Recent Trends in the Organization of Legal Services

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RECENT TRENDS IN THE ORGANIZATION OF LEGAL SERVICES

FREDERICK H. ZEMANS*

I. INTRODUCTION

This paper outlines the significant developments in the provision of legal services to low-income persons that have taken place since the First Congress on Civil Procedures, held in Ghent, Belgium, in August of 1977. Although only six years have passed, there have been numerous developments in various parts of the world with respect to legal services, as the legal profession the judiciary and governments have grappled with civil and criminal procedures in their attempts to make them more accessible to the poor, the unemployed and other groups which have traditionally been excluded from the legal system. This paper carries forward the analysis of Professor Vittorio Denti which was published with the Ghent national reports on this topic in Perspectives on Legal Aid — A Comparative Survey, (1979),¹ and relies heavily on the data generated by the

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My sincere thanks to the national reporters for their excellent research papers on this topic: Peter Böhm, Austria; Christian Panier, Belgium; J.J. Calmon de Passos, Brazil; Mary Jane Mossman, Canada; Fernando Umaña Pavolini, Colombia; Luis Fernando Solano Carrera, Costa Rica; Martin Partington, England; Kevat Nousianen, Finland; Paul Laroche de Roussane, France; Walter Lindacher, Germany (Fed. Rep.); Constantin Polyzogopoulos, Greece; Gautama Fonseca, Honduras; K.B. Agrawal, India; David Kretzmer, Israel; Vincenzo Varano, Italy; Takeyoshi Uchida, Japan; Kelebone A. Maope, Lesotho; Santiago Oñate, Mexico; Freek Bruinsma, Netherlands; Mel Smith, New Zealand; Alberto Bustamante, Peru; Tadeusz Erecinski, Poland; Felicia Kentidge, South Africa; Ulf Drugge, Sweden; Carrie J. Menkel-Meadow, United States of America; Adolfo Gelsi Bidart, Uruguay.

I wish also to recognize two papers that were also specifically prepared for this study: "Descriptions Towards Typologies and Analysis of Legal Aid Trends in Latin America" by Fernando Rojas, served as the basis for much of the Latin American section of this paper, and Dr. Jeremy Cooper's "Preserving Justice for the Poor: Can Legal Services Survive a Recession?", provided useful analysis and information concerning legal services in the United States, the Netherlands, and Great Britain. I also wish to express my appreciation for the research assistance I received at various stages of this study from Steven Barrett, Peter Bartlett and James O'Reilly.

26 responses to a questionnaire designed by the writer\(^2\) which addressed the issues of changes and developments since 1977.

As scholars we are both intrigued by the development of differing models of legal services within particular nations or regions, and also challenged to develop international models of comparative analyses and typologies which consider common factors in procedural developments. Within the board parameters that are necessitated when one is dealing with a world overview of legal services, I shall focus on these issues. I shall also attempt to give a sense of the nature and state of legal delivery systems in the contemporary world with a special emphasis on new and innovative developments.

A number of national reports suggest that the commitment to social justice and social reform that gave birth to the first wave of legal services in the 1960s is being eroded by inaction and, in some instances, outright hostility on the part of governments in the early 1980s. As well as outlining the developments in legal services over the past five years, this paper will also examine the impact of political, economic and structural factors that have influenced these developments during the past several decades. Analysis of data received suggests that currently, the provision of legal services to low-income and underprivileged citizens is not based on the recognition that there exists in the sophisticated legal systems of the latter part of the twentieth century an inherent right of access. Rather, despite the gradual acceptance by many nations that reform-oriented social programmes should include legal assistance, we see in nation after nation limitations being placed on the funding of legal services and restrictions being imposed on the types of cases for which representation will be provided. In some instances, attempts have been made by governments to dismantle schemes which previous governments or regimes had introduced as aspects of state-supported welfare schemes. The issue of the right to legal services and models that will address that right is of primary concern to the writer, as it was to his respondents in this international survey.

Implicitly or explicitly, there has been a single underlying justification for intervention in the legal marketplace, whether it be in contemporary North America, or earlier periods in Europe; it is the undemocratic nature of the legal system. The twentieth century has seen the recognition of the reality that large segments of the popula-

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\(^{2}\) A copy of the questionnaire is included as Appendix One to this paper.

tion of all nations are effectively denied entry to or use of the legal system. It is the recognition of the exclusive nature of the legal system that has created the demand for, and the slow evolution of, a plurality of legal services and state supported delivery systems. It is this "democratization" of the legal system that this writer develops as the main theme in his discussion of developments of legal service schemes. To understand the present situation, it is important to consider the manner in which the contemporary legal system came to be exclusive and undemocratic and to examine the question of whether legal services can possibly ameliorate such fundamental features of our legal culture.

Lawrence Friedman has traced the development of the modern legal system, and discussed the movement for access to justice in a historical context. In essence, Friedman shows the historical trend toward a uniform, central legal system, one which brings all citizens under one regime. The growth of a centralized system of law, he points out, has been at the expense of local and customary rules of social organization. Central authority came to be paramount over customary laws, and eventually succeeded in smothering local diversity. The significant issue for students of the provision of legal services is Friedman's observation of the paradoxical nature of this evolution. At the time when all citizens were being brought within a single legal system, more and more citizens also became effectively excluded from participation in the operation of law:

As the law became more and more "uniform", it became both more and less accessible: more, in that a lot of medieval, crabbed, technical, obsolete trappings were pruned away; less in that system and uniformity destroyed what was left of popular (and lay) justice.

Such was the evolution of the legal system in the industrialized world during the late eighteenth and nineteenth centuries. Of course, the coincident social force of the time was the entrenchment of the market system of economy. It is crucial to recognize these parallel developments. At the time when the legal system became widely applicable, the basic distributive mechanism was the market place. Not surprisingly then, the legal system and the services of the legal profession came to reflect the ideology of market economics; legal representation was a commodity that could be purchased; legal action could be purchased if the tenacity of the litigant was convertible into the necessary form of monetary exchange.

4 Id. at 10.
It is probably most accurate to describe these historical trends as coincident rather than coincidental. The uniformity and rationality of the legal system, and the objectification of social relationships cultivated by a market economy, were part of a matrix of change. As Foucault wrote of the reforms of the criminal law in the eighteenth and nineteenth centuries:

The true objective of the reform movement, even in its most general formulations, was not so much to establish a new right to punish based on more equitable principles, as to set up a new 'economy' of the power to punish, to assure its better distribution, so that is should be neither too concentrated at certain privileged points, nor too divided between opposing authorities; so that it should be distributed in homogeneous circuits capable of operation everywhere, in a continuous way, down to the finest grain of social body. . . . The new juridical theory of penalty corresponds in fact to a new 'political economy' of the power to punish.¹⁵

Foucault makes the argument that the centralization and rationalization of the criminal law reflected a change in the power base of law in general. Power, or the power to punish, in Foucault's words, was rendered "more regular, more effective, more constant, and more detailed in its effects".⁶ As the legal system became more effective as a medium of general control, then, its monetary expense, according to the market principles in vogue, ensured that access to the formal legal system was limited. Friedman puts it this way:

Somehow, the influential people in society sensed that litigation was an enemy of rapid economic growth. Litigation is inconsistent with a vigorous, active market; the market thrives best when people do not break off commercial relations and sue each other at the least trouble or disagreement; rather, they absorb their losses in the short run and keep on trading.⁷

Not only was the legal system organized along market principles, but it was deliberately made expensive in order to discourage litigation, except by those who had the resources to engage in costly legal proceedings, or those who had interests at stake that sufficiently exceeded the cost of participation in the legal system. The average man was deterred from utilizing the courts of most countries and came to perceive the legal system as another impenetrable aspect of the socio-economic elite.

One should not, however, emphasize the role of the cost barrier to the exclusion of other impediments to participation. Equally significant have been the psychological barriers, those features of legal culture that serve to discourage the approach of tentative claimants. For example, the legal system's success as a system of control lies in its highly formalized procedures and proceedings. In particular, its

²⁶ Id. at 80.
²⁷ Supra note 3, at 12.
formal character communicates the weight of authority to legal proceedings, and at the same time generates the commonly perceived image of hostility.

Similarly, formality has significant implications. The opulence of palaces of justice, the garb of court personnel and the appointments of counsel offices all contribute to the intimidating face of the legal system by suggesting power through prestige. The creation of a uniform legal system as a medium of authority founded on market principles achieved limited access by erecting barriers of cost, psychology and class. These issues are often discussed in terms of formality, remoteness and expense, but ultimately all reflect the barriers to litigation — the principal mode of dispute resolution.

Cappelletti's recent discussions of legal services, particularly his Access to Justice study, describe the underprivileged as gradually being allowed to "enter" the palace of justice — or at least the waiting rooms. The Cappelletti studies, as do the Wurzburg national reports, show that when legal services are provided they are directed, at least in their initial stage of development, to providing advice and assistance in the legal problems experienced by the underprivileged, primarily for litigation; in other words, access to justice has been in most instances exclusively associated with access to the courts. The barriers of cost, an elite profession, and highly formalized court procedures continue to reinforce the remoteness and undemocratic nature of the legal system.

Recently some writers have questioned the legitimacy of the access to justice movement. If the legal system has evolved with the purpose of excluding from participation democratic interests and rather has as its purpose the strengthening of minority and elitist interests, is it not likely that there is little of substance in the law to serve the interests of those who have been excluded from the legal system? One must inquire as to what possible advantages there can be in seeking entry for the poor and powerless to such a hostile place. The usual justification for improved access to justice and the development of legal services programmes is that if the substance of the law has developed by the exclusion of large elements of the community, then there is a possibility that improved access may


bring about reform of the legal system or perhaps fundamental changes in the decisions of courts respecting underprivileged persons.

Grossman and Sarat discuss the drawbacks inherent in the simple solution of increasing litigation or improving representation. Neither is, in itself, a sign of progress nor an indication of social justice. They point out that there is no guarantee that increased access implies increased effectiveness. Indeed, they argue that expanded access may be counterproductive, since the capacity of the legal system to deal with the resulting increased burden of cases is often diminished. By overloading the capacity of the system, the value of the system as a deterrent may be undermined.\(^{10}\)

Such critics of the access to justice movement contend that legal services are merely a device by which legitimization is enhanced. For them, access to justice leads to formal adjudication conducted under the idea of "formal equality", providing the basis for the erroneous equation of "fair procedure with substantive justice".\(^{11}\) Others believe that expansion of access to justice leads to the expansion of state intervention in social affairs, hence amplifying social control by the state in what is perceived to be a repressive manner.\(^{12}\)

Although discussions of the criticisms of the access to justice movement are helpful and contribute to the examination of developments of the legal services movement, their main value is that they enforce limits to the discussion of access to justice, making it clear that access itself does not lead inevitably to a "new social order". Discussion of legal aid and legal services can no longer take place under the belief that adjudication will bring about a legal "nirvana" where all injustice and inequalities will miraculously be obliterated. Professor Santiago Oñate, the Mexican national reporter, sums up the argument in a brief but considered analysis of the situation:

Notwithstanding the virtues inherent in these critical approaches, they might involuntarily lead to consider legal services as an artful decoy provided by the ruling classes for the perpetuation of their order and as a practice that does not purport significant progress for the underprivileged.

This peril is easily avoided when the roles of adjudication in particular, and of law in general, are carefully considered. Adjudication is certainly not a good in itself, nor is it a general system for the redistribution of power within society. Contemporary legal scholars have clearly stressed that neither the regime of formal nor that of substantive adjudication is able to solve, per se, the problem of freedom in our society. Nevertheless, adjudication and dispute processing activities represent a precise mode by which law is created and applied. Broader access to the courts


\(^{11}\) \textit{Supra} note 9, Sarat.

means broader participation in the creation and construction of law. For the under-privileged, generally unrepresented in other law enactment bodies, litigation might prove to be their only instance of participation in activities related to the legal shaping of social structures.13

Like Oñate, we recognize the barriers to a more democratic legal system, and we realistically assess the possibility for change inherent in litigation. We are nevertheless unprepared to abandon the movement for access because of these obstacles. The presence of such impediments should rather justify more ambitious access initiatives which will make the movement for legal services more politically sophisticated and viable. There appears to be no merit in the argument that access is an unworthy objective merely because there are substantive as well as procedural inequities in the legal system. Either out of supreme optimism, political naivete, partisan rhetoric, or sound reasoning, some form of model of legal services for the underprivileged can be rationalized. The greater difficulty for the analyst of legal services lies in articulating what the character and the form of these services should be.

II. THE MORAL ARGUMENT

Historically, the concern of lack of access to the legal system first emerged in the late nineteenth century in Western European countries, particularly Germany, and in the United States, when members of the legal profession voluntarily chose to donate their services to certain underprivileged persons. As such, only the causes with the greatest moral merit, as perceived by concerned members of the profession, were recipients of service from the public-minded advocates. Although the creation of legal aid societies in New York City and other limited assistance programmes of this period implied recognition that the legal marketplace did not adequately distribute services to all elements of society, there was no significant pressure for reform or change. Rather, the political economy of the Victorian era saw universalism, centralization and the market system adopted as the values of the legal system in developed, industrial nations. Rules of procedure reinforced these tendencies and any possibility of inexpensive, informal dispute resolution, or class actions were thwarted by the courts and governments. These forces served to exclude the vast majority of society from asserting legal interests and their lack of substantive and procedural rights reinforced their secondary and often impotent role within society. Even the early charitable groups and compassionate lawyers who exhibited concern for attempting to right the imbalance by providing some form of legal services, did so

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for religious or charitable purposes and not out of a sense that the poor, or for that matter, the working man, had the right to be represented, or to legitimate his substantive legal claims. Quite the contrary. Early legal aid groups applied moral criteria which effectively meant that legal services were not available in the very situations which affected the poor most significantly: bankruptcy, eviction, and divorce lacked the necessary degree of purity or propriety to be given legal assistance.¹⁴

As Professor Martin Partington has written in his national report on England:

It is against this ideological and socio-economic background that legal services are provided. The rhetoric of the law talks of justice and freedom. But the law which lawyers help to administer, and the services that they therefore provide, are in essence a part of the private enterprise economy in which it is essential that work be done for profit, if business is not to go to the wall.

In protecting their own business interests, lawyers in England (as in other developed countries) have been able to use their knowledge of law and their social organizations to create powerful professional control over legal services provision, and to determine, to a large degree, the nature of the services provided. Although some of the wider manifestations of monopoly power (restrictive practices) have been relaxed in England in recent years, as a result of external pressures on the legal professions to reform themselves, the professional bodies still remain an extremely powerful influence on the scope and quality of legal services provision.¹⁵

The Wurzburg national reports underline the fact that legal services, even in the most developed programmes, continue to retain their original judgmental qualities. Legal services continue to be allocated frequently on the basis of moral merit,¹⁶ rather than legal right, and controversies continue, particularly within judicare schemes,

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¹⁴ The first successful legal aid to the poor in the United States was organized by the German Society in New York City in 1876 to provide aid to recent German immigrants who were exploited by merchants and landlords (J.S. Auerbach, Unequal Justice: Lawyers and Social Change in Modern America (New York: Oxford University Press, 1976). The second group was formed in Chicago in 1886 as an adjunct to the Women's Club with the "reform" purpose of protection of women and children (J. Katz, Poor People's Lawyers in Transition (New Brunswick, N.J.: Rutgers University Press)). Both of these organizations set the stage for legal aid societies for many years. They were private organizations, financed by private charitable contributions and controlled by boards of directors, virtually indistinguishable from other charitable organizations. Legal services were "doled" out frequently because of moral merit, rather than legal right, and controversies developed early in prohibiting the provision of divorce services that would split up families and possibly increase the drain of poverty on society. (Menkel-Meadow, "Legal Aid in the United States: The Professionalization and Politicalization of Legal Services in the 1980's" (1984), 22 O.H.L.J. at 33.


