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POVERTY LAW AND POOR PEOPLE: THE PLACE OF GENDER AND CLASS IN CLINIC PRACTICE

SHELLEY GAVIGAN

1. INTRODUCTION

Anyone who has worked in a legal clinic can empathize with the wit and sentiment expressed by the Far Side cartoonist Gary Larsen in his "Crisis Clinic" cartoon: a decrepid building listing in wildly rough waters on the verge of proceeding headlong over a waterfall. Crisis management and the management of crises seem to define legal clinic work. To be sure a crisis is never far from the experience of those who turn to the clinics for assistance and those whose work is the practice of poverty law. No crisis ever seems more pressing or difficult than the present, and this present offers no exception.

During a year I spent supervising law students at Parkdale Community Legal Services in the early 1980s, I often felt like a person with a bit part in the film, and later television series, "MASH." With each crackle of the intercom I imagined that our receptionist, the indefatigable Dorothy Leatch, would next say, "The choppers are here, They are bringing in the wounded." Those of us

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who are committed to poverty law and clinic practice now know for certain that the choppers are here, neo conservative hatchet men who are forcing a dramatic and unprecedented restructuring of the foundation of Canadian social, economic and political life, and, as long as our doors are able to stay open, and our clinics staffed, we will have the dubious honour of witnessing first hand their casualties. We attest that the war on poverty (really never more than a skirmish) which facilitated the emergence of store front law offices and community based law,\(^1\) has given way to the war on the poor.\(^2\)

The metaphor of war informs us: our caseworkers are frontline, our work in the trenches, our clients “battered but not beaten,”\(^3\) and we, like our clients and the communities we serve, feel under siege.

Now that the principle of universality in Canada’s social programmes has been jettisoned, surviving social programmes ostensibly designed to serve the particular needs of the poor are in their sight lines. The cuts to social assistance rates in Ontario effective October 1, 1995 place the household income for welfare recipients beneath even the insult of a ‘poverty line’ suggested by the Fraser Institute.\(^4\)

In this article, then, I hope to illustrate that all legal practice, including clinic practice, has a theoretical foundation and I hope further to illustrate that one’s theoretical framework, whether articulated or not, inevitably shapes one’s practice and engagement with law. In other words, the issue is not theory versus practice, but rather “What Theory and What Practice?” In my view, the interrogation of this rather large question is best done through a series of smaller, though no less significant, questions, some of which I will attempt to answer here.

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4. The Fraser Institute’s 1994 poverty line for a single person in Ontario is $7,556 per annum, for a household of 4 persons, $17,542. Prior to the 22% cut to Ontario social assistance payments, a single employable person was entitled to receive $8,395 per annum, a heterosexual couple with two children, $22,010. Both these amounts are thousands of dollars beneath either the Statistics Canada Low Income Cut-Offs for 1994 ($16,609 and $31,256 respectively) or the Canadian Council on Social Development Income Lines ($13,770 and $32,130 respectively): see D. P. Ross, E. R. Shillington and C. Lochhead, The Canadian Fact Book on Poverty-1994 (Ottawa: Canadian Council on Social Development, 1994) at 14-16, 21-24.
a. Whose face(s) do we see when we meet the poor? Do we need to understand why they are poor?

b. How should legal services be defined and how should these legal services be delivered? Does access to justice mean more than one thing?

c. Can the interests of the poor be advanced through the law, or is the law only a site of defensive struggle?

d. Is the role of the poverty law lawyer to 'stop' poverty? If so, what sort of advocacy should a poverty lawyer do?

e. How are cases selected and by