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THE PLACE OF LAW IN SOCIAL WORK EDUCATION: A COMMENTARY ON DEAN SCHOTTLAND'S ARTICLE

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I

IN assessing the kind of contribution legal and social work education—and professional activities—may make to each other, it is useful to reassess the meaning of the much abused terms "interprofessional cooperation," and "interprofessional conflict." Dean Schottland points out, quite appropriately, that during the first three decades of this century, many social workers had good cause for distress over the role played by courts "and even lawyers," with regard to such progressive social legislation as workmen's compensation, child labor and minimum wage legislation. The obvious and important (though easily forgotten) point should be added, however, that the conflict was not between the social work and legal "professions" as such. Surely it was true that some lawyers were equally distressed by the decisions Dean Schottland commented upon, that some of those lawyers had drafted the legislation in question, that other lawyers represented the losing side, that some judges vigorously dissented from the type of judicial decisions in question,[1] and that other courts (albeit a minority of them) spoke in at least as vigorous a manner as the social workers and applied constitutional concepts to the maxium advantage of potential social welfare beneficiaries.[2] The conflict over the social legislation to which Dean Schottland referred existed *within* the legal profession just as it existed within the whole of American society.

The same point ought to be made about the nature of the so-called "cooperation" between "law" and "social work" taking place today. A "hit theme throughout the country," Dean Schottland emphasizes. Yet, much of the relationship at issue is not "cooperation" at all. What has taken place, especially within the last three years, is increasing criticism and legal attack by some elements of the legal profession upon some rather long standing regulations and practices implemented—and, in important ways originated—by some social workers. (Most of the recent court actions cited by Dean Schottland, as well as other extremely significant actions,[3] illustrate this assertion.) Other social workers have played important roles in supporting such legal

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1. *See, e.g.*, Mr. Justice Holmes' well-known dissent in Lochner v. New York, 198 U.S. 45, 74 (1905).

2. *See, e.g.*, Sacramento Orphanage & Children's Home v. Chambers 25 Cal. App. 536, 144 P. 317 (Dist. Ct. App. 1914).

3. *See, e.g.*, Smith v. King, 277 F. Supp. 31 (N.D., Ala. 1967), *probable jurisdiction noted*, 88 S. Ct. 821 (1968), involving a "substitute father" or "man-in-the-house" issue in public welfare. As will be noted subsequently in the text, comparable eligibility rules were strongly supported and to some extent originated by early social work leaders. There are still importantly placed social workers, for example those who lead some of the state welfare departments, who are enamoured of such rules.

criticism.[4] The cooperation that has been developing in the very recent past has been between only certain elements of the legal and social work professions.

Insofar as professions which deal with human values—such as law and social work—are concerned, there is no such thing as cooperation between the professions on significant matters. To be sure, semantical difficulties may be relieved, mutual referral systems increased etc.[5] But on the many large and unresolved social issues of concern to both professions, it is cooperation between like-minded professionals (and not the professions) which is relevant. If we would strip away the vague jargon which we usually use in approaching such issues—and examine what happens within each of our professions with regard to major social concerns—we might agree that each profession is suffering (or benefiting) from a deep division over its values, over the contribution the profession has to make towards a democratic society, over the meaning of a democratic society. In each profession there are persons who, in their professional philosophy and concerns, relate more closely to many in the other professions then to some of their professional brothers. Insofar as we are willing to accept this "fact of life" (fact of professional life) to that extent—and not much further—will we be able to work out sensible and useful means of cooperation between lawyers and social workers.

II

"Memories died hard," Dr. Schottland said, and he reminded us to bear in mind certain judicial decisions so that we may appreciate the "jaundiced attitude" some social workers have toward the legal profession. Subject to the qualification argued above, his reminder is fair enough. However, so that we might better understand the cause of some of the legal attacks on welfare practices now taking place, and so that we might better understand at least one view of what role the law might play in social work curriculum, let me briefly trace a major anti-democratic aspect of much social work ideology and practice as it appeared historically and as it still appears today.