¹⁶ "Moral merit" may be used in some cases as a mere justification for other ends. Recent limitations in the American legal services scheme serve as an example.
as to the type of service that should be provided. Legal services remain discretionary with respect to most minor criminal offences and with respect to civil and domestic disputes involving lesser services. Similarly, it is not universal in service-oriented schemes that private lawyers will be paid to represent low-income persons before administrative tribunals determining eligibility for social welfare, unemployment insurance, and workers' compensation. As well, bankruptcy and often divorce are a discretionary area of legal service representation.\textsuperscript{17} The relevant criterion in judicare-private lawyer schemes is whether similar services would be provided for a

Legal services are not provided in cases involving school desegregation, abortion, aliens and homosexuals, and lawyers may not engage in lobbying activities. The arguments of the Reagan administration to exclude aliens from eligibility in the programme were phrased in terms of morality. (See Menkel-Meadow, \textit{supra}, note 14, at 59.) It cannot be ignored, however, that such aliens benefitted significantly from Caesar Chavez's farmworker unionization drive in California, when Reagan was governor of that state. This programme was a political thorn in Reagan's side at that time, and was supported by California Rural Legal Assistance. The present restriction of legal services to aliens, and, indeed, Reagan's attacks on the programme as a whole, are an outgrowth of these earlier political struggles. (See Menkel-Meadow, \textit{supra} note 14, at 55-63.) It is difficult to distinguish whether exclusion of services is based on moral, political, or cost factors.

\textsuperscript{17} Access to justice is limited in a number of ways. The most straightforward of these are specific limitations on the types of problems and the individuals eligible for services. Limitation of the types of problems is the most common restriction. South Africa is an example of the restrictions in a judicare scheme:

- Certain matters are excluded from the purview of the legal aid system. These include actions based on defamation, damages for adultery or other matrimonial misbehaviour, matters arising out of the administration of an estate and certain debtor proceedings in the lower courts. There are also stringent limitations on the provision of legal aid in divorce matters. (Kentridge, South African National Report, at 10)

- Aid in criminal matters is also frequently restricted in this manner. In Israel, with exceptions made only for the severely handicapped and some juvenile cases, legal aid in criminal matters is considered a right only when the accused may face either life imprisonment or the death penalty, or if the case is initiated at the District Court and the accused may face a sentence of at least ten years in prison (Kretzmer, Israeli National Report (1982) at 2-3)

- Restriction of legal aid through restrictions on the person's eligibility to obtain aid is also frequent. The restrictions placed by the Mexico City, Universidad Autonoma Metropolitana programme serve as an example:

- Programmes directed to the aid of prisoners were not supported by the university; aid to drug offenders was diverted by the university to other public agencies and a project on defense against police brutality was suspended because university authorities did not feel confident of being seen as a provider of services to deviants. (Onate, \textit{supra} note 13, at 33)

In addition, legal aid may be available only for certain courts or tribunals and is often not provided for administrative tribunals. Many judicare legal services schemes only provide a certificate for those cases which have some probability of
paying client. Criteria with moral overtones are particularly vexatious in periods of economic restraint such as the present where we find legal services curtailed on the basis of selective value judgments.

Professor Menkel-Meadow, the United States national reporter, describes the current American situation:

Furthermore, the early philosophical underpinnings of the Legal Aid movement of providing individual representation for "deserving" cases continues to affect legal services delivery systems today. With more demands for services than can possibly be met, programmes must establish priorities and decide who is to receive some of the available, but limited resources. Some continue to argue that the most "deserving" should receive aid.

The significance of these legal aid developments in the United States must be underscored in the present climate of attempts to disembowel legal services for the poor.18

Despite their individualistic, moralistic, relatively ineffective and badly-funded nature, they did succeed in establishing that the provision of legal services to the poor was a legitimate, if not a necessary function of industrialized nations. And what had developed initially in countries such as Germany and the United States has become, in the last two decades, an aspect of most contemporary legal systems.

It becomes clear that in the western world (and elsewhere), legal services have not grown out of the belief that there is an inherent right to legal representation. Rather, services have tended to be dominated by notions of moral relativity and differential entitlement. But if the fundamental justification for legal services is, as is proposed here, that the legal system is inherently undemocratic, does it not logically follow then that access to justice can only be meaningful if a right to legal representation is recognized?

It has been seen that, historically, the legal system has deliberately denied access to a definable segment of society. Yet it is the legal system that must be relied upon to give effect to the intention of governments. Legal entitlements approved by parliament can have no meaning if their vindication is dependent upon the holder's success. The legislation in the Federal Republic of Germany, for example, requires that the aid applicant must not be a "careless risktaker" ("fehlender mutwilligkeit").

Finally, the effect of rules with respect to the cost of proceedings to poor people must be noted. In Japan, for example, legal aid offers only temporary relief from costs; the funds must ultimately be repaid. If an applicant is successful, his opponent is required to reimburse the funds; if not, the applicant must repay his debt to the granting institution. (Uchida, Japanese National Report (1982) at 13, 17). A similar repayment provision exists in the Greek aid scheme (Polyzogopoulos, Greek National Report (1982) at 3).

18 Menkel-Meadow, supra note 14, at 35-36.
pursuit of his or her due, and such pursuit must be carried out by an unaffordable and unapproachable agent. In the organization of the modern polity, the legal system is virtually as prominent an institution as the commons, the executive, or the judiciary itself. The courts and the profession, in practice, bear increasingly the burden of administering the modern state. How, then, can differential access to the machinery of our society be justified?

The issue can be put simply: if the legal system's inherent defect is that it alienates a portion of the population, and if it is recognized that this offends the democratic aspirations of our society, then should not a democratic right to equal participation in the legal process be recognized?

Further, in the context of the legal process alone, equal participation can be considered essential to the adversarial system. Richard Abel, describing the situation in the United States, writes:

Equality in the distribution of legal services has a value beyond that of enhancing the welfare of the unrepresented or underrepresented. The very integrity of the U.S. legal system as an adversary system depends upon equal representation of all parties. The legitimacy of contemporary law rests on the assumption that optimally efficient allocations of scarce resources are produced by parties who freely negotiate with each other on the basis of equal information about the law and equal competence to use it. The adversarial model of litigation... is grounded upon the belief that factual truth and fidelity to substantive and procedural rules are best achieved by partisan struggle between equal opponents, which at a minimum means opponents who are equally represented. Moreover, the theory of democratic pluralism assumes that all citizens are equally able to influence the making and application of laws. Given the influence of lawyers in U.S. politics, that assumption requires equal representation by lawyers before both the legislature and the executive at all levels of government.

Virtually every problem in the area of legal services is related to this central issue of equality.¹⁹

Yet, there is a qualitative difference between the recognition that access to legal representation is an absolute necessity and the characterization of that necessity as a "right".

To elevate the concept of access to justice to the status of "right" is to view it with symbolism, reverence and, at least, a certain degree of inalienability. This is one argument that has been used to determine an appropriate system of legal delivery. Its proponents argue that this right is protected in the same way as democratic rights, such as the right of a citizen to vote, to assemble, and to speak freely.

The concept of "rights", though apparently straightforward, is far from unproblematic. Precisely because of their symbolic character,
rights are difficult to define. Removed from objective, unimpassioned discourse, they are in fact frequently ignored.

The positive aspect of "rights" is that they give the person being represented a certain amount of protection from political interference. One of the main objectives of legal services advocates has been to entrench the concept of the entitlement to representation deeply in the public consciousness, in order to place the institutions of legal services on a firmer footing. In the past, the perceived "charitable" character of legal services has, to an extent, prevented the question of legal needs from being taken seriously in public debate. To seek recognition of an access "right", then, may well raise the profile of the legal services issue and concomitantly give the access movement a firmer foundation. Difficulties arise in discussing the introduction of the concept of "access rights", however, since that concept may, in itself, restrict the type of legal services that any particular government, professional organization, or other body may decide to provide.

Rights proponents argue that a juridical model of legal services is the most appropriate delivery mechanism if all citizens are entitled as a matter of right to legal representation. Superficially, the juridical model is attractive to access rights theorists because services are provided on a case by case basis by a wide range of advocates. Such a model is perceived to be a reflection of the independent "legal system", based on the belief that all litigants can have their cases heard in a comparable fashion and that representation is best accomplished by the "independent" practitioner.

Opponents of the "rights" theory condemn its irrational insistence on pursuing individuality over a calculable collective welfare. They argue that a more compelling justification for legal services is a utilitarian approach, recognizing that human existence is enhanced by the provision of such services and that priorities for the development of legal services programmes ought to be determined according to what will generate the greatest benefit for the greatest number of recipients. This approach has developed in the United States in the last two decades\(^20\) and is an outgrowth of the recognition of

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\(^20\) The emphasis on broadly based reform, rather than on a case-by-case approach, may be seen in the uniquely American characteristics of the legal services plan in the United States, as explained by Professor Menkel-Meadow:

In reviewing trends in the development of legal aid in the United States, it is essential to note those characteristics of legal aid which are peculiarly American. In 1977, Clinton Bamburger, then a member of the Legal Services Corporation national staff, identified three "immutable characteristics" of the American legal aid system: (1) public financing, (2) law reform (rule changes) for the poor, and (3) full-time salaried staff lawyers, specializing in "poverty law" (Bamburger, 1977). To these characteristics, I would add two more. First is the employment
many writers that the allocation of scarce resources to legal services requires careful assessment of their effective allocation.

We find that in the United States in the 1980s, the utilitarian approach to legal services is under attack. Professor Marshall Breger is sharply critical of utilitarianism as a guiding principle in legal services delivery. Breger extols the greater humanity of a legal services delivery model which is based upon the "rights" theory, arguing that utilitarianism requires that value judgments about the legal position of others must be made arbitrarily by disinterested persons. Only rights theories, he argues, give primacy to individual dignity. Thus, the debate is far reaching and is conducted by scholars remote from the usual areas of legal services discourse.

The merits and faults of both theoretical bases for legal services delivery have great implications for the access movement. Utilitarianism is most compatible with a clinical, public-funded, salaried lawyer model of delivery, whereas the rights theory suggests a more traditional judicature system. In fact, an imaginative interpretation of the right to counsel may well include both the judicature and the community-based delivery models, although it has been seen that at a theoretical level, rights theory and utilitarianism have been perceived as completely incompatible.

III. MODELS OF DELIVERY

The most frequently discussed aspect of legal services is the question of delivery models. Although much of the literature has focused on the distinctions between the use of salaried, full time legal services lawyers as compared to private practitioners, we find a grow-

of paralegals, who are legal assistants, trained especially to aid in providing services to the poor, many of whom were drawn from the indigenous poverty community. Second is the use of explicitly political forms of advocacy to better the conditions under which poor people live. These include community organizing and lobbying, national research or "back-up" centres specializing in certain areas of law affecting the poor, and the use of peculiarly American legal constructs to fight the legal battles of the poor — the class action, group plaintiffs, and American constitutional theory as a device for expanding both substantive and procedural legal rights. (Dooley and Houseman, 1982) (Menkel-Meadow, supra, note 14, at 31-32. Professor Menkel-Meadow's references are to Bamberger, The American Approach: Public Funding, Law Reform, and Staff Attorneys (1977) Cornell Int'l L.J. 207-212 and to Dooley and Houseman, Legal Services in the 80's and Challenges Facing the Poor (1982), 15 Clearinghouse Review 104-118).


ing recognition that much of what the providers have accomplished, whether working in legal services on a full time basis or on a case by case basis, is not only comparable, but in many instances identical.\textsuperscript{23} In reviewing recent developments, the writer discerns in the national reports significant developments in the delivery of legal services concerning the types of clients served, the problems handled, the providers of the service, and the service model. All appeared to be in a state of flux. An observable trend in countries with sophisticated social welfare schemes such as The Netherlands, Finland, England, Canada, and the United States, is the movement towards a mixed delivery system — a development that is worthy of careful analysis.

In our search for a typology or framework for analysis of these recent developments in legal services, it is helpful to contrast the "service" model of delivery with what has been described as the "strategic" model of legal services.\textsuperscript{24} Such a contrast takes the reader beyond the traditional discussions which tended to become mired in debate between the merits of private and public lawyering delivery schemes. Although service schemes and strategic schemes are not mutually exclusive, it is helpful to recognize that models of delivery of service to low income people have developed within a spectrum in which the poles are represented by a purely service orientation and a model dedicated to the strategic approach. Like the philosophical access rights as opposed to utilitarian approach, an analysis of these approaches and their underlying premises will assist in our examination of the mixed delivery models which have recently emerged.

The service model is the traditional and the most common form of legal services. An outgrowth of the juridical and charitable approach,\textsuperscript{25} service models confine their attention to discrete claims and problems brought to a programme by an individual with a readily categorized legal problem. This approach grows directly out of the traditional approach to protecting rights which:

\[\ldots\text{has been essentially legalistic and individual; it involves the promulgation of legal standards defining the obligations of the state, the vesting of corresponding legal rights in individuals, and the provision of judicial or quasi-judicial redress if these state obligations are not met. The end of this approach is to assign each}\]

\textsuperscript{23} This issue is dealt with in detail later in this paper.

\textsuperscript{24} The author wishes to acknowledge the contribution of Marc Galanter of the University of Wisconsin to this section of the paper. Galanter's paper on "Making Law Work for the Oppressed" (1983), 3 The Other Side 7-15 develops the contrast between "services" and "strategic" legal services.

\textsuperscript{25} The juridical rights approach to legal aid is contrasted to the welfare rights approach by M. Cappelletti, J. Gordley and E. Johnson, Jr., Toward Equal Justice: A Comparative Study of Legal Aid in Modern Societies (Dobbs Ferry, N.Y.: Oceana, 1975) at 26-27 and at 110-112, and 124-128.
individual his proper rights and responsibilities; the means is to provide objective legal standards and to ensure their impartial application . . . the nineteenth century granted legal protection to the right to aid; however, the right remained in good part charity since distrust of affirmative state action and a concern for a purely formal equality led to reliance on the charitable services of the bar. As that distrust subsided in the face of concern for an effective equality, it was only natural to attempt to combine such action with the traditional approach to protecting political rights.26

It is important to note that within the service model, the lawyer (in some instances, the paralegal),27 can respond only in cases where clients, aware of their problem, have sought out legal assistance. Whether this assistance is provided by the private lawyer or by the salaried lawyer, in bureaux such as those created by the Quebec Commission des Services Juridiques,28 or the municipal legal aid offices in Sweden, is of little consequence. The results are essentially the same. The role of the scheme is to represent low income persons who can establish that they are economically eligible and that their problems are worthy of a lawyer's time.29 Inevitably overloaded, service models can expend little time or energy in educating the community or on outreach programmes. Since service models accept the norms of the legal system and provide a service for poor people which, in the opinion of the administrators (inevitably lawyers), is the same for the poor as for the rich, poor people using service schemes face many of the same obstacles that they would encounter within the traditional setting. Such service models offer little recognition of the uniqueness of the poor person's lifestyle. They neither make the service psychologically more accessible, nor do they attempt to handle problems which have not been on the traditional agenda of legal services (i.e., eviction). The service model reinforces the distance between the "recipient" and the "deliverer" of the service by encouraging clients to assume passive and dependent roles in their relation with the legal aid scheme. Lawyers write briefs, interview witnesses, negotiate settlements and go to court. The client's perspective is generally of an over-worked, under-paid lawyer who is dealing with the immediate problem and ignoring the

26 Id. at 109-110.
27 The use of non-lawyers in the delivery of legal services is discussed later in this paper.
28 It is worth remembering that there exists a wide variety of methods for establishing "worthiness". It may also be determined in direct response to the caseload and funding of the particular scheme.
fundamental cancer of poverty and poverty-related problems that continue to survive and destroy.  

In contrast to the service model of legal services, there is the "strategic" legal services scheme. Such a programme is oriented to identifying the significant social problems facing the community it is serving. While dealing with the inevitable daily problems, a strategic legal services programme attempts to develop a long term approach of research, reform and education to deal with the more fundamental issues. Rather than handling cases which are relevant to the lawyer's experiences, a strategic programme sets priorities in one or several areas of concern to a particular community such as the environment, housing, land-ownership, occupational health, or immigration, to enumerate but a few. In concert with the geographic community or the community of interest, the professional will consider collective issues or the complaints of a class of individuals. (Thus, an emphasis on handling the problems of tenants will lead to an analysis of security of tenure and rent control.) A significant distinction between the service and strategic models is in methodology. While the service model perceives itself as bound to the court and to litigation, the strategic model views advocacy as only one potential strategy. Other strategies might include tenant organizing, lobbying the legislature, television and media coverage, or community picketing of a particularly abhorrent landlord.

