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## Poor People's Lawyers in Transition

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POOR PEOPLE'S LAWYERS IN TRANSITION. By *Jack Katz*. New Brunswick, N.J.: Rutgers University Press. 1982. Pp. xi, 273. \$25.

Cutbacks in federal aid for legal services for the poor as well as proposed changes in the ABA Code of Professional Responsibility have prompted much discussion recently about the responsibility of the legal profession in meeting the needs of poor clients.<sup>1</sup> Jack Katz in *Poor People's Lawyers in Transition* does not attempt to answer that knotty question directly; his focus is much more concrete. He presents us with a case study of the actual experience of poor people's lawyers throughout the political and economic changes of the past hundred years, and provides a valuable insight into the frustrations and forces that have given shape to the present character of "legal assistance" in the modern welfare state.

Katz's case study of poor people's lawyers in Chicago reveals that the advocacy of poor people's claims is shaped by the individual lawyer's perception of himself as a professional rather than by changing societal notions of "equal justice." To be sure, the surrounding political, social and economic conditions have affected the nature of legal assistance over the years, but the effects, such as changes in the type of individual who typically enters the practice of poverty law and thus in the style of advocating poor people's claims, have been indirect.

Nevertheless, Katz's study confirms that the poor themselves probably have the least influence of all in determining how the law will serve their interests, and in determining what those interests are. The poor are "recipients" of equal justice, the extent and quality of which is dictated by forces beyond their control. The poor thus remain powerless — dependent upon the prevailing attitudes of "professionals" at all levels of the welfare state, as well as the contraction and expansion of an economy which rarely has use for them.<sup>2</sup>

Katz identifies three major stages in the history of legal assistance in Chicago. First, the reform movements of the Progressive Era, supported by elite members of Chicago society,<sup>3</sup> sought to enhance the power of the "working poor" in their dealings with the powerful propertied class. Poor clients were often unwilling "creditors" — workers who, because of their lack of market power, could not collect wages and compensation for injuries from powerful capitalists. Accordingly, proponents of legal assistance sought to reform this class structure and thus alleviate the oppression of the powerless in the brutal market. These reform efforts, primarily geared toward passage of reform legislation,<sup>4</sup> succeeded with the backing of elite

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1. See, e.g., Ferren, *The Legal Profession's Responsibility to the Public*, 53 OKLA. B.J. 514 (1982); Ehrlich, *Legal Services for Poor People*, 30 CATH. U. L. REV. 483 (1981).

2. For a good overview of the interdependence of the welfare state and the modern capitalist economy, see F. PIVEN & R. CLOWARD, *REGULATING THE POOR* (1971).

3. Among the groups supporting reform efforts were the Chicago Woman's Club, the Ethical Cultural Society of Chicago, the Chicago Association of Commerce, and the *Chicago Tribune*. Pp. 35-40.

4. Legislation was primarily aimed at stopping conspiratorial arrangements between

members of the community. With the passage of these new laws,<sup>5</sup> the needs of the working poor were largely met and their need for legal assistance thereby decreased (pp. 35-40).

With the success of the Progressive Era movements, the clientele of poor people's lawyers shifted from the working poor to the nonworking poor and the emphasis of legal assistance correspondingly shifted from "social reform" to "social work." This second historical phase, which lasted from the 1920's to the advent of Great Society programs of the 1960's, was dominated by "legal aid" organizations. These organizations were funded by charitable contributions and associated with institutions whose primary mission was reform of the moral character of the poor rather than reform of the law (pp. 44-45).

The major influence on the nature of legal assistance in this period was the prevailing attitude of Legal Aid lawyers toward their professional role. Here Katz's case-study approach yields its greatest rewards. He explores at great length what he describes as the "ethic of reasonableness" among Legal Aid lawyers, by which they maintained their professional self-esteem while practicing among the lowest strata of the legal profession (p. 51). Their cases often involved conflicts in which all the parties were poor. Adversaries were typically collection agencies, poor landlords, or spouses, all with little knowledge of the law and unable to afford quality legal counsel. To overcome the frustrations of working in such surroundings, Katz finds, Legal Aid lawyers maintained their self esteem by adhering to inordinately high ethical standards and exercising restraint and discretion, which won the respect of judges and other professional peers in the local social environment. But, Katz contends, this culture of "reasonableness" probably meant that legal aid clients were not getting the best possible advocacy as compared to some paying clients whose lawyers would use all the tactics at their disposal to win for their clients (pp. 43, 51-64).