Briefly, and perhaps crudely put, the social work ideology to which I refer holds as follows: Those who have public or quasi-public power—at least when they are well-trained social workers—should use that power to determine the place, manner and habits of life for those who are helpless and dependent because of poverty or other misfortunes of circumstance. The theory has been and is that there are "scientific" ways, through the use of "social diagnosis" or whathaveyou, for determining what is in a powerless person's "best interests." This being the case, the fruits of public power—be they welfare grants, public

4. W. Bell, Aid to Dependent Children (1965) is illustrative of the excellent contributions made by many social workers for our national and humane welfare policy making.

5. A useful article illustrating the value of improved referral systems is Fogelson and Freeman, *Legal Knowledge and Casework With Delinquent Adolescents and Their Families*, in Controlling Delinquents (S. Wheeler, ed. 1966).

housing apartments or whathaveyou—should be used to bring about conformity with those interests.[6]

Such a "best interests" theory for the use of public power became a major force in social work thinking in America and in England at the beginning of this century. Among its progenitors were such outstanding English social workers as Octavia Hill, who opposed the right to vote for those who were medically needy on the ground that it was not in the best interests of the poor to remove such deterrents to "dependency."[7]

Mary Richmond gave "scientific" content to the theory I describe in her classic text, *Social Diagnosis*,[8] which for many years served as the social caseworker's "bible." Two of the truly outstanding social workers in America, Edith Abbott and Sophonisba Breckinredge, gave clear expression to the coercive aspects of social work ideology in their arguments that mother's pensions should be given only to those mothers who are "worthy" and conform to moral conditions promulgated by program administrators.[9] Indeed, in a review of social work literature between 1911 and 1935, only one dissenting opinion was found to their view that financial aid for needy children should be conditioned upon the moral behavior of their parents.[10] (It was this latter social work view which gave rise to our current "substitute-father" rules, now under court attack).

The ideology I refer to has been responsible for the denial of welfare *aid* to many thousands of citizens newly arriving in New York from other states but until two years ago, not on the ground of the typical public assistance residence rule—but on the ground that it was not in the "best interests" or "socially valid" for these newcomers to live in New York.[11] The ideology in issue has been used to justify the seizure of children by welfare departments without court adjudication and it has been used to justify the imposition of psychiatric and "rehabilitative" services without the consent of the public assistance recipients upon whom such "services" have been imposed. It has also been responsible for the violation by welfare officials of statutorily imposed duties to keep recipient caserecords confidential in instances where prison parole officers seek information (relevant to a decision to recommend parole for an incarcerated man), where public housing authority agents seek information (which may be used to evict a family on the ground that its members are

6. Of course, here too there are those who share such a philosophy within the legal profession. *See, e.g.*, the lower court's opinion on why the presence of two or more illegitimate children in one family constitutes—without more—legal neglect, Matter of Cager, No. 353 (Md. Ct. App. 1967).

7. *See* Hill, *Memorandum*, in Report of the Royal Commission on the Poor Laws 678 (1909).

8. M. Richmond, Social Diagnosis (1917).

9. *See* G. Abbott & L. Breckinridge, The Administration of the Aid-To-Mother's Law in Illinois (1921).

10. W. Bell, *supra* note 4, at 29.

11. *See* Sparer, *The New Public Law*, in The Extension of Legal Services to the Poor 26, 28 (1964).

"undesirable"), and where other "social agencies"—public and private—seek information about their "clients" without bothering to obtain their consent.

A recent, somewhat astonishing—yet I fear not atypical—application of coercive "best interest" ideology in social work occurred recently in Texas. A young mother of an illegitimate child applied for AFDC aid. She was told by the local welfare agency that she must make a "personal effort" to bring the father to the welfare department. The mother explained that this was quite difficult for her, though she willingly supplied the father's address to the agency. Her story was that the father, who had been courting her, terminated the relationship with her after the pregnancy occurred two years prior to the AFDC application. The father subsequently married another woman. The mother said that she felt unable to visit this man and hold a rational conversation with him. The welfare agency stated that a state regulation required that her application be rejected unless she personally called upon the father. When a legal aid lawyer wrote to the state welfare department, asking for an explanation of the regulation, the reply quoted section 2642.60 of the Texas Public Welfare Manual, which requires a mother of an illegitimate child to make such "an effort" and added, "there are many sound reasons behind this policy." What were the reasons? I quote the four reasons offered:[12]