The distinction between the strategic and service models of delivery should not be taken to describe schemes which are mutually exclusive. Most legal service administrators have been attracted to the juridical or service model. The problem inherent in the service approach is that seldom, if ever, are there enough funds available for all needed services to be provided to all persons eligible for the service. As Professor Mary Jane Mossman of Canada has written:

From the perspective of legal aid administrators, moreover, the focus on individual rights prevents decision-making which allocates available funds on the basis of cost-benefit analysis, an eligible client must receive legal aid for a service included by the programme even though, by any objective standards, the funds could provide a greater benefit to an eligible client for services excluded from the programme. Unless funds are available for all eligible clients for any needed legal services, it is inevitable that legal services will not be "covered" in a programme using a juridical rights approach.  

The attraction of progressive theorists to a utilitarian, welfare or strategic approach to legal services has grown in large measure from recognition that governments will seldom provide sufficient funds to allow all individual and collective claims to be asserted.

IV. MODELS OF LEGAL SERVICES

The discussion of various analytical frameworks for legal services brings us face to face with the significant issues that confront current developments in legal services. The national reports indicate that in all parts of the world an on-going debate is taking place between those committed to developing the welfare rights or strategic approach to legal services and those who are desirous of expanding traditional service models. The national reports clearly indicate that legal services, even in wealthy nations where the welfare state is well developed, remain a fragile movement, frequently lacking direction and unity and existing solely at the whim of government. Unable to distinguish themselves from other social services, legal services have often been the subject of political attack as governments have become more conservative in the changing political climate of the late 1970s.

The most significant and progressive development in recent years appears to be a movement towards mixed delivery systems which combine aspects of the service and strategic models, and which combine the use of the private bar and salaried lawyers based in clinics to deliver legal services. This move to a mixed system is often a reflection of the political compromises and partnerships necessitated by declining political and financial support for legal aid and the

31 Mary Jane Mossman, "Legal Aid in Canada" (unp., 1983) at 28-29.
need for political and, in some instances, financial support of the organized legal profession.\textsuperscript{32}

In 1977, Professor Vittorio Denti noted the almost exclusive use of a judicare system of legal services in European countries:

The first trend, certainly more homogenous with the laws of civil procedure in liberal countries, can be traced in the legal systems which have maintained practically unchanged the scheme of legal assistance introduced in the second half of the nineteenth century. These were based on: (a) the obligation for the lawyer to render free services to indigent litigants; (b) special committees establishing the requisites to be met for free assistance; (c) a preliminary inquiry into the probability of a favourable outcome.

This view of legal assistance as an honourary duty of the lawyer, has remained practically unchanged in the countries (like Italy, Spain and Belgium) where the legislation is still that of the nineteenth century. On the contrary, in other countries, changes have recently been made, leading to the direct or indirect coverage of lawyers' fees . . . All these reforms provide that fees are paid directly to the lawyer on public funds.\textsuperscript{33}

Denti did recognize a somewhat different system operating in both Great Britain and Sweden, but noted as well that these systems did not represent a clear break from the judicare model:

Like the English reform, the Swedish reform of 1973, though one of the most advanced legal assistance laws in Europe, is a compromise between the traditional model of services rendered by private lawyers and the need to organize assistance by means of public offices established for this purpose.\textsuperscript{34}

The judicare model must be compared to the community legal services model — the law clinic — which developed in the United States during the 1960s. Denti discusses the community clinic model of legal services solely in respect of the United States, although community-based clinics had developed during the 1970s to a greater or lesser extent in The Netherlands, Canada, Finland, the United Kingdom, New Zealand, and Australia.\textsuperscript{35}

The contrast between the traditional service-oriented models which exist in varying degrees in most countries of the world and the community-based law clinic with its more strategic welfare-based orientation operating in the United States still prevails. The service model with the private lawyer as the primary deliverer of services

\textsuperscript{32} The support of the American Bar Association in the face of the unmitigated attack on the Legal Services Corporation in the United States is the most significant example of this phenomenon.

\textsuperscript{33} Denti, \textit{supra} note 1, at 175-176 of the Storme and Casman volume, and with editorial revisions, at 351 of the Zemans volume.

\textsuperscript{34} Id., Storme and Casman at 177 and Zemans at 353.

\textsuperscript{35} Some of the developments in these countries are discussed in this paper. In Saskatchewan and Nova Scotia American-style community clinics have been adopted as the delivery model.
represents the major or exclusive delivery system in France, the Federal Republic of Germany, Great Britain, Japan, Israel, Australia, South Africa, The Netherlands, New Zealand, and the Canadian provinces of Alberta, New Brunswick, and Ontario. But despite the recent commitment by the Legal Services Corporation that at least ten per cent of their funds would be spent on judicare schemes, the United States has retained a legal services model that is predominantly staffed by salaried lawyers and which continues to take a utilitarian reform approach to legal services.

Many countries with judicare models are developing strategically oriented elements in their programmes. The Netherlands is an interesting example of the trend towards a mixed delivery system. Holland introduced a judicare system in 1957 and extended it during the 1970s. The judicare system still absorbs most of the public funds for legal services, but since 1974 Holland has seen the development of a state clinic movement in the Buro's voor Rechtschulp (BVR's). These clinics were first established in 1974, out of a desire on the part of the government and the legal profession to become more directly involved in the community clinic movement which had been initiated in Holland by the development of the law shops during the previous five years. Law shops had been opened by Dutch law students as a response to the student unrest in the late 1960s. The first such law shop opened in Tilburg in 1969 and was inspired by the North Kensington Law Centre in London, England. Legal services were freely provided in the law shops by law students who worked as volunteers. The offices were casual, informal, and client-oriented. The concept was contagious in Holland, and within a few years approximately ninety shops operated on a regular basis throughout Holland. As Freek Bruinsma, our Dutch national reporter, writes:

The political influence on the law shop movement was much more important than their actual market-share in legal services would suggest. The only, rather controversial figure (based on a cumulation and extrapolation of the annual reports of the biggest law shops) is about 60,000 clients in 1974, a top year for the law shops: this amounts to about 5% of the articulated demand for legal services of individuals. The law shop movement derived its political influence from the fact that it put into practice an alternative legal service: the existence of a law shop was a practical criticism of the professional legal services by the private bar. In the first years of their existence, some doubts were raised about the quality of the legal services by law students, but these were not substantiated. While the law shop movement referred convincingly to the accessibility of the law shop, the kind of legal problems the law shops handled, i.e., welfare state law, and the kind of people the law shops serviced, i.e., low income people. At all these points a law shop scored better than the office of a lawyer, at least in the eyes of the public at large.36

By the mid 1970s, the Dutch Bar Association came to accept, or at least no longer to oppose, the law shop concept and recognized that such shops did not detract clients or income from the private bar, but rather expanded the market for legal services by providing lawyers and paralegal services to clients who previously found the system inaccessible. As well, the law shops expanded the demand for legal services by generating litigation and referring previously unrepresented clients to the private bar. The Dutch judicare system, in existence for nearly 20 years, theoretically available for both litigation and legal advice, was administratively cumbersome and ill-equipped to handle welfare law problems. The Bar Association joined forces with the law shop movement in lobbying the Dutch government to set up the BVR's. After 1974, when the government took over their initiative, some law shops continued to exist, providing sporadic services dependent upon voluntary assistance.

BVR's were funded by the Dutch government and some 40 offices had been established between 1974 and 1980, employing approximately 200 lawyers. These offices have the dual purpose of granting legal aid certificates for the judicare scheme and giving readily accessible legal advice. Although the staff lawyers are progressive, their heavy caseloads and conservative management boards have limited the possibility of social action. The use of the Buros had grown to 250,000 clients in 1981, approximately five per cent of the Dutch population. Buros not only grew in number and size, but their budget increased tenfold from 1977 to 1981, when it represented nine per cent of the total legal services budget.

A significant empirical study of legal services in The Netherlands was conducted by Professor Freek Bruinsma in conjunction with law students. The project adopted the consumer's perspective with respect to the actual access to and quality of public legal services in Holland. A law student went as an undercover client with a self-made problem for advice to different BVR's. The Bruinsma study showed that one-third of the advice given was of a poor quality while one-fifth was considered to be of a really bad quality. According to the law students, they were quite often given incomplete or out-of-date information which would have impaired the client's legal posi-

37 Id. at 6. An empirical study conducted in 1979 by the Dutch government examined the distribution of the clients of Buros and law shops. The income distribution in the client group matched approximately the income distribution of the population as a whole. Selection of clients is regarded as incompatible with the Dutch constitution (Id. at 8).
38 Expenditures for legal services jumped from 25 million guilders in 1972 to 225 million guilders in 1982 (Id. at 10).
tion. The report was critical of both the legalistic attitude of the salaried lawyers and the highly service oriented approach of the Dutch Buros. The Dutch mixed delivery system is very much a service scheme with a minimal reform component. As Jeremy Cooper writes:

Access for all, national conformity, lack of local community involvement, bureaucratic thinking on policy: these are the features of the Buro philosophy, and they do not make happy bedmates for the romantic political radicalism that was sought in the early 70s to use lawshops as a spearhead for more fundamental social reforms within the state as a whole.

Finland is another example of a country that expanded its judicare system in the 1970s to include legal services offices staffed with full-time lawyers. A system of "common legal aid" was created at the commune level. Communes were allowed to establish legal aid Buros either alone or with other communes. By 1981 virtually all of the population was included in this Buro system wherein one or two communities received service from a full-time lawyer and one clerk. The programme was staffed by young, inexperienced lawyers who were controlled through the Finnish Bar Association. Workers in the common legal aid programme acted in a fashion comparable to lawyers who deal primarily with court matters.

The Finnish system seems to be another example of the extension of the service model which places little emphasis on aggregating claims or pressing for reform of either the substantive law or the position of underprivileged persons.

A most interesting development in mixed delivery systems has occurred in Canada. Legal aid in Canada has been accepted in the last decade as a joint venture of the legal profession and the federal and provincial governments. Although Canada does not have a nationally administered legal services scheme, as is the case in the United States, there is some level of uniformity in the service delivered by the various provincial schemes because of the federal government's introduction of a cost-sharing scheme for criminal legal aid in 1972. Because the Canadian Constitution places the administration of justice within provincial responsibility, it has allowed Canada to develop twelve different legal aid schemes (in the

39 See Id. at 8-10.
40 J. Cooper, "Preserving Justice for the Poor: Can Public Legal Services Survive a Recession?" (unp., 1982) at 22.
41 The Finnish national report offers a breakdown of their caseload:

<table>
<thead>
<tr>
<th>Service</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family</td>
<td>30%</td>
</tr>
<tr>
<td>Execution of wills</td>
<td>17%</td>
</tr>
<tr>
<td>Housing rents</td>
<td>5%</td>
</tr>
<tr>
<td>Criminal matters</td>
<td>12%</td>
</tr>
<tr>
<td>Administrative matters</td>
<td>11%</td>
</tr>
<tr>
<td>Other civil matters</td>
<td>20%</td>
</tr>
</tbody>
</table>

Recent Trends

In Canada, most legal aid programs have adopted what is essentially a juridical rights approach, sometimes with added special programs modelled on the rights approach. The juridical rights approach, with its emphasis on defined "coverage", is in place in six provinces (Alberta, Saskatchewan, Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland) and the two territories. In three other provinces (Manitoba, Quebec, and British Columbia), the legislation provides essentially for a juridical rights approach but there is some limited scope for a welfare rights approach as well. In Manitoba, for example, neighbourhood legal aid centres created by corporations appears to have encouraged law reform activities by law centres, in addition to the case by case services required by the statute; the Annual Report of the Quebec Commission contains details of the activities of individual regional corporations although, as the report notes:

"There is a marked tendency to put more emphasis, in the annual report, on community activities rather than activities pertaining to the individual representation of clients before the Courts. This is not significant with respect to the daily reality of the work implied for each type of activity. In fact, the individual representation of clients counts for the vast majority of efforts . . ."
In British Columbia, the Legal Services Society, is organized primarily as a juridical rights model of legal aid services, although it also provides funding (or partial funding) to a few independent organizations which have law reform mandates in the nature of the welfare rights model.\(^{42}\)

As can be seen from Professor Mossman's report, the Canadian legislation in mixed delivery systems is permissive rather than requiring the implementation of a welfare rights or strategic model of legal services.

Perhaps the most controversial mixed delivery system has been the modified welfare rights system which has evolved in Ontario. As in The Netherlands, the profession has grown to gradually accept the concept of community based clinics staffed by salaried lawyers. The profession's acceptance of the welfare rights approach was brought about in no small measure by two judicial inquiries which strongly approved the clinic model and encouraged government to fund clinics with a more strategic and community orientation. There are over 45 clinics in Ontario operating with many features of the American welfare rights model of legal services. Some are speciality clinics providing services in specific areas of the law,\(^{43}\) services to ethnic communities, including Native Canadians,\(^ {44}\) or clinics dealing with underprivileged groups in the community such as children and the handicapped.\(^ {45}\) Community-elected boards of directors establish financial eligibility guidelines and service priorities so that the caseload accepted is not solely on the basis of individual merit, but with reference to the likelihood of establishing significant reform for a client group. The boards have full responsibility for allocating limited resources to the areas of service that they determine will be most effective.\(^ {46}\) As an auxiliary of the original judicare scheme, the Ontario clinics have been able to develop a strategic approach to


\(^{43}\) The strength of the community clinic movement in Ontario is its diversity and the specialization of its clinics. The specialty clinics include the Canadian Environmental Law Association (CELA), Metro Tenants Legal Services, Tenant Hotline, Landlord's Self Help — these clinics all located in Toronto.

\(^{44}\) The Centre for Spanish Speaking People, located in Toronto since 1972 is the oldest ethnic clinic still in existence. There is a growing number of clinics serving Native Canadians, including Kenora Community Legal Clinic and Thunder Bay District Native Legal Counselling Services. Staff in both Native clinics speak Ojibway and include Native paralegals.

\(^{45}\) Two important clinics are Justice for Children and Advocacy Research Centre for the Handicapped (ARCH).

\(^{46}\) The clinics are also located in Toronto and concentrate on test case litigation, lobbying for reform of legislation, community education and some case-handling for their specific constituency.
legal services and in most instances move beyond a service model to being involved in community education, community development and some significant law reform litigation. These clinics are involved in some of the most significant and far reaching projects affecting low-income persons in Canada.

Before concluding our discussion of mixed delivery systems, it is important to briefly consider the development of the British law centre movement. The United Kingdom has, since 1970, seen the development of law centres in England and Wales which have taken a strategic and social change approach to legal services. The first law centre opened in North Kensington, London, in 1970. This office had a high profile from the time of its opening, having involved itself in controversial issues of police harassment of West Indian immigrants and committing itself to the housing issues of the racial minorities who were locating themselves in metropolitan London. Although North Kensington continually fought for its survival, it was eventually able to consolidate its position financially and professionally. By 1974, there were five law centres in England, each of which was operated independently, was publicly funded, had its own community board, and was staffed by a full-time staff of law clerks and solicitors. The English legal professions have given limited support to the law centres and have on occasion joined the public outcry against the termination of funding for several law centres.

By 1980, 42 law centres were in operation in England and Wales, with the majority located in urban regions. The strength of the law centres has been their local management by members of the client community who have been prepared to join the struggle to sustain the continued existence of their law centres.47 Funding for the law centres has been diversified and has come primarily from the Department of the Environment, with a stipulation that there be a 25 per cent matching contribution from the local government where the law centre is located. This diversity of funding has allowed the law centres to be resistant to attack, as no one government agency could close all of the centres. Since 1974, a law centre federation has existed and carries out a programme of new centre development, staff training, and publication of an excellent newsletter.

Cooper has written that the short term strength of the law centre movement in England is its deep community roots, diversity of funding, and developing coordination. But he suggests that, in the long term, law centres will probably remain a marginal element to

47 By comparison, the struggle for the continued existence of the Legal Services Corporation in the United States was waged by staff attorneys and the American Bar Association; the American client community had only limited involvement.
the state provision of legal services to the poor.48 The marginality of the British law centres may ultimately be perceived as their major strength and allow the law centre movement to flourish as a strategic element within the basic judicare scheme.