This cautious approach may have stemmed from the fact that Legal Aid lawyers were disproportionately minority members (women, blacks, Jews, Catholics, etc.) (p. 48) from so-called "local" law schools (p. 54), and therefore worked especially hard for the respect of their professional peers. They did not see their work as an exercise of altruism, but rather viewed it as a "good job" (p. 52), through which they could advance their professional careers.

With the social movements of the sixties came the latest shift in the focus of legal assistance: away from individualized service, and back to reform of laws that affect the poor as a class. Again this shift was primarily due to an increasing involvement of elites in the problems of the poor. Elites increasingly viewed the persistence of poverty as the result of structural conditions that kept the poor at a permanent disadvantage. President Johnson's "War on Poverty" spoke in broad terms of "eliminating" poverty, but failed to set forth any practical solutions.<sup>6</sup> Nonetheless, the stirring rhetoric sparked interest in the problems of the poor among a new

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judges, constables, and collection agencies, and at curbing sharp lending practices of employers. Pp. 36-37.

5. The rise of unionism also enhanced the bargaining power of many Chicago workers.

6. Arguably, Johnson's antipoverty program was no more than a classic liberal compro-

breed of legal assistance lawyer (p. 71) — entrepreneurial, WASP, from top “national” law schools, many with experience in large corporate law firms, and thus well-acquainted with the procedural tactics of “legal realist” advocacy. The government began funding “legal services” programs with the express intent of attracting the best and brightest lawyers to help combat the problem of poverty (p. 68).

Yet it was still not clear exactly what role they would play. Emphasis early on was put on neighborhood offices, community contact, and community participation, with the apparent assumption that lawyers would work with community groups to help identify and achieve their goals (p. 69). But this ideal was short-lived; Legal Services lawyers increasingly focused much of their attention and energy on litigation, especially class action suits, which required little community involvement, but significant legal expertise (p. 107).

Katz argues that this trend toward complex litigation primarily resulted from Legal Services lawyers’ efforts to make their work more interesting and challenging. Even the best-intentioned lawyers had considerable difficulty in translating broad community desires into definable legal issues. Meanwhile, the neighborhood offices were still receiving the same type of day-to-day cases from poor clients, but increasing emphasis was put on finding especially “interesting” cases or looking for patterns of complaints which could lead to a class action. Thus, while Legal Services lawyers confronted the same frustrations experienced earlier by their Legal Aid counterparts, their methods of dealing with that frustration were wholly different: The Legal Aid attorney strove for “reasonableness” to earn respect in the local social environment; the Legal Services lawyer turned that frustration into aggressive rage, channelled into the pursuit of complex, controversial litigation (pp. 113-19).

In the final chapter of the book Katz observes that “[t]he central thrust [of Legal Services reform litigation] appears to be to transfer the distinctive, segregating treatment of the poor out of the irrational workings of the private sector and into the routines of public bureaucracies” (p. 180). The poor people’s lawyer, then, far from becoming a voice for the poor, has instead become an integral participant in the maintenance of the modern welfare state: he ensures that regulations are enforced, that benefit programs do not exclude anyone irrationally, and that the laws are administered properly. In short, he acts as a “check,” fine tuning the ongoing operation of the welfare state, but in no way preventing it from withdrawing its support of the poor.

Lawyers cannot eradicate gross economic inequality. They can, however, ensure that the problems associated with inequality are not exacerbated by a lack of effective access to the legal system. Unfortunately, Katz fails to suggest how the needs of the poor might better be identified and served by the legal system. His book nevertheless makes a worthwhile contribution. When speaking of high ideals of social justice, it is all too easy to gloss over the difficulty of finding effective means to realize those ideals. Katz presents a long hard look at what poor people’s lawyers do, what

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mise, its aim being to pacify the poor rather than improve their condition. P. 91. See also F. PIVEN & R. CLOWARD, *supra* note 2, at 248-84.

motivates them, and how they deal with the frustrations of their job. For those striving to develop practical means of realizing the goal of equal justice for all, this study provides valuable information about one crucial element of that problem: the lawyers themselves.<sup>7</sup>

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7. Of related interest: J. HANDLER, E. HOLLINGSWORTH & H. EHRLANGER, *LAWYERS AND THE PURSUIT OF LEGAL RIGHTS* (1978); E. JOHNSON, *JUSTICE & REFORM: THE FORMATIVE YEARS OF THE OEO LEGAL SERVICES PROGRAM* (1974); Bellow, *Legal Aid in the United States*, 14 *CLEARINGHOUSE REV.* 337 (1980); Erlanger, *Lawyers and Neighborhood Legal Services: Social Background and the Impetus for Reform*, 12 *LAW & SOC. REV.* 253 (1978); Hazard, *Social Justice Through Civil Justice*, 36 *U. CHI. L. REV.* 699 (1969).