1. The involvement of the client in her own application is a well known and well accepted social work principle. The application process is regarded as a cooperative worker-client effort. It is in this process that the client-worker relationship is built and such a relationship is regarded by most workers, therapists, etc. as the mode of bringing about change within the client.
2. Since the direction in AFDC is toward self-help, the requirement of having the mother contact the father is a step in this direction. If, through her efforts, child support can be obtained it is something in which she can take pride—that is, she has helped herself and has not been entirely dependent upon others for help.
3. Since the mother knows the father, her contact with him would have the advantage of this contact being more meaningful to him than a contact with a stranger in the form of a caseworker.
4. As you know in the case of illegitimate children, the father is under no legal obligation to support. If child support is brought about it would be with casework effort. It is believed that the mother's help is needed to help us get in touch with him to help bring about this needed support.

And the letter went on to add:

> I do not see that the man's being married per se would have any effect on the policy. Many of our applicants telephoned absent fathers on his job to advise him of our desire to speak to him.

When I read the letter from the Texas welfare official to the casework

12. A copy of the text of the Texas welfare department's letter is in the writer's files.

section of the faculty of a leading social work school, its members were outraged. They urged that such thinking represented very bad social work analysis indeed. So too, however, do those thoughts of Octavia Hill, Mary Richmond, Edith Abbott, Sophonisha Breckinredge and others to which I earlier referred. The error lies not simply in the particular result (denial of AFDC aid to the mother described above; the various "substitute father" rules; invasions of confidentiality; eligibility for public assistance made dependent upon "social validity" of a new residence). Rather, I would argue, the error is found in the very notion that public officials—be they social workers or other persons—may use public assistance or other need programs to compel changes in living patterns and standards of personal behavior. Once that notion is accepted (and many social workers—and lawyers—do accept it), the arbitrary results referred to above become as inevitable as taxes and death.

A great many more examples of "best interest" practices on the part of social workers could be cited (including some which are deceptively attractive). The point, however, should be clear. Under the guise of "social work," a variety of coercive practices have developed which tend to and do result in a loss of self-determination and full citizenship for those impoverished citizens who are dependent upon public aid. Since such "social work" practices are based upon governmental power, they necessarily involve law as well as social work—and issues of "good" law or "bad" law, just as they involve issues of "good" social work or "bad" social work. It is for this reason that some lawyers are beginning to involve themselves in legal attacks on some social work practices.

III

Obviously members of both professions who are concerned with democratic values, have a lot of relevant thinking and fruitful collaboration to engage in. This collaboration ought to unfold upon many different levels.

There is, for example, an impelling need for exploration by members of both professions, with others, of such issues of legal and social policy as: Should we separate programs of social treatment and rehabilitation from programs for material need? If so (as I think), how can we best go about it? Parenthetically, it should be added, the current congressional trend seems to be that of merging such programs more so than ever before.[13]

Serious research on a wide number of pressing social and legal issues has been conspicuously absent. For example, we now have a national legislative policy aimed at coercing work by mothers of young children receiving AFDC. This newly adopted policy reverses that policy adopted in 1935. It is time we found out about the effects of coerced work on mothers and their children.[14]

13. *See, e.g.*, Pub. Law 90-248, 81 Stat. 821 (1968) (the 1967 amendments to the Social Security Act).

14. A current federal case involving this issue is Anderson v. Schaeffer, Civil No. 10443 (N.D. Ga. 1967).

Even considering my negative remarks on certain aspects of social work ideology—and those of Dean Schottland on past judicial trends—there have been many in the history of both the legal and social work professions who have been concerned with justice for the poor. The task of building adequate institutions for justice ought not to be left to lawyers alone. The legal profession alone cannot even supply the number and kind of advocates who are needed to represent poor persons. Lay advocacy, including social work advocacy, might be developed on a large scale for a wide variety of matters. Such lay advocacy would not be in place of lawyers' advocacy, for many of the matters needing advocacy today are left totally untended.[15] At the least, interested members of both professions ought to start the process of serious exploration and experimentation.[16]

There are many within our two professions—and elsewhere—who are committed to making our beneficial social welfare laws work as they were intended, not as they actually do, and who are committed to examining and changing our more oppressive laws. The need for interaction, joint action and research among these social work and legal professionals is overwhelming. It is in this context, that I would like to turn to Dean Schottland's proposal concerning a course on law and social work in the social work schools.