The national reports on developments in legal services note the continued concern with the assessment of existing legal services schemes. In common law countries where the judicare model took root in the early 1970s,49 we find a movement in the early 1980s to broaden these schemes to include programmes with reform components.50

National reports also note the caseload pressures on legal services offices. It is these pressures which prevent these offices from responding to their reform agendas and force them to deal only with burgeoning caseloads. Recent studies51 in the United States indicate that American legal services lawyers have become acclimatized to their work and no longer engage on a day to day basis in the political struggles against the issues that fundamentally affect their communities.

According to Gary Bellow, former legal services attorney and presently a law professor and teacher of legal services lawyers at Harvard University, the practice of legal services lawyers in the 1970s was characterized by routine handling of cases, low client autonomy and increased client dependence on legal services staff, a tendency to favour settlement over litigation, and a focus on needs as presented by the client rather than as uncovered by the lawyer's broader investigations.52 Bellow attributed much of this behaviour to the crushing pressure of high caseloads,53 the complexity of cases that could consume all of the lawyer's time, and the emergency quality of many of the cases. As Bellow has noted:

48 Supra note 40, at 36.
49 For example, Canada, Australia, New Zealand, and England.
50 Our New Zealand national reporter, Smith, writes of widespread discontent with the existing judicare model of services. The first neighbourhood law office opened in Auckland, in August of 1977. As in other jurisdictions where professionally dominated legal services schemes already existed, the Grey-Lynn Law Centre encountered opposition. Under the supervision and control of the Auckland District Law Society, the project has had only limited community involvement in its administration and must continue to legitimate itself with its two distinct constituencies: its clientele and the legal profession.
51 Supra note 30 for a full listing of recent American studies.
52 See Bellow (1977), supra note 30.
53 Average caseloads hovered between 100 and 400 cases per lawyer per year during this period. Vide Auerbach Corporation, Office of Legal Services Individual Project Evaluation Final Report, (Washington: 1971).
Increasing amount of regulation and law governing activity in the United States makes the possible number of cases in any given poor population extremely large if not unlimited. Every conflict in the family, at school, at work, or with a vast array of governmental institutions has some legal aspect— that is, it is capable of being handled in whole or in part by a lawyer. Moreover, it is now reasonably well established that demand for legal services increases with supply. The more lawyers that are available, the more clients who will seek their help.  

Simply put, our national reports from both Canada and the United States indicate that with the expansion of the caseloads in both the judicare and clinic systems of legal aid the two schemes have become virtually indistinguishable. Judicare schemes have generated some mixed delivery aspects with limited reform elements, while the clinic model has moved away from strategic approach with an inherent social philosophy and responded to the pressures of caseloads and individual client demands.

Mossman, our Canadian national reporter, writes:

In the result, there is remarkable uniformity in the services actually available to legal aid clients across Canada, notwithstanding the difference in models in delivering services. The combination of minimum standard requirements in the cost-sharing agreements with the federal government, and the inevitable limit on provincial spending for legal aid programmes, has resulted in a salaried model which can offer some accessibility and expertise, but which generally cannot provide more than the services traditionally available in the fee-for-service model.

Katz has arrived at similar conclusions regarding the situation in the United States since the creation of the Legal Services Corporation in 1974:

In the seventies, reform activity in Legal Services was treated officially as a professional, apolitical matter. Within the administration of Legal Services, "anti-poverty" rhetoric passed from being an officially sanctioned routine— Legal Services Programmes originally had to report annually to the OEO— Office of Legal Services with an evaluation of the year's progress in reducing poverty— to an embarrassment to a dimming memory. Ever since its creation in 1974, the Legal Services Corporation has steered clear of indignant commentary on the social reality of poverty in America. The research projects funded by the Corporation have emphasized standard professional and administrative concerns— how to keep the federal courts open to Legal Services litigation, how to reduce staff turnover — not the development of a guiding social philosophy on a relation of the law to the social class justice for the poor.

The fundamental question continues to be: What type of service model should be implemented or, for that matter, retained, in light of the similarity of the services performed? Cost may, unfortunately, become the basis for such a determination. The significant issue of a

54 Bellow (1980), supra note 30; see also Bellow and Bellow and Kettleson, "The Politics of Scarcity in Legal Services Work" (1979), 36 NLADA Briefcase 5-11.
55 Supra note 31, at 46.
system's potential is overlooked in its concern with cost effectiveness. In Canada, the cost issue became significant at the end of the 1970s, as government restraint programmes threatened both existing and proposed legal aid services:

When money was more readily available, discussions about legal aid concentrated on meeting needs. Now discussions focus on controlling cost. But the objectives of legal aid have not changed; they still relate to meeting needs. What has changed is the resources available in legal aid. Thus, this, like our newly heightened interest in the cost of justice, is a result of government financial restraint.57

Two studies of legal aid costs in Canada are noteworthy. A three year evaluation was undertaken in the province of British Columbia, to analyze the cost of delivering criminal legal aid services under a salaried, public defender system.58 This study concluded that there is little difference in cost of services whether provided by a salaried lawyer or through a fee-for-service model using lawyers in private practice.59

Significantly, related costs within the justice system rose dramatically under the judicare schemes in comparison with the public defender system. The British Columbia study concluded that judi-

57 "Legal Aid in the Age of Restraint", quoted in Mossman, supra note 31 at 48-49.
58 As there was no public defender system in British Columbia, it was necessary to establish a small project office staffed by three full-time lawyers, a paralegal, and a secretary. The public defense office routinely offered cases to the private bar when it became overloaded or when a conflict of interest arose, but cases were referred in blocks and there was no screening of individual cases prior to referral. The study involved a comparison of data on all cases handled by the public defender lawyers and all cases referred to private practice lawyers during the period of the study.
59 The average costs per case were as follows:

<table>
<thead>
<tr>
<th></th>
<th>Vancouver</th>
<th>Burnaby</th>
<th>Burnaby</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Public</td>
<td>Judicare</td>
<td>Public</td>
</tr>
<tr>
<td>Average cost per case</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>With eligibility assessment</td>
<td>$263.66</td>
<td>$225.36</td>
<td>$235.65</td>
</tr>
<tr>
<td>Without eligibility assessment</td>
<td>253.07</td>
<td>218.53</td>
<td>227.62</td>
</tr>
</tbody>
</table>

The results of this study may be subject to quite dramatic changes with only small shifts in the variables. The report indicates that, "If the caseload in the Criminal Defense Office were increased by one case per lawyer per month, the average public defense cost would drop to $223.00, or effectively the same average cost as a judicare case. An increase of four cases per lawyer per month would decrease the average cost for a public defence case to $192.00, thirty-three dollars below the average judicare cost. The determination of accurate cost comparison depends as well on the level of judicare costs which are directly related to judicare staff." (Patricia Brantingham and Peter Burns, "The Burnaby, British Columbia Experimental Public Defender Project: An Evaluation" (Dept. of Justice of Canada, and B.C. Legal Services Society, 1981), Report III. The table is at page 61, and the quotation at 65).
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Care lawyers pleaded their clients guilty less often than public defense lawyers and that judicare lawyers proceeded to trial more often than public defenders.

Judicare and public defense clients experienced overall similar guilty rates, however, with about 60 per cent of the cases ending with guilty verdicts. There was, however, a significant difference in sentences received: about 30 per cent of public defense clients, compared to 40 per cent of judicare clients, were sentenced to jail terms. The relatively higher number of judicare clients receiving jail terms implies higher costs for correctional institutions for these clients, in addition to the costs of legal representation.

While public defense clients obtained more lenient sentences, the fact that more of them pleaded guilty raised the possibility that public defense clients had been denied the opportunity of a fair trial to determine guilt:

However, ... in order to obtain those sentences, public defenders are entering guilty pleas for clients who would have been acquitted had they been represented by a member of the private bar. This fact goes to the heart of the purpose of defense counsel within that system ... [If] use of public defenders results in guilty pleas by a statistically significant number of accused persons who have been found not guilty at trial, that alone is a reason for rejecting the public defender system of legal defense.

The British Columbia research does raise questions about the assumption that the salaried service model is necessarily more cost effective. It also forces the legal aid analyst to compare the quality of service provided. Mossman writes: "The report's value, however, lies in its clear demonstration of the mutability of cost figures for judicare and public defender services, depending on the tariff levels and payment categories for fee-for-service lawyers, compared to case volumes and salary levels for the salaried lawyers."

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60 Percentage of cases ending in a guilty plea:
- Vancouver Judicare: 35.9%
- Burnaby Judicare: 38.8%
- Burnaby Public Defense: 51.0%

(Id. Report II at 35.)

61 Percentage of total cases going to trial:
- Vancouver Judicare: 42.7%
- Burnaby Judicare: 36.4%
- Burnaby Public Defense: 29.1%

(Id. Report II at 36.)

62 Id. Report II at 40.

63 Id. Report II at 46.

64 "Brief Presented on Behalf of the British Columbia Section of the Canadian Bar Association concerning the Burnaby Public Defenders Pilot-Project Study" 1982, at 23.

65 Supra note 31, at 56. The 1982 cutback in tariffs in British Columbia.
It is significant to compare the British Columbian results with cost studies in the Province of Quebec in 1981, where the Commission des Services Juridiques provides both criminal and civil services through both private practitioners and salaried lawyers. In 1980-1981, the Quebec Commission operated 142 legal aid offices, of which 40 were only open part-time. Three hundred and thirty-one lawyers and 442 other full-time staff were employed through this scheme. Of the 200,332 cases handled in 1980-1981, 69.3 per cent were handled by salaried staff and the remaining 30.7 per cent were referred to private lawyers. A cost comparison was undertaken using the methodology of an earlier study. The latter study confirmed the cost effectiveness of the salaried model demonstrated by the earlier study.

The 1980-1981 evaluation report in Quebec indicates that the increase in the cost of salaried legal aid services was less than 14 per cent between 1977-1978 and 1980-1981, and could be related primarily to the increase in the average years of experience of salaried lawyers working in the Quebec plan. The Quebec study also noted the relevance of the tariff: for example, a tariff increase effective March, 1978 meant large percentage increases in costs for criminal and family legal aid cases handled by private practitioners.

The two Canadian costs studies, in Quebec and British Columbia, arrived at different results with respect to the comparative costs of salaried and private lawyers. Any comparison between the sets of results, however, must take into account certain differences in the

<table>
<thead>
<tr>
<th>Nature de Dossier</th>
<th>Cout par dossier avocats salaries</th>
<th>Cout par dossier pratique privee</th>
<th>Variation</th>
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<tbody>
<tr>
<td>Separation, divorce</td>
<td>$267.14</td>
<td>$319.53</td>
<td>19.6%</td>
</tr>
<tr>
<td>Autre matrimonial</td>
<td>108.79</td>
<td>133.89</td>
<td>23.1%</td>
</tr>
<tr>
<td>Compte en defense</td>
<td>84.12</td>
<td>233.77</td>
<td>166.0%</td>
</tr>
<tr>
<td>Autre civil</td>
<td>65.27</td>
<td>142.37</td>
<td>118.1%</td>
</tr>
<tr>
<td>Criminel</td>
<td>105.17</td>
<td>214.22</td>
<td>103.7%</td>
</tr>
</tbody>
</table>

Moyenne (Average) $105.44 $221.58 110.1%


Lawyers had an average of 6.8 years of experience in 1977-78, and 8.5 years in 1980-81 (supra note 66 at 81).
scopes of the reports. The Quebec figures are based on a comparison of the delivery of both civil and criminal legal aid services, while the British Columbia study was much more restricted, with a salaried public defender office created specifically for the project. It is difficult to assess the relative effects of the tariff paid to private lawyers in Quebec and British Columbia to determine what, if any, correlation the tariffs would have on the outcome of the studies. The Quebec study attributes the cost effectiveness of the salaried model to the increasing experience of the staff, but also notes that cost effectiveness seems to increase when salaried offices employ three or more lawyers. The Quebec study would appear to be more meaningful than the British Columbia study both because of the larger caseload and the greater number of lawyers, and the length of time that the Quebec legal aid services has been in existence. Although government and bureaucrats continue to become much more concerned with the issue of cost effectiveness, discussions of cost have done little to advance the discussion of legal services to low income people. Since both salaried and private lawyers schemes provide similar services, the cost effectiveness discussions become a digression from the crucial discussion of the democratization of legal services and provision of appropriate legal services to respond to the socio-economic needs of underprivileged and low income persons. Mossman writes in her Canadian report:

As is evident, there has been a major focus on the issue of relative cost in the delivery of legal aid services in Canada in recent years. To an extent, the focus on the cost-effectiveness has detracted from, rather than contributed to, a better understanding of legal aid objectives. Thus, rather than questioning decisions about equality objectives or the approaches to providing legal aid services, most legal aid efforts have been directed to assessing models of delivering such services; and because both salaried and private practice lawyers provide essentially similar services, the focus on cost effectiveness has been directed very narrowly indeed. Moreover, the preoccupation with cost-effectiveness seems to have obscured, for everyone except the administrators and government, the fact that salaried lawyer services provide an opportunity for cost control — potentially a much more significant feature than cost savings even on the scale reported by the Quebec evaluation.

Although I have concentrated my discussion on new developments in models of legal services, particularly the evolution of the mixed delivery system, it is important to recognize that in most countries we find continued limited legal services programmes for low income persons provided by a variety of juridical rights approaches. In western countries, the juridical rights schemes have seen some considerable developments. In Germany, in 1980, the Prozesskosten-
hilferecht (law concerning relief of litigation costs) replaced the traditional Armenrecht (poor man's law). The new law retains the basic structure of the German judicare schemes but increases both the numbers of persons who are entitled to legal services, and more importantly, for the first time, provides for legal advice outside of a litigation context.  

Judicare remains the preponderant model of legal services in France, New Zealand, Italy, Japan and Australia. Within these countries there is considerable variation in the services provided. Within the European Common Market, no right to counsel for accused persons exists in either Italy or France, despite Article 6 of the European Convention. Although there is a growing awareness even in judicare schemes that services may be a legitimate expectation of tenants, consumers and welfare recipients, such services are often not available. This applies even in wealthy nations such as Japan, where until recently, 50 per cent of the legal aid cases were traffic offences. The largest growth area in Japan has been in the provision of legal services for domestic disputes. Similarly, despite the highly sophisticated social welfare scheme in Germany, there has been no development of independent legal representation in

74 The German legal aid system is administered by the courts rather than by the legal profession. A potential litigant obtains a certificate of means from the town hall and then approaches a lawyer or court officer. There, the nature of the claim is reduced to its fundamental principles in writing. Application is then made by the litigant or his/her representative to the judge who will eventually try the case. This judge decides whether or not to grant legal aid. The decision is rendered according to the dual test of the reasonableness of the claim and the means of the litigant.

75 Article 6, paragraph 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms states:

Everyone charged with a criminal offence has the following minimum rights: ... (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require. (Quoted in Varano, Italian National Report (1982), at 3-4.)

In addition, paragraph 1 provides,

In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. (Quoted in Varano, Italian National Report (1982), at 4.)

In the Airey case of October 9, 1979, the European Court of Human Rights held that the inadequacy of the Irish legal aid system constituted a violation of the "fair hearing" requirements of this paragraph.

76 Uchida, Japanese National Report (1982). The statistics refer to the assistance scheme organized by the Japanese Legal Aid Society. Since the Legal Aid Society uses the same criteria to grant aid as the government scheme, it may be assumed that a roughly comparable figure is applicable to the government scheme.
non-traditional matters; although advice can be obtained at some social welfare offices, very little representation takes place for basic poverty law problems. In Poland, where there is no private legal practice, costs are exempted in some matters when need is shown. Some assistance is given over and above the cost exemption by the judiciary whose general duty is to assist parties and inform them of their legal rights. As well, Polish social organizations attempt to resolve disputes by conciliation and may provide lawyers in certain limited instances.\textsuperscript{77}

In countries where legal aid schemes have been in existence for some time, we note the development of a private legal aid bar which has become specialized in handling, not only domestic and criminal disputes, but also social welfare cases. Judicare administrators are being pressured by the expanding legal aid bar to grant certificates in landlord and tenant disputes, immigration cases, and social welfare matters which were traditionally considered to be outside the orbit of the juridical model. Private lawyers who have worked in clinics either as part of their legal education or as staff lawyers, have often chosen to remain involved within the practice of poverty law. Similarly, many young lawyers who are unable to penetrate the corporate law firms or more traditional areas of practice have gravitated to legal services. Thus we note the growth of specialization in poverty law in the private and public sectors. The continued development of both the quality and quantity of poor people’s lawyers is dependent on the willingness of governments to allow legal aid funds to grow so that tariffs for private lawyers and salaries for public lawyers can be kept at a relatively tolerable level.

