (Studies in Social History)

Wright Mills, 1943. American Journal of Sociology, Sept., "The Professional Ideology of Social Pathologists"

Wright Mills, 1959, "The Power Elite" (Oxford University Press)

Young, 1969, Alabama Law Review, 21, "Legal Aid in Scotland"

Zander, 1966, Modern Law Review, 29, Report on Committee on "Legal Aid in Criminal Proceedings"

Zander, 1968, "Lawyers and the Public Interest" (Weidenfeld)

Zander, 1969A, Northern Ireland Law Quarterly, 20.4, "The Legal Profession and the Poor"

Zander, 1969B, Criminal Law Review, Dec., "Unrepresented Defendants in the Criminal Courts"

Zander, 1972, New Law Journal, Nov., "Unrepresented Defendants in Magistrates Courts, 1972"

Zander, 1973A, American Bar Association Journal, April, "The English Legal Aid System at the Crossroads"

Zander, 1973B, "Cases and Materials on the English Legal System" (Weidenfeld and Nicholson)

Zander et al, 1970, "What's wrong with the law" (B.B.C. Publications)

Zander and Glasser, 1967, New Law Journal, July, "A Study in Representation"

Zander and Morris, 1973, Law Society Gazette, 70, "The Allocation of Criminal Aid in the Magistrates' Courts"