IV

My own notion of a one course version of law and social work, with which I experimented for two years at Columbia's School of Social Work, is somewhat different from Dean Schottland's. The course did not aim at covering many of the items subsumed in Dean Schottland's thirteen areas. Rather, I selected those areas where social workers have exercised public or quasi-public power—such as welfare administration, educational suspension proceedings, public housing review boards, juvenile courts, child welfare and custody agencies—and aimed at sensitizing the students to the kind of issues regarding statutory and constitutional rights which exist in those areas. The course was concerned with examining the relevance of due process and equal protection concepts, among other things, to the dignity and self-determination of the citizens who were the subjects of that public power. It attempted to trace the deep conflict over whether and how such public power should be imposed on citizens by administrative boards and courts. My own presentations were frankly partisan—however much I encouraged disagreement. I sought to suggest why there was reason to believe we are at the beginning of a judicial revolution in social welfare, how social workers might assist in that "revolution," and what the relevance of such judicial change might be to social workers.

15. *See* Sparer, Thorkelson & Weiss, *The Lay Advocate*, 43 Detroit L. J. 493 (1966).

16. One of the very few experimentals dealing with lay advocacy has been successfully made by the Dixwell Legal Rights Ass'n in New Haven, Conn. Welfare rights organizations throughout the country also engage in lay advocacy on a daily basis.

There was, by the way, no antagonism on the part of the social work students. The course was regularly oversubscribed. The students were enthusiastic—in certain ways, too much so. The students were also important sources of information to me. For term paper assignments, they took the issues we had discussed in class and analyzed the operations of the (field work) agencies to which they had been assigned by the school: The data which they produced, still sitting idly in my files, constitutes in my opinion an enormously rich mine of information on the day to day problems of legal rights and protections in a welfare society.

Nevertheless, this Columbia course barely scratched the surface of what ought to be done with law in the social work schools. While I agree with Dean Schottland that school curriculum is already overcrowded, and one cannot keep adding course after course, there is an alternative to the new course versus many new courses argument. Such an alternative would keep a single course for the purpose of focus, and introduce "legal" issues more expansively by introducing relevant material and teaching throughout the whole of the *established* curriculum. There is little in the casework and community organization areas to which such an approach would not be relevant.

For example, Columbia offers a course entitled "Casework with psychotic and borderline clients." I have some difficulty understanding how caseworkers could be granted a masters degree with the intent of specializing in the area indicated by this course and its related courses, without an extensive examination of such matters as: The standards, and the "legal" issues they pose, for mental commitment; the rights of persons subjected to the commitment process; the relationship between medical authority to impose "treatment" and the known efficacy of such treatment; the "rights" of patients to be free from experimentation without consent; the meaning of consent in such areas; the "right" of patients to know what is being done to them; "confidentiality" restrictions between the doctor, the patient, the medical caseworker and client in the mental hospital; the policy disputes regarding patient role in decision making and its implications for the legal authority of the mental hospital on a variety of matters. Such issues are not being examined today. They are fundamental to good casework. They cannot be handled adequately in a general legal survey course. They belong directly within courses on psychiatric casework.

Of course, it is true that any concerned social work school, adopting the kind of approach suggested above, will have difficulty (at first) obtaining adequate materials and teachers. It is more than unlikely, however, that such materials and teachers will ever appear until a demand is made for them. Those many social workers and lawyers who share a common concern for the dignity and social welfare of man have begun a limited amount of cooperation—and have introduced a certain amount of appropriate initial conflict with others. This limited initial experience will not flower until the schools take a far more ambi-

tious approach to the mutual relevance of law and social work than any hitherto attempted.

V

My principal regret with these articles is their primary concern with the need for "law" in the social work schools. At least as important, perhaps more so if my lawyer prejudices are valid, is the need to examine the relevance of social work—social policy matters in the law schools. The latter issue, unfortunately, has not yet reached even the level of serious discussion.