V. PROFESSIONALIZATION OF LEGAL SERVICES

As this paper has already discussed, the traditional provider of legal services has been and continues to be the lawyer. The professional monopoly has protected the legal professions from intrusion from immigration consultants, divorce advocates, or welfare rights workers by various forms of policing of intruders. The significant development in provision of legal services, particularly in the community legal aid clinic, has been the growing use of paraprofessionals, non-lawyers providing legal services to low income persons. Non-lawyers are being utilized in the public sector, either directly delivering legal services to low-income citizens or assisting staff lawyers in community legal aid clinics. Since legal aid services schemes have not permitted low income citizens to retain paralegals directly or indirectly on a fee for service basis, the public sector

\textsuperscript{77} Erecinski, Polish National Report (1982), at 117.
paralegal or the community legal worker, as they have come to be known in Ontario, is the result of the community legal aid movement in North America and the English law centre. In Poland, where there are no private law firms and where citizens may represent themselves or be represented by a member of their family, most persons are in fact represented by advocates.

Public sector paralegals bring to their tasks varying degrees of formal training and experience, but they usually have a special awareness of the situation confronting the potential client. In the United States, these workers have been recruiting from within the community, sometimes from ranks of formal social security claimants, and are therefore uniquely in tune with the social and legal problems confronting the poor. There are distinct advantages to the familiarity and interest the legal worker brings to a situation. Thorough familiarity with the community and its needs, an ability to communicate easily with members of the community, and the potential for innovative solutions not always apparent to the university-trained professional are all distinguishing features of the legal worker. It has been argued that the paralegal can articulate more effectively the problems of the underprivileged person or community group to government and public agencies which dispense services and monies to the poor.78

The use of non-lawyers in the delivery of legal services first arose in the American legal services movement in the 1960s. Initially, community clinics were staffed primarily by salaried lawyer and little use was made of either volunteer members of the bar or paralegals. This situation was severely criticized by Edgar and Jean Cahn. In their article, "What Price Justice: The Civilian Perspective Revisited",79 they noted the failure of the neighbourhood clinics to use non-professionals on their delivery staff:

Finally, with respect to manpower, we have created an artificial shortage by refusing to learn from the medical and other professions and to develop technicians, non-professionals and lawyer-aides-manpower roles to carry out such functions as: informal advocate, technician, counsellor, sympathetic listener, investigator, researcher, form writer, etc.

At present lawyer are expected to perform all these functions. To so equip them, lawyers are put through an extensive period of formal training and then apprenticeship that limits the number that can be produced. Yet lawyers spend only a small portion of their time performing functions which cannot be performed equally well by less thoroughly trained persons. Nonetheless, the profession has refused tenaciously to delegate any of these functions to anyone else.80

79 Cahn and Cahn, (1966), 41 Notre Dame Lawyer 927.
80 Id. at 934-935.
Today, paralegals are a significant element in the delivery of legal services in the United States and Canada, both in clinics and in mixed delivery systems.

The makeup of the staff of clinics and the relation between the number of legal and non-legal personnel is of particular interest to the study. During the mid 1970s, Ontario clinics employed three paralegals for every lawyer. While the percentage of community legal workers relative to the total number of people employed in the clinics declined between 1976 and 1980, the ratio of community workers to lawyers is still two to one in favour of the paraprofessionals. 81

We find by comparison that paralegals composed 17.5 per cent of the total staff in American legal clinics in 1974, while attorneys composed 39.4 per cent. 82 From another perspective, the Ontario clinics employ twice as many paralegals as lawyers, where the American clinics employ half as many paralegals as lawyers. The greater proportion of community workers employed in the public sector in Canada can be explained by the resistance of public sector lawyers in the United States to both the hiring of and the delegation of responsibilities to paralegals, and the unwillingness to provide adequate funding to paraprofessionals.

In recent years the number of paralegals working in public sector legal services in countries with a welfare perspective on legal services has increased substantially. 83 Concern has shifted from an initial preoccupation with the creation of the role of the paralegal, to an emphasis on specific jobs, standards of performance, quality control, accreditation and training needs. Functions which public sector paralegals perform in the delivery of legal services may be characterized as follows: 84 (1) information giving: the paralegal is often called upon to provide information and advice on legal matters ranging from landlord and tenant to criminal law. The client will typically wish to be informed about what the governing law is, what

83 In Jamaica paralegals are employed in the Kingston Legal Aid Clinic, the Mid-Island Clinic and the Montego Bay Clinic and played a significant role in each of these programmes.
protection the law grants him in the situation, and which course of action is most advisable in the circumstances. (2) assistance: this involves identifying and researching the legal problems, collecting and analyzing the factual and legal material, providing procedural assistance, and in some instances preparing legal forms. (3) advocacy: this function can be subdivided into informal and formal advocacy. The paralegal often functions as mediator and conciliator, attempting to negotiate in an informal manner through letters, telephone calls, and discussions with the parties. Where no settlement is possible, the paralegal will take a formal advocacy function. He will prepare his client's case for formal dispute resolution and will represent the client in the designated forum. Paralegals have the capacity in most jurisdictions to appear before administrative tribunals, lower courts, and legislative committees. (4) public education: this includes the preparation of booklets, newsletters and other literature for popular dissemination and the planning of workshops and seminars. These aim at making the general public more aware of their rights and of the remedies available. Educators may also use the mass media such as newspaper columns, radio and television to bring to the attention of the community their legal rights. This latter function has been used effectively by paralegals in Latin America. Land reform information, for example, has been brought to the attention of peasants in Peru by using comic strips. (5) community development and law reform: this function includes facilitating the organization of the community into groups that are prepared and able to exercise their rights effectively and press for genuine social change.

Any discussion of the role and functions of paralegals in the provision of legal services must consider the extent to which they are capable of functioning independently. This writer has conducted empirical studies on this topic — studies which conclude that paralegals working in community clinics have been given the freedom to handle a wide assortment of legal tasks with little or no supervision by staff lawyers. Much of the work done by the paralegals has been handled effectively, efficiently, and economically. There are legal services programmes in Canada which are staffed

85 The work of Centro Pernanode Estudios (CEPES) is noteworthy and was discussed by Diego Garcia-Sayan at the first Conference on Legal Services in Latin America and the Caribbean in San Jose, Costa Rica in October 1981.
86 Paralegals are allowed to appear at tribunals and before lower courts as "agents" or "friends" or at the discretion of the presiding judge or chairman of the administrative body. The non-lawyer is not able to appear in the higher courts.
exclusively by paralegals who received limited supervision from either part-time lawyers or private practitioners. Such speciality clinics have tended to work in specific areas of the law such as housing or social assistance.

As funding for legal services becomes more constrained, the need for legal services continues to increase. Legal paraprofessionals allow the delivery of both effective traditional legal services and more innovative and reform-oriented services at a moderate cost and in a responsive fashion to the client community. Training citizen advocates to represent their own community and to work within their particular areas of interest offers new potential and challenge to the delivery of legal services.

Along with the growing use of paralegals, the last decade has seen the growing professionalization of the lawyers working in salaried legal services programmes. By the late 1970s, legal services lawyers in the United States had become well established and their number grew to the extent that they became a significant force within the American legal profession. As the political climate had changed, so had the lawyers who worked for the Legal Services Corporation. Gone was the radicalism of the sixties and early seventies. Legal services lawyers of the eighties are concerned with job security, limiting caseloads and rationalizing their professional development. Some legal services lawyers have quite naturally banded together with others and unionized. Legal services lawyers not only had greater security in the late seventies, but they were better trained and more prepared to initiate test case litigation. Such litigation was encouraged by national training seminars, exchange of pleadings and the reports of significant victories in reviews and journals. Legal services lawyers began to see themselves as being legitimately able to join their professional colleagues as they moved from fighting for social change in the streets into the courtrooms. Appel-

88 Injured Workers' Consultants (IWC) in Toronto, Canada is such a clinic. One of the original legal clinics in Ontario, IWC provides legal assistance to injured workers pursuing claims for the Workmen's Compensation Board of Ontario. In 1980, Injured Workers' Consultants received funding in the amount of $162,982 from the Ontario Legal Aid Plan to employ eight paralegals on its staff, but no full-time lawyers. The day to day case work in this clinic is handled by the individual community legal worker who assumes responsibility for over thirty active files and is primarily responsible for the quality of the case work. These paralegals have developed a special expertise and competence equal, if not superior, to that of lawyers in the area of workmen's compensation.

89 Partington, in the English National Report, discusses the issue of the professional monopoly and the position taken by welfare lawyers in the United Kingdom that the legal profession should be nationalized.

90 Supra note 30.
late litigation as well as participation in professional activities gave legal services lawyers a level of acceptability with the establishment bar which "poor people's lawyers" had not previously enjoyed in the United States.

The well-intentioned reform litigation of legal services lawyers began to have a significant impact on the administration of social welfare in the United States in the late 1970s. Writers such as Jack Katz suggest that, in their efforts to rationalize the administration of welfare to the poor in America, legal services lawyers have reformed and rationalized welfare schemes but have, at the same time, effectively legitimated the treatment of poor people as a separate class. Katz argues that much of the reform litigation generated by legal services lawyers is an outgrowth of their need to act like and perform tasks considered to be significant by other lawyers. The effect of this form of practice has been the stabilization, regularization and insulation of poverty programmes into separate government agencies.

At the same time that critics of the system like Bellow and Katz raised their criticism concerning the "insularity" of American legal services lawyers. The Legal Services Delivery Study, conducted by the Legal Services Corporation, concluded that the American staff attorney programme was the most effective form of delivery of legal services, especially with respect to law reform, because of the "professional expertise" that such offices had developed. Thus, American legal services lawyers, at the end of the seventies, were cost effective, well trained and sophisticated deliverers of traditional as well as reform litigation. Yet the concern continued to be expressed that the services were becoming too routinized, that poverty was being regulated and legitimized, and not removed, and that the justice system had merely expanded its boundaries slightly to encompass legal services lawyers whom the profession had co-opted. The Reagan administration's attack on legal services in early 1980 has politicized the legal services lawyers if for no other reason than to sustain their programme and their livelihood.

VI. THE SECOND GENERATION OF LEGAL SERVICES

Denti, in 1977, wrote that:

\[\ldots\] the cost of a truly efficient legal aid system would be unbearable for these poor countries. As a consequence, legal aid on a universal basis is not yet feasible, at

91 Supra note 14, at 50-55.
92 Supra note 30.
93 Supra note 14, at 52.
94 These developments are discussed in the conclusion of this paper.
95 Supra note 30.
least as far as civil cases are concerned. It has correctly been observed that an efficient legal aid system requires a high national economic standard, a relatively small proportion of poor people, the availability of many lawyers willing to perform a socially-oriented activity, the independence of courts, and the existence of constitutional principles regulating fundamental guarantees in the administration of justice. The absence of these conditions in developing countries indicates that access to justice can be attained not through the introduction of legal aid schemes such as those found in Western countries, but by eliminating the need for representation by counsel. This means simpler procedures, initiative powers for the judge with respect to the course of the proceedings and to the assembly of evidence, and the creation of special conciliation boards and greater utilization of small claims courts.\textsuperscript{96}

I shall briefly provide an overview of developments in legal services in some of those nations which are considered to be amongst the developing nations. These are the countries where there are significant numbers of underprivileged citizens, and where, according to Denti's observation, new solutions must be found. In the following pages I shall examine the availability of legal services in India, Latin America, and South Africa.

**INDIA**

From its colonial period, India inherited legal and political traditions — traditions which have been superimposed on a large and generally deprived population living predominantly in rural villages. The national reporter on India, Professor K.B. Agrawal, states:

It is indisputable that in India, the society is marked by extreme socio-economic inequalities. Poverty, ignorance and illiteracy are general and pervasive, affecting large sections of the community. A vast majority of the people live today in a sub-human existence, in conditions of abject poverty which has broken their backs and sapped their moral fibre. They have lost their will to resist, to struggle and to fight. They are resigned to the hopelessness and helplessness of their miserable existence.\textsuperscript{97}

A highly complicated procedure was left behind at the time of independence as a legacy of British rule, and since 1949, the Indian government has further complicated the court procedures to the point where the intricacies of the system are beyond the grasp of all but the most sophisticated legal professionals. This complicated procedure has resulted in a tendency for lawyers to become specialists in the procedures of one court and to be attached to that court, to the exclusion of all others. In addition, the Indian legal profession may be considered large in both absolute and relative terms. A recent estimate placed the number of lawyers at 228,000 — approximately

\textsuperscript{96} \textit{Supra} note 1, Zemans in 181 and Storme and Casman at 356-357.

336 lawyers for each million people, a ratio far larger than other third world countries.\textsuperscript{98} Prominent features of the Indian legal profession include an orientation to litigation rather than advising, negotiating or planning; individualism; and lack of commercial law or other expertise.

Galanter has written about the Indian legal profession:

Thus we get a picture of legal services supplied by relatively unspecialized lawyers, involved in little coordination of effort, offering a relatively narrow range of services. Relations with clients are episodic and intermittent. The lawyer addresses discrete problems in isolation from the whole situation of the client and uninformed by considerations of long range strategy. This kind of atomized legal services accentuates the disadvantages of the poor and disadvantaged in using the legal system. Vindication of the entitlements of the poor is not part of the standard repertoire of lawyers, which is oriented to the needs of the recurrent users of the system. The ways the poor could use the legal system are more inchoate and require investment in innovative research and investigation. But lawyers are disinclined to make these investments because of lack of imagination, resources and models and because the poor and disadvantaged are not organized to provide a sustained market for such expertise if it were developed.\textsuperscript{99}

The strong attachment of Indian lawyers to individual courts and their bias towards legal rules and technical approaches have created a legal system which has distanced itself from the vast majority of the Indian population.

India inherited a legal system with a tradition of integrity, particularly with respect to the courts, from its British origins.\textsuperscript{100} This reputation was not destroyed, and was perhaps even enhanced, during the state of emergency declared by the Indian government during the mid 1970s. While the courts did make some decisions which were seen to be politically influenced, they also came to be seen, to a limited degree, as guardians of the rights of the individual. Throughout this period, the government generally carefully maintained the independence of the judiciary.\textsuperscript{101} During the 1975-76 emergency, legal aid to the people was one of the key points of the 20 point programme launched by Indira Gandhi. Several leading judges responded by leading a nationwide movement for the promotion of legal services. They organized legal aid camps in distant villages; they mobilized many high court justices to do padayatras (long marches) through villages. They also, in their extracurial utterances, called for a total restructuring of the legal system, and in particular of the administration of justice. In a sense, their movement constituted a

\textsuperscript{98} Galanter, \textit{supra} note 24. Agrawal states there are 120,000 lawyers in India. \textit{Supra} note 97, at 24.

\textsuperscript{99} Id. at 7.

\textsuperscript{100} Id. at 2.

\textsuperscript{101} Id.
juridical counterpart to the party programme which stemmed from the 1971 slogan "Garibi Hatao" (eliminate poverty). Although the judges stopped short of overtly legitimating the regime of the emergency, they remained vulnerable to the charge of acting as legitimators of the regime. Be that as it may, many Supreme Court and High Court justices did systemically become re-oriented to the needs of the people in a manner conducive to the growth of judicial populism.  

Although the first comprehensive examination of the need for legal aid occurred in India just after independence in the late 1940s, it was not until the period of emergency in the mid 1970s that both a Committee of Judicare, chaired by a Supreme Court Justice, and an India Congress Committee on Constitutional Reform recommended the inclusion of a commitment to legal aid in the Indian Constitution. Thus, the forty-second amendment of the Indian Constitution included article 39A:

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid by suitable legislation or scheme or in any other way, to ensure that opportunities for securing justice are not denied to any citizens by reasons of economic or other disabilities.  

The inclusion of the right to free legal aid in the Indian Constitution reflected a limited commitment on the part of the government to legal services for the poor and a philosophy of broadening access to justice. As with many other governments, the commitment to access and the actual provision of funds and establishment of legal services are quite different matters. Some Indian states have made tentative initiatives, but programmes remain either in the planning or initial stages of development. Although a national criminal legal aid programme exists, it is inadequate. Civil legal aid, where it is provided, is usually on a charitable basis, and concerns are frequently expressed about the quality of the service. Professor Agrawal writes:

The leaders of the judiciary and the bar in India have long recognized the need for effective legal assistance to all in the society. But their work in practice has remained high sounding speeches, long drawn out articles and paper schemes. No appreciable work appears to have been done in this area. The present facilities are hopelessly inadequate.

A review of the provisions for legal aid in the states reveals that, with a few exceptions, the twenty-seven states in India have not been able to ensure legal services to an appreciable degree in civil, or criminal, or any other area.  

102 This movement was spearheaded by Justices Krisha Iyer and Bhagwati of the Indian High Court. For details of this movement, see Baxi, "Social Action Litigation in the Supreme Court of India" (unp.) at 8-9.

103 Supra note 97, at 24; also see Galanter, supra note 24, at 14.

104 Supra note 97, at 7.
During the late seventies, within both the government and the higher levels of the judiciary, recognition grew of the need to both implement the constitutional amendment and to legitimate the commitment to legal services. A government committee under the chairmanship of Mr. Justice Bhagwati of the Supreme Court of India recommended the introduction of a fortified judicare scheme. Although this committee opted for a judicare model, there is an awareness on the part of Indian legal aid planners that such simple service-oriented programmes are inadequate. It is recognized that the effects of rampant poverty, illiteracy, ignorance, and exploitation must be taken into account in the design of legal aid schemes.

The Bhagwati Committee held that a legal services programme in a country like India must be dynamic and reformist, and must promote legal awareness amongst the people, carrying legal services to their doorsteps and promoting community mobilization, rights enforcement and public interest litigation. To meet these needs, the committee recommended not only an expanded judicare scheme but also three other programmes: legal aid camps, Nyaya Panchayats (Courts of Village Elders), and the Lok Nyayalaya (People's Courts). While these proposals have not been legislated, pilot and experimental projects have been established for all three recommendations.

Legal aid camps are proposed for poor communities. Under this programme, law students, lawyers, and social workers would make door-to-door home visits. Camp personnel would both attempt to raise citizens' awareness of their rights and gather information about regional problems. Problems between several citizens of the same community would be dealt with by camp personnel through counseling and informal dispute resolution techniques, although formal litigation would be beyond the scope of this project.

The Nyaya Panchayats (Courts of Village Elders) were a significant part of the pre-colonial Indian justice system. Located within the villages, the Courts of Village Elders would resemble the informal justice systems now being developed in North America. Three citizens would preside over the court. The chairman would have some legal knowledge, but the other two members would be respected local laymen. Hearings would be held in public and would be conducted informally, in the native language. Following the historical traditions of these tribunals, disputes would be approached in an inquisitorial rather than an adversarial manner and litigants would represent themselves.

105 Supra note 97, at 3. This committee was established in May 1976, and submitted its "Report of the Committee on Judicare" in August 1977.
106 Id. at 10A.
The courts would be in many ways equivalent to small claims courts, with jurisdiction limited to approximately $112 U.S. The courts would have the authority to deal with those criminal matters traditionally handled by a third-class magistrate.\textsuperscript{107}

The \textit{Lok Nyayalaya} (People's Court) would be under the jurisdiction of a small panel of lawyers and social workers and would function as an arbitration board rather than a court. The emphasis would be on informal dispute resolution, and decisions would be in the form of arbitration awards that could be converted into judicial decrees if enforcement became necessary.\textsuperscript{108}

The Bhagwati Committee recognized the importance of research, law reform and community legal education, as well as the need for specialized training for poor people's lawyers. To facilitate and coordinate these goals, the Committee recommended the establishment of a national legal aid programme in India.\textsuperscript{109}

The proposals of the Bhagwati Committee would offer some hope for a more effective, informal resolution of disputes between low income citizens. The recognition of the need to return to more informal community-based courts should be applauded, as should the recognition of the need to avoid the formalities and expense of the court system, which would be perpetuated by a judicare scheme. The proposed People's Courts and Courts of Village Elders recognize that many, if not most, innovations on behalf of low income and other underprivileged persons can best be accomplished outside the traditional approaches of the legal system and profession. This would particularly seem to be the case in India, where the profession is noted for its highly individualized approach to client problems and where professional careers have tended to focus almost exclusively on advocacy within particular courts. The potential for success of the proposed innovations in dealing with conflicts between poor people and government agencies, large businesses or non-poor people (rich), however, seems doubtful. Systemic problems of poverty will fall outside the jurisdiction of the innovative solutions and will either be relegated to the judicare system, or to the evolving public interest or social action bar. The writer sees some hope in the proposal for legal aid camps which is an extension of the concept of community education which is gradually developing in more industrialized countries. The Bhagwati Committee hopes to develop a specialized poverty and social action bar, and some movement has begun in that direction with the development of exchange programmes for lawyers and para-

107 \textit{Id.} at 11, 15.
108 \textit{Id.} at 12, 16.
109 \textit{Id.} at 17A.
Extenste funding by the Ford Foundation, for conferences, exchange programmes and innovative legal service projects should further those developments.

In conclusion, it is interesting to note that there has been only limited commitment to more strategic models of legal services delivery. Specifically, establishment of community legal clinics has not been recommended. Following the British tradition, the few Indian clinics that do exist have not been incorporated into state-funded schemes. There are two programmes in India which resemble the clinical model, but they would appear to be anomalies. Both of these programmes provide legal services to the tribal communities in the State of Gujarat. Paralegals are used for community liaison, intake, and support services, while professional lawyers provide most of the legal representation. Rajpila Free Legal Aid is operated by the Jesuits and supported by overseas charities as part of a wider economic development and service programme in a tribal region of Gujarat. A mixed delivery system has developed which allows the staff lawyer to screen and select cases which are handled by local counsel who are briefed and paid to do the courtroom advocacy. This programme goes beyond a service model, to devise campaigns focused on significant issues. The Legal Support Scheme for the Poor, operated by Anand Niketan Ashram, is another part of the service programme in the tribal areas of Gujarat. With some 12 lawyers, 43 paralegals and 18 clerks and administrators, this scheme is the largest law firm in the region. Galanter reports that during its initial year of operation (1978-79), the centre rendered advice in about 5,000 cases and filed 259 cases in court. As well, the programme utilizes a long established Lok Adalat (People’s Court) to hear disputes among the tribe members themselves and as a training ground for paralegals.

Another significant development in India has been the growth of social action litigation. Cases are almost never litigated by the individuals directly concerned. Rather, legal action is initiated by lawyers, social workers, interested groups, or the judges themselves. During the early 1980s, approximately 70 cases that were concerned with social change and social action were commenced in India.

110 Details concerning these programmes are available from AFS International/Intercultural Programs, 343 East 43rd Street, New York, N.Y. 10017.
111 Supra note 98.
112 This term is utilized by Indian scholars to distinguish this type of litigation from the North American concept of public interest advocacy.
My brief analysis of the Indian situation offers some tentative observations, and perhaps reasons for optimism. There would seem to be a growing recognition that the problem is too great to attempt to introduce legal services schemes such as those that have developed in Western Europe and North America. Rather, both domestic and foreign funding are employed in more innovative and strategic types of programmes. The introduction of People’s Courts and the re-introduction of the Courts of Elders have been criticized as removing pressure from the legal profession and dissipating reform energies. The concern is that a stratified system of justice will develop with one system for the rich who can afford to litigate and use attorneys, and another system for the poor who are relegated to People’s Courts and paralegals. This argument is not a new one, but is the recurring debate in all countries with respect to legal aid. The stratification argument is inevitable in judicial systems, and a theme of this paper is to recognize the inevitability of such a hierarchy in the legal system. The danger of funding judicare schemes is that such support may in fact be taking place because of the need of the legal system and the legal profession for legitimization. Agrawal and Galanter have both written that the reputation of the legal profession has declined in recent years.\(^1\) Lawyers are increasingly looked upon with suspicion by the public. Lawyers and judges alike may see access to justice schemes, and particularly service models such as judicare, as an opportunity to improve both their reputations and their incomes. The ultimate question in India, as elsewhere, is whether the growth of innovative, more strategic legal services can be effective in improving the lot of the oppressed of India. Constitu-

\(^{113}\) Supra note 24, at 10:
Galanter writes:

At the same time, the role of law and lawyers in India seems superficial and precarious. The prestige of the legal profession has declined since the pre-independence days when lawyers were key spokesmen for national aspirations. The emphasis on economic development and the burgeoning of elective politics enhanced the power and prestige of other callings, accelerating the long-term drift away from the bar as a focus of ambition for the educated. It is clear that lawyers play a much less prominent role in public life than they did before independence. Lawyers are often seen as parasites and more word-mongers who have little to contribute to national development, when they are not obstructing it by over-zealous protection of vested interests.

Supra note 97, at 22:
Agrawal in his National Report:

But it is clear that lawyers play a much less prominent role in public life than they did before independence. The re-orientation of the moral and social basis of the Bar is a matter of concern for India, especially because the state has granted to it a monopoly to practise before the courts and tribunals.
tional reform and legal commitments are straightforward and arguably advantageous to the existing social order, while reforms and new divisions of property and power can only potentially be encouraged by strategic legal services.

SOUTH AFRICA

It is a peculiarity of South African legislation that it tries to make rigid and inflexible situations that might otherwise have a natural pattern of growth and change. The divisions between black and white, between country and town are enforced by a panoply of legislation. It is a truism although a simplified truth that race is a dominant feature of South African society. The cornerstone of the South African political structure is a form of categorization of people by race and, in the case of Blacks, by origin. The Population Registration Act provides that all persons must be assigned a colour description: White, Black, Coloured. Whom one may marry, where one may live, where one may work, where children may go to school, the scale of welfare benefits for which one is eligible, the scale of wages which can be expected (although this becomes increasingly less true) are all dependent upon this original classification. If one is Black, the origin which is ascribed to one, whether accurately or not, will affect citizenship. Within the border of the Republic of South Africa there are now four independent national Black states. These are Transkei, Bophutatswana, Venda and Ciskei. Persons to whom origin in one of these states is ascribed become citizens of those states and lose their South African citizenship. The repercussions of this loss are widespread and distressing for those who have summarily and against their will been deprived of their citizenship. In addition to the independent national states there are self governing but not independent Black states which sometimes are called homelands. They are Gazankulu, Lebowa, Qwa-Qwa, and Kwa-Zulu. KaNgwane and KwaNdebeke are two more areas which will receive a form of self government, roughly equivalent to the powers of the white provincial authorities, soon.114

Our discussion of legal services in South Africa must start with a recognition of the unique political and economic structure of South Africa. Felicia Kentridge, the South African national reporter, has eloquently set the scene for my examination of recent developments in legal services in this racially oppressed nation. No specific racial exclusion exists for legal services, yet we find that state legal aid systems are used least by the blacks who are the majority and the economically deprived members of the South African community.115

The obstacles to the legal system are inherent in the very poverty,

115 Id. Appendix at 1.

Approximately 18% of the South African population is classified as white, 67% as black, and 14% as coloured. Derived from 1980 estimates which exclude the populations of Bophuthatswana, the Transkei, and Venda. The state legal aid system handled 32,909 applications in 1980. Of these 30% were from whites, 27% were from blacks, and 43% from coloureds. (Derived from statistics in the South Africa Institute of Race Relations, Annual Survey of Race Relations, 1980, and quoted in Kentridge appendix at 3.)
ignorance, and enforced distances prevalent in the South African black community. The resettlement programmes have moved people, generally blacks, to rural areas where no services are available and in most instances where no community infrastructure and no economy exists. Citizens of South Africa are deterred by their own experience from approaching a government institution for legal aid.

South Africa has a state system of legal aid which was introduced in 1969. It is a classic service model, under which private lawyers' fees are paid according to a fee tariff. In addition, there are a number of significant recent developments such as the Legal Resources Centre in Johannesburg, advice offices, university clinics and the Centre for Applied Legal Studies.

An interesting aspect of the South African legal system is the Commissioner's Courts which can both preside over civil and criminal cases where both parties are black. Depending on the nature of the dispute, these courts may apply either common law or customary tribal law. The latter is used most frequently for domestic disputes. Generally, litigants are unrepresented in Commissioner's Court. The Commissioner's Court is designed to allow black persons to attend to their own affairs, with the assistance and guidance of the clerks of the court. This is one of the many aspects of the current South African legal system which is the subject of scrutiny and the subject of a current judicial commission. The capability of persons to conduct their own affairs in the inferior courts is being questioned, as is the capability of those running the courts to assist litigants.116

There are few black lawyers in South Africa. In the state of Transvaal, there are 2,800 attorneys of whom 75 are black. In all of South Africa, there are 700 advocates (barristers) with only 10 black advocates.117

The South African legal aid system has been described in detail elsewhere.118 Simply put, it is a state legal aid system run by the government, administered by representatives of the Bar, and the attorneys' association and the government serving on a Legal Aid Board. Its officials are civil servants who for the most part serve a double function as both legal aid officers and, in their primary function, as magistrates, commissioners or clerks. The scheme is a rather typical service-oriented judicare scheme, with representation to be given in all cases where the assistance of a legal practitioner is normally required. There is no sliding scale of assistance, and as

116 Id. at 8.
117 Id. at 8.
118 See, for example, P.H., Gross, "South Africa", in Perspectives on Legal Aid: A Comparative Survey, F.H. Zemans ed. (London: Frances Pinter, 1979) 346-361.
with many court-oriented legal services schemes, there are certain types of cases which are deemed to be unworthy of representation. These include actions based on defamation, estate administration and certain debtor proceedings in the lower courts. There are also severe limitations on the provisions of legal aid in divorce proceedings.

As we have noted in our discussion of legal services in the so-called developed nations, the right to representation and the provision of quality legal services do not always coincide. The South African experience is particularly poignant in this regard:

One of the major impediments to the better functioning of the Legal Aid Board has been the attitudes of attorneys. There are constant complaints from persons all over the country who have asked an attorney to act for them to apply for legal aid from the Board, but who are told by the attorneys concerned "it is no good" or "there is too much red tape", etc. In the urban areas and in particular in Johannesburg where the Legal Aid Board is asked to act, it does in general do so. In country areas, it is much more difficult for persons to get legal aid partly because, it appears, the persons designated to act as legal aid officer are often unaware of the implications of that office.¹¹⁹

Recent developments in South Africa, however, are encouraging. Perhaps the most significant project is the Legal Resources Centre, which is the first law firm in South Africa staffed by both salaried advocates and attorneys. The Johannesburg centre has been in operation since January, 1979, and is now staffed by five attorneys, four advocates and four articling lawyers. In 1982, the Centre opened an office in Durban staffed by one advocate, four attorneys, and one trainee. Adopting a strategic approach to the provision of its free service, the Legal Resources Centres has carefully established its priorities and goals.

The Legal Resources Centre has emphasized cases involving a group benefit and not simply individual claims. Although class actions are not possible in South Africa, the Legal Resources Centre does take "test" cases.¹²⁰ The Centre has assisted in the development of legal education and legal training schemes suitable to the grow-

¹¹⁹ Supra note 114, at 10.
¹²⁰ Id. at 16.

Kentridge's National Report on South Africa gives several examples of significant test cases which have been handled by the Legal Resources Centre:

South Africa allows for administrative hearings where a transport operator wishes to increase bus fares. Commuters from the Black town of Soweto and from the Coloured and Indian areas, all of which lie some kilometres outside the Johannesburg city centre, wished to oppose an application for fare increase, on the ground that they could not afford the increased fares. The right to a hearing has existed for many years but the objectors have not in the past been able to arrange for full representation at the hearings. The Legal Resources Centre appeared on behalf of these objectors and for the first time the question
Recent Trends

ing number of black law graduates. It is involved in community
development and operates a programme for training and assisting
persons wishing to establish neighbourhood advice offices.

In addition, the Legal Resources Centre has opened the first law
clinic in South Africa. It is staffed by two full time attorneys who are
able to litigate in court and train student counsellors. The clinic
concentrates on consumer matters and labour law. In 1980-81, the
clinic conducted 10,000 interviews and handled approximately 2,000
cases.\footnote{121}

A number of advice offices have been developed in South Africa,
the most significant of which being operated by the Black Sash. The
Black Sash is primarily a woman's organization, formed originally
to protect the disenfranchisement of coloured South Africans 25
years ago. Since that time, these lay advocates have developed an
expertise with respect to the maze of legislation which affects the
rights of local black persons. They offer a paralegal advice service to
persons with problems with the pass laws which affect every aspect
of the lives of black people. They are also actively involved in
training community workers from the black townships to set up
advice offices which will be staffed by local volunteers:

The volunteer workers who staff the advice offices are now better qualified than
anyone else in South Africa to explain the regulatory controls which enmesh Black
persons living in South Africa and to assist these persons where possible to find a
way of leading a family life within that maze.\footnote{122}

Other developments in South Africa include programmes such as
the Legal Aid Bureau, which provides litigation services by volun-
teer lawyers. A more recent innovation is the development of law
school clinics which have encouraged the development of new spe-
cialists, particularly in the area of labour law.

The extremities of the political situation in South Africa confront
the international observer squarely with the question of the utility
of legal services and the extent to which social change is achievable

\begin{itemize}
  \item of the structure and funding of public transport, of the financial standing of the
  company applying for the increase was fully aired. This representation led to
  or may have been partly responsible for the appointment of a parliamentary
  commission to investigate the entire question of road transport in South
  Africa. It also led in some cases to the fare rise applied for being refused or
  granted to a lesser degree.

  Kentridge also indicates that The Legal Resources Centre has dealt with cases
  arising from the Blacks (Urban Area) Consolidation Act No. 25 of 1945, which
  controls the rights of blacks to live and work in urban centres.
\end{itemize}

\footnote{121}{Id. at 12.}
\footnote{122}{Id. at 13.}
through these means. One must particularly question the extent to which legal services are merely a legitimating exercise for the South African government. Certainly, the judicare scheme established and administered by the government is neither active in nor committed to social change, and approaches those problems it is prepared to handle on a case-by-case basis. Projects such as the Legal Resources Centre are dependent on external funding as well as contributions from South African corporations. Realistically, such programmes must define their role regarding the Black majority within the context of the oppressive laws of the Nationalist government. Perhaps the most significant role performed by the Black Sash and the Legal Resources Centre is their community education function, particularly their commitment to the education of black lawyers, black lay advocates, and black paralegals. This commitment to education may ultimately provide a significant contribution to the inevitable introduction of a democratic society in South Africa.

LATIN AMERICA

International studies of legal services have tended to ignore the Latin American situation. Latin America contains a greater number of countries than Europe, and within these countries there is a diverse range of legal services schemes. As a result, in-depth and comparative research about legal services in this area has not been easily available. Although a full discussion of developments in Latin America requires more extensive analysis than this report allows, I am most fortunate to have received from Fernando Rojas, of Colombia, an overview of legal services in Latin America. My report is based on the information contained in his report and the national reports received from Brazil, Costa Rica, Colombia, Honduras, Mexico, Peru, Uruguay, and Venezuela.

To understand Latin American legal services, we must keep in mind the situation of those whom the system services. Latin America has a high incidence of poverty: between 30 and 70 per cent of its national populations are peasants. Uneven income distribution is prevalent in both Spanish and Portuguese speaking South America. The poorest 20 per cent of the Brazilian population received approximately 4 per cent of the national income, and the most recent statistics indicate that the poor are becoming relatively poorer.

123 Rojas, "Descriptions towards Typologies and Analysis of Legal Aid Trends in Latin America" (unp. 1982) at 18.
Correspondingly, legal fees are relatively high in most Latin American nations. In Venezuela, the hourly rate to hire a good (but not outstanding) lawyer is 500 bolivars, an amount equal to the average family income for five days. Legal services in Latin America are clearly outside the means of the majority of the population.

Latin America retains many of the vestiges of Spanish and Portuguese colonization of the fifteenth and sixteenth centuries. The judiciary is in most instances isolated from social, political and economic reality of the individual nation, and its legitimization is attained to a greater extent by virtue of its support of the powerful elites. Perez Perdomo writes:

... even in contingent conflicts, that is to say, those which oppose well-defined political sectors of the ruling class, the decisions of the Judicial Power are influenced enormously by the political system. The selection and promotion procedures of judges is very marked by the political party system, which would indicate that the judges are sensitive to the expectations (while not the suggestions) of their political patrons; moreover, it could be empirically demonstrated that in deciding controversial cases which interest the national political parties, the judges are divided along the line of their party affiliations or sympathies.

The legal systems in most Latin American countries still contain the early provisions of the Civil Code regarding the right to free legal representation for children and for those lacking the necessary

126 Bustamante, the Peruvian national reporter, writes:

Peru has a judicial system completely isolated from the basic elements of social, political, and economic conflict, and the administrative activity is solely legitimated due to its vindication with the elite and not because of its legal junction. The consequences are suffered by social groups, and before these groups become direct victims of the state rules or the decisions of its tribunals, they are victims of a system that is either distant or isolated. (Bustamante, Peruvian National Report (1982), at 1.)

The judicial hierarchy is drawn not only from a social elite, but also according to political considerations in Latin America. Perdomo writes that the selection and promotion procedures for judges are marked by the political party system and that the decisions of judges are frequently politically influenced. (Perez Perdomo, supra note 125, at 30) Lawyers, because of their education and income, are themselves a part of this elite. (Perez Perdomo, supra note 125, at 20-21).

The control of the judicial and legal hierarchies by this elite does not simply mean that the system is unaware and unresponsive to the needs of the underprivileged majority. In addition, legal services schemes may be the subject of suspicion by their potential clients. Gautama Fonseca, the National reporter from Honduras, states that programmes established to aid urban workers and agrarian labour have been unsuccessful primarily because the staff of the programmes are not trusted by their potential clients (Gautama Fonseca, Honduras National Report (1982)).

127 Supra note 125, at 20.
means to afford a lawyer. Civil procedure in this region is modeled upon the principle in force in the Iberian peninsula during the late Middle Ages. As well, public defenders are available in criminal matters, and the Attorney General's office usually plays an inquisitorial rather than accusatory role. Rojas describes these provisions as unfulfilled promises — "unacted upon testaments" — because of the lack of interest of lawyers and the courts' lack of capacity and general unwillingness to enforce these rights.

It is interesting to note the somewhat unusual circumstances in which recent developments in legal services have taken place in Latin America. These developments have occurred primarily because of the intrusion of foreign ideas and money to Central and South America. These resources were sanctioned internally because of growing domestic awareness that legal services for the poor were potentially useful for domestic political purposes. The 1970s in Latin America saw neither the provision by governments of funds to pay lawyers who advise or represent the poor, as had happened earlier in developed countries, nor any attempt in Latin America to either redistribute wealth or to integrate the poor into the mainstream. Foreign funding initiatives however were welcomed by various groups within Latin America as they provided a relatively stable financial base for the development of a limited number of legal services programmes in the face of little local support.

128 Supra note 123, at 2.


130 Rojas, at 3. The national reports frequently raise questions about the standard of services provided. See, for example, the national reports of Honduras and Mexico; Oñate states that the services provided by public defender systems are said to be substandard. Perez Perdomo cites a study by van Groningen which found the quality of Venezuelan legal services to be poor (Van Groningen, Aplicacion de la Ley Penal).

In addition, the scale of services should be considered. In Mexico, for example, 69 public defenders serve a population of 13 million people (Oñate, supra note 13, at 15).

Latin American lawyers have been uncooperative in many instances in providing legal services to the poor. In Brazil, for example, a needy client who does not have access to a salaried lawyer from the state scheme is likely in many cases to be unsuccessful in finding representation. The bar association of Sao Paulo, for example, has gone so far as to state that free services from lawyers are simply unconstitutional (Calmon de Passos, Supra note 124, at 14).
Thus, funding for legal services in Latin America in the 1970s is the result of a combination of private funds, public sources and foreign development assistance, and the nature of the services differs dramatically according to the funding source. The most stable of these financial sources are the funds provided by Latin American private foundations and large corporations as a tax avoidance scheme. Such funds are usually provided to legal services for the public relations and goodwill that they generate for their sponsors and as an attempt to counteract the leftist criticism of these powerful corporate structures. Privately funded projects have generally been programmes which have dealt with individual client issues through the traditional bar, excluding any involvement of the political bar in the region. In contrast, the funding provided by European foundations and governments has been directed towards political and social change. European monies have generally had a social democratic orientation, directed towards progressive projects where beneficiaries have had a considerable voice in how the monies are utilized. The issues addressed in such projects are of a political nature.

Monies provided by North American foundations and governments, particularly the United States, are usually allocated between governments (the donor government and the recipient government) and are not as political in their orientation. Criteria applied in funding for these projects include a demonstrable level of administrative efficiency and the capacity of the project to become self-sustaining.

Subject to domestic politics and the restraint of national budgets, some Latin American projects have also been supported by public funding. In a particular country, such funds have tended to be allocated to state organizations or occasionally to community action

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131 The funds provided through European churches, particularly the Roman Catholic Church, deserve special note. The following is an illustrative list of the range of activities which the Catholic Church supports in Latin America:

A. The law school of the Catholic University in Sao Paulo, Brazil, clinical programme is involved with the rights of the urban poor and workers. Comic books are used to spread legal information.

B. In Chile, the Vicaria Pastoral Obrera was founded by Cardinal Silva in 1975. This organization provides legal assistance to urban workers and labour unions.

C. The Centro Dominicano de Asesoría e Investigaciones Legales is one of the principal institutions in the Dominican Republic serving Haitian immigrants. In addition, the Centre is active in promoting legal education to urban and rural workers.

D. In Peru, the Comision Episcopal de Accion Social documents, processes, and pursues claims concerning human rights violations.
and civil defence groups which are clearly and openly sympathetic to the government. These projects take a highly individualized approach to legal problems and utilize the traditional bar.¹³²

External funding for legal services in Latin America is a major problem. Programmes exclusively sponsored by sources fundamentally outside of the communities that they attempt to serve cannot be expected to survive changes to political climate in either the recipient country or in the funding nation. As Rojas writes:

... legal aid in Latin America is a competitive field among sponsors fundamentally exogenous to the communities they claim to serve. Under this circumstance, programmes cannot be expected to last beyond that political climate which originated them in the first place. They are not directly ruled by the immediate needs of the communities nor should be expected to be deeply entrenched in them in the long run. Reasons for continuity or discontinuity are fundamentally external to the programmes themselves.¹³³

The foresight of Rojas’ remarks is validated by the recent defunding of the American International Development Agency of the Inter-American Legal Services Association (I.L.S.A.) which had been established by the Carter presidency as part of its human rights initiative to develop legal services programmes in the Caribbean and Latin America.¹³⁴ I.L.S.A. had begun to develop a legal services network in Latin America and held the first conference in legal services in Latin America and the Caribbean in San José, Costa Rica in Octo-

¹³² The diverse funding of Peruvian aid structures provides an example of the types of services provided by the various funding sources. The state-funded scheme supplies some aid in criminal matters. Claims of human rights violations are monitored and processed by the Comision Episcopal de Accion Social, which is funded by the Roman Catholic Church in Peru. Lawyers and law students provide professional services in human rights matters through this organization. Some lawyers, members of the so-called "socio-political" bar, volunteer their services for cases of high social or political import. Several organizations specifically devoted to legal aid for specific constituencies were funded by the Inter-American Legal Services Association. These organizations were concerned particularly with the provision of services to labour unions. Various European churches also made a financial input to some of these programmes. Finally, a number of social service agencies include a legal services function as a part of their wider responsibilities. These include the Peruvian Centre for Social Studies, the Centre of Investigation and Amazonic Promotion, and the Centre of Labour Assistance; services are rendered to peasants, native communities and others. These latter organizations receive substantial foreign funding. In Peru, the contribution of the Friedrich Nauman Foundation of the Federal Republic of Germany deserves special mention (Bustamante, supra note 126, at 3-5).

¹³³ Supra note 123, at 6.

¹³⁴ The Reagan attack on the Legal Services Corporation is discussed at the conclusion of this paper. In 1980, the Heritage Foundation recommended dismantling the legal services programme.
ber, 1981. Early in the Reagan administration, the appointments to A.I.D. took the same political perspective on legal services in Latin America as they had with respect to legal services in the United States — defunding I.L.S.A as they had attempted to defund legal services in the United States. The precarious nature of funding of legal services in Latin America and the continuous scrambling for monies has left most programmes with a sense of futility and exhaustion. Energies and resources are expended upon survival rather than attempting to grapple with the fundamental problems of their clientele.

It should be noted that in countries where the state has traditionally played a relatively major role in funding legal services such as Mexico, Venezuela, and Costa Rica, foreign funds have played a lesser role with respect to official legal aid programmes. Indeed, since these countries provide funds of their own, foreign sponsored programmes are not of the same significance as elsewhere in Latin America either with respect to funding or to programme development. Foreign ideas have nevertheless made an important impact in all of these countries. Mexico, one of the few countries in this region where legal services have been sponsored almost entirely by state rather than foreign funds, shared in the 1970s with most Latin American countries the emergence of new types of legal services such as community clinics and consumer advocacy. In the Mexican case, these developments were primarily created and funded by state agencies — with very limited input of foreign funds — yet

135 I.L.S.A. was funded by A.I.D. for three years in 1978 and further funding was rejected after the first three year grant in September, 1981. I.L.S.A. has been restructured and its head office moved from Washington, D.C., to Bogota, Colombia, with core funding provided by the Canadian International Development Agency (CIDA). The writer is an officer of I.L.S.A. and further information is in his personal files.

136 The services in these nations usually take the form of a number of programmes administered by various organs of the government. In Costa Rica, these programmes include a public defender system, an aid programme for the victims of crime, and services directed at children. The University of Costa Rica offers some services resembling the university clinics in America, but no foreign-funded programmes are mentioned by Solano Carrera, the national reporter. The range of services offered and the administrative mechanisms employed are comparable in Venezuela and Mexico, although it appears that services are offered on a larger scale in Mexico. In addition, Mexico has a government-organized consumer protection agency. The local community clinics in Mexico are not funded by the government. These state-funded programmes tend to specialize in one area of law and one client group. Resulting services are hence fragmentary.

137 See Onate, supra note 13, at 26.
the services provided are similar to other foreign sponsored developments in legal services in Latin America.138

Despite the early stages of its development, legal aid in Latin America is already reflective of the dichotomy we find in more developed countries — with a dialectic developing between private attorneys providing traditional legal services on a case-by-case basis and the social and political lawyers who are anti-elitist, often Marxist, and committed to social change, citizen advocacy, and significant reform of the fabric of society.139 In Latin America, state or privately sponsored clinics are involved in handling individual cases. They are staffed by traditional lawyers who use the clinic as a training ground with the intention of moving from the clinic into more mainstream legal practices. Such lawyers do satisfy to a limited extent "unmet legal needs" and assist in overcoming some of the barriers to provision of legal information and access to justice in Latin America, yet the attachment of such lawyers to the status quo and their adherence to traditional legal services preclude significant change. The Mexican experience typifies such a case. Services are offered almost entirely by the state, and can be described as bureaucratic and nonresponsive.140 Even programmes that are based upon the community clinic model tend to be case-by-case in their orientation. Community clinics, moreover, are generally under-staffed by poorly paid lawyers or law students who are required to work in a clinic as part of their legal education. Such enforced service to the poor will inevitably provide inadequate service, reinforcing the poor community's perception of the legal system as alien to them and to their interest. At the same time, this method permits the legal profession to distance itself from the problems of the poor by its assigning responsibility to the inadequate legal service schemes. Perez Perdomo sums up the inherent problems in this approach to legal services in his discussion of the legal profession in Venezuela:

138 Concerning the rough comparability of styles of service and clientele, see infra note 147.
139 See Rojas, supra note 123, at 13-17.
140 Oñate notes that it is particularly those programmes run by lawyers and law students which are bureaucratic and inefficient. The only programme which does not come into this category in Mexico is the consumer protection agency (Oñate, supra note 13, at 27). Oñate further notes a change in attitude among law students working in clinics after a few months of service. These students tend to prefer litigation at the beginning of their tenure in the clinics, but increasingly negotiate claims as time passes (Oñate, supra note 13, at 18). As Professor Oñate points out, the complex and bureaucratic procedures have the effect of distancing the law even further from the people, since few clients understand relatively complex and legalistic agreements (Oñate, supra note 13, at 24).
The most notable differences in the services result from a basic fact: the public lawyers are paid by the government, not by the client, and receive a fixed remuneration independent of the quality of the services rendered. This, together with the handling of a very high number of cases, tends to make the professional very insensitive to the needs of the client. On the other hand, as the services are free to the client, "the client knows" that he cannot demand too much from the lawyer even though the law requires that the lawyer be as diligent as possible and establishes that the lawyer is responsible, if only on paper, in the case of negligence.

Critics suggest that the services such clinics provide are more relevant to the lawyers than to their clients. Problems relating to health care, housing and welfare seldom generate claims by public lawyers. Nor are poor people encouraged to see these as legal problems. In Venezuela nearly one half of the population are beneficiaries of social welfare, yet very few claims are made against a system whose performance is held in low esteem. The quality of service delivered by public lawyers in both the criminal and civil sector is recognized as inferior to that provided by members of the profession who serve the rich.

As noted earlier, Latin America has also seen the development of a group of progressive lawyers who have been referred to as social-political lawyers. In contrast to the traditional lawyers, this latter group work in foreign sponsored clinics which principally take collective action for unions, political prisoners, indigenous tribes and peasants. Many of these lawyers have totally removed themselves from the mainstream of their profession and have identified themselves with the causes and concerns of the communities for whom they work. These lawyers sacrifice the day-to-day results of traditional legal aid programmes for the sake of long-term goals. Rojas describes the social-political lawyers of Latin America:

Salary is not the main consideration of political lawyers seeking jobs; on the contrary, many of them work as part-time volunteers or under equalization of pay

141 Supra note 125, at 24.
143 Perez Perdomo (supra note 125, at 25), cites one result of the Van Groningen study:

... It was noted that those persons defended by public defenders in cases of homicide received sentences which on the average were in excess of seventeen years, while those persons of the upper class charged with the same crime and defended by private defenders received sentences of 5.1 years on the average. It should be noted that the study did distinguish the degree to which the difference in sentencing was an outgrowth of the effectiveness of the legal counsel, and how much a result of the social class of the defendant.

144 Supra note 123. These lawyers tend to staff the progressive, Social Democratic projects funded from Europe.
145 Id. at 15-71.
schemes. Clinics they work for will be poorly staffed and very often poorly administered. Division of labour is practically non-existent; hierarchical lines are diffused; duties are normally interchangeable. . .

* * *

Social and political lawyers are risk prone with regard to their own lives and to social structure as a whole . . . They live with uncertainty and stressing instability on all fronts, ranging from political repression to political dismay; from sudden changes in people's needs to sudden changes in political regimes. They are "self-estranged" from colleagues and classmates; tend to associate themselves with workers and minorities, very often adopting the mores of these strata and sharing with them their own habitat. 146

In concluding our discussion of Latin America, it is important to note that recent events have witnessed the development of legal services specialists — the provision of legal services for deprived and disenfranchised interest groups. Peasants, indigenous tribes, labour unions, low-income city dwellers and women are groups for whom special projects have been established. 147 The services provided for these groups are at different stages of development and represent particular responses to the unique situation of the clientele.

Staffed by dedicated social-political lawyers, legal services for peasants and indigenous tribes in Central America have traditionally been decentralized. Many lawyers have become fully integrated in the community, although some make only occasional visits to the region as an outgrowth of more limited needs. Lawyers working with peasants have become involved in agrarian reform — a policy which has recently been generally discontinued. In contrast, legal services for labour unions are offered through centralized permanent institutions which are self-financed by charges on the membership. As would be expected, legal services lawyers working for unions are involved in collective bargaining, human rights and some economic analysis. Because of their stable funding sources, the

146 Id. at 15-16.
147 A brief survey of the national reports offers some idea of the range of specialized services. Honduras, Ecuador, the Dominican Republic and Peru have programmes directed towards peasants, and Uruguay has instituted simplified proceedings for agrarian cases. Peru has a special programme for indigenous tribes, funded from the Federal Republic of Germany, and Uruguay has once again simplified proceedings in these matters. Some services to workers are almost universally available to some degree or other, frequently as part of government initiatives, as in Costa Rica, Mexico, and Peru. Urban dwellers tend to take advantage of the university clinics which are a feature of most Latin American nations; Mexico has community clinics based on the American model in some poor urban neighbourhoods. Formal services to women are also generally government initiatives, offered through child protection agencies such as those in Mexico and Costa Rica. There are as well foreign funded women's clinics in Costa Rica, Honduras and Nicaragua.
future of these clinics is much more secure than that of clinics established in rural areas dependent on external initiatives. Since the women's movement in Latin America is being heavily funded by foreign sources, it is currently in a developmental stage, and women are only beginning to become a significant group of recipients. It remains to be seen whether a continuing supportive climate and consistent funding will permit significant development in this area. Low income urban dwellers facing housing problems tend to be concentrated in a few large Latin American cities, primarily capital cities — Colombia and Brazil are the exception to the rule. But urban mobilization has not been sustained in a large measure because the issues tend to be transitory and groups coalesce around a housing or a utilities issue and then disband with little or no institutionalization taking place.

The Latin American experience provides us with an extreme example of the legal services dialectic. Most legal services projects are government controlled or government sponsored programmes staffed by members of the traditional bar. These programmes have no reform aspirations, but rather display a vested interest in perpetuating the existing legal system. In contrast, lawyers working in grassroots, strategic and foreign funded projects are often contemptuous of the legal system. They are involved in their communities; active in mobilizing citizen groups for political change. The social activist lawyer has his own political agenda and will often be prepared to sacrifice the short term needs of clients to the end of social change. Independent of government funding, progressive clinics are less willing to allow their legal services to be utilized to legitimate government or the profession. Their independence has not unexpectedly alienated both government and the dominant elite of the legal profession who have concerns about their subversive and political role.

The fragmentation of the legal profession is but one example of a fragmented society, and fragmentation of legal services may stifle hopes for democratic or systemic reform. There are few bright spots on the horizon in Latin America described by the national reports of 1982. The tone of the Latin American reporters such as Alberto Bustamante of Peru is one of uncertainty. Bustamante expresses doubt that legal services will be able to work for social change, but does expect that legal services programmes will at least create a legitimate space for themselves. Whether this limited optimism for legal services will survive the economic recession and the harsh financial setback that countries like Mexico and, to a lesser extent,

148 Supra note 126, at 12.
Venezuela have suffered is doubtful. The American government has limited foreign funding to Latin America for legal services at the very time when expectations of legal services, rising unemployment, and severe economic problems in the region make it all the more urgent. Professor de Passos eloquently summarizes the larger issue in his report on Brazil:

If the colours of my report are gray and heavy, it is because the context in which the legal system develops in Brazil is dark with shadows.

The perspectives in a short run are not encouraging. Truly all the country is now mobilized to subdue its acute economic and financial crises, to overcome the abyss between the few rich and so many destitute, and above all to try to bring back to the civil society the participation of power which it has lost with serious damages for Brazil and for the Brazilian people.

Within this struggle, that for a better justice is present; however, the bigger fight, the great struggle is to try to reach a condition which makes Justice possible. Without that, better justice is superficial because it will always be reduced to a costly means to solve the insignificant disputes of those who can try to solve their disputes of surface value inside the great social conflict still unsolved.¹⁴⁹

VII. CONCLUSION

This paper has examined some of the recent developments in legal services as reflected by the national researchers and the recent literature on legal services. It is difficult within the confines of a short paper to do justice to all the issues and changes which are taking place in 25 countries with distinct socio-economic situations. I have attempted to describe some of the significant developments in mixed delivery systems in Europe and North America, which I would suggest as the direction of the future. Whether such mixed delivery systems will develop beyond the provision of legal services and attempt to grapple with more fundamental problems is, at the moment, unclear.

Despite various recent developments in legal services, including the growth of welfare rights schemes in some countries and the continuing development of juridical schemes, we find that not only are legal services open to financial evaluations and government cut-back, but in some countries — notably the United States — the 1980s has witnessed a questioning of their very existence.

Access to justice, or even improved quality of justice in the eighties, appears to be of less significance than the issue of the cost of justice and the acknowledgement of the limited political commitment to reform and change. Thus this paper concludes on a note of realism which recognizes the vulnerability of legal services at the

¹⁴⁹ Supra note 124, at 23.
Recent Trends

present time. We observe that during the recent world-wide recession, legal services have been open to severe government cut-backs in funding, zero growth funding, and in the United States a sustained attack from the Reagan administration that attempted to totally dismantle the Legal Services Corporation. This abrupt change in attitude in many industrialized countries, as more conservative governments have been elected, not only emphasizes the fragility of the movement towards a more democratic legal system, but underlines how legal services are themselves perceived as an aspect of the political system. The threat posed by liberal governments' encouragement of social change and redistribution of power has been identified by think-tanks such as the Heritage Foundation in the United States and acted upon by the Republican government of Ronald Reagan:

Going to court is a political act, contesting a government action that threatens to terminate benefits is a political act. Demanding that a landlord maintain a home in habitable condition as a condition of being paid is a political act. All of these acts are assertions or expressions of power or of a right to something. Some power or rights can be given or shared without necessarily diminishing other people's enjoyment of them. Other forms of power or rights are necessarily competitive. Thus, providing those without power or resources with the means to attempt to obtain some is as much a political issue as the protection of those with power and resources. The debate surrounding the substantive limitation of what legal services attorneys can do poses this issue at its most extreme. Why else would opponents of class actions or suits against governmental entities fight so hard to prohibit these forms of legal action unless they feared they might just be successful?

So writes Menkel-Meadow about the fight for survival of the most sophisticated and highly funded legal services scheme in the world. Such a political attack as that mounted in the United States cannot be dismissed as merely an outgrowth of the political philosophy of a particular conservative government. The vulnerability of the Legal Services Corporation and the lengthy fight in which it engaged demonstrates that governments will only permit limited incremental change and will ultimately protect those interests which have a power-base and control the financial resources of the community.

Although I have outlined the development of new and more effective models of legal services and recognized the increase in access to the legal system through the use of paraprofessionals, the fundamental question remains: Will the access to justice movement be successful only as a procedural exercise which must continuously defend itself against political attack and economic cut-backs? The radicalism of legal services activities in the United States has left it open to political assassination. Legal services are dependent on the political and economic support of government and of the legal profession. As the winds have shifted in the United States in the early
seventies and in the early eighties, legal services have found themselves in an extremely vulnerable position. This vulnerability is extenuated in the extreme regions such as Latin America where we noted the termination of much of the foreign assistance for more progressive programmes during the last several years. In South Africa, despite significant developments, one must question whether Menkel-Meadow's observations will not ultimately hold sway.

At a time when funding security is desperately needed to allow legal services to continue to develop stability and attract and retain the best advocates, we note the need to justify its very existence. This is in many ways the contradiction of the eighties: Greater needs of low-income citizens and the underprivileged in all parts of the world confronted by less political and economic support of social welfare. We find little hope for the consumers of legal services who continue to be faced with a justice system which remains expensive and isolated from their lives. It is difficult, as legal services proponents well know, to sketch any strategy to enhance access to justice in face of the theoretical-practical paradox discussed in this paper. Developments during the next decade will determine whether the winds of change which began to blow through the legal system a decade ago will have totally subsided or whether government and lawyers will allow at least a breeze of democracy to flow into the justice system.
APPENDIX ONE

ISSUES TO BE ADDRESSED BY THE NATIONAL REPORTERS ON THE
TOPIC OF "RECENT TRENDS IN THE ORGANIZATION OF LEGAL SERVICES"
FOR THE INTERNATIONAL CONGRESS ON PROCEDURAL LAW IN
WURZBURG, WEST GERMANY, 1983
Prepared by Frederick H. Zemans

If a national report has previously been published in either Access to Justice, edited by Mauro Cappelletti and Bryant Garth, or in Perspectives on Legal Aid, edited by F.H. Zemans, please do not reiterate that report but rather discuss developments since the last national report. Your national report should be an analysis of current programmes and possible developments, rather than an extended historical narrative. The following are the general issues that I would like National Reporters on this topic to address in their reports in preparation for the Wurzburg Congress on Procedural Law:

1. Briefly describe the political, social, economic, and ideological background against which the provision of legal services takes place in your country. What constraints does this background place on the possible type of legal services delivery system that has, and can be, developed?

2. Discuss the barriers or obstacles which impede access to the legal system by various segments of society. Are there individuals or groups in your country who are denied access to legal services because they live in remote areas, or are members of an ethnic minority (i.e., natives, Indians, or gypsies), or for any other reason?

3. a) What methods have been adopted to provide citizens with access to the legal system and specifically with access to legal services? i.e.,
   — Has a judicare or court based system of legal services delivery been adopted?
   — Has a salaried lawyer, community legal clinic model of legal services delivery been introduced?
 b) What alternatives, if any, to the courts have been introduced? Have administrative tribunals, small claims courts, community courts, or other methods of dispute resolution been developed?
 c) Have procedures been simplified so that individuals can handle certain legal problems without the need for lawyers’ services?
 d) Discuss briefly any group legal services or prepaid legal insurance schemes that exist.

4. Discuss in some detail the various legal services schemes or administrative procedures which have been created to provide greater access to the legal system. Has this scheme been created to provide traditional case by case representation of citizens or does the scheme contain a social change component? Does the scheme provide opportunities for: group representation; class actions; community education; law reform/test cases; community development and organization?

5. Why have certain type(s) of legal services or methods of providing legal services developed in your country? You might consider some of the following issues:
   a) Have developments been guided or controlled by: the recipients of the service; or by community based organizations; or by a government department; or by an independent legal services commission; or by the judiciary; or by the legal profession?
   b) Who funds your national and local legal services schemes? Who administers the various programmes?
c) What are the conditions attached to the granting of legal assistance? Are these financial or geographical? Is the prospect of the applicant's success taken into account? Are there any other bases on which legal aid is granted or refused in your country?

d) To what extent are efforts made to provide legal services to diffuse and fragmented interests, i.e., consumers, environmentalists, women, prisoners?

e) To what extent has the provision of legal services responded to the needs (demands) of low income and other deprived groups?

f) To what extent has the effectiveness or expense of the services been crucial in determining policy issues?

g) Are your legal services schemes evaluated by the recipients of the service; by funding bodies; or by the administration of the scheme?

6. Discuss the roles played by the various providers of legal services. Has the legal profession retained its monopoly on legal services to low income people or have alternative providers of legal services developed? These alternative providers would include: paralegals, community legal workers, social welfare advocates, and law students. What tasks and functions do these alternative providers perform? To what extent can legal services to low income citizens be extended by using non-lawyers?

7. Discuss the types of cases handled by the legal services scheme. Is the plan emphasizing mainly criminal, civil, or domestic disputes? Why? Is equivalent representation available before administrative tribunals as is available before the courts? Is the availability of legal representation determined by lawyers, judges, or citizens? Who determines what particular types of legal problems receive legal representation?

8. If your country has developed a legal clinic model, comment on its organization and structure; the degree of community control and participation; the role of non-lawyers in the delivery of legal services; and the methods used to bring the service to the attention of the public, i.e., advertising.

9. Who makes use of legal assistance? Are these individuals or groups the targets for whom legal assistance was originally intended? Why do individuals or groups who are targets of legal assistance not make use of this? Are there further barriers or obstacles which were not originally taken into account? Does the structure and organization of the delivery system itself detract from its effectiveness?

10. Are there any on-going or projected experiments for improving the legal services delivery system that are promising and noteworthy?

11. Overview:
Discuss the extent to which the second or third waves of legal services are developing in your country. (See Cappelletti and Garth, "Access to Justice: The Worldwide Movement to Make Rights Effective — A General Report", Volume I, Book I of Access to Justice: A World Survey, edited by Cappelletti and Garth.) What do you consider to be the international or regional significance of legal services that have developed or are underway in your country? Critically analyze the commitment of your country's national and regional governments to legal services. Is the current development of legal services an outgrowth of the economic or historical evolution of your country? To what extent has the legal profession thwarted or encouraged legal services to low income citizens?

N.B.
Attempt to place your country's developments in a perspective which will assist lawyers, scholars, and governments to understand the strengths and weaknesses
of the legal services schemes and programmes which you have described and assessed. Although the questions overlap, try to be concise, informative and analytical in your discussion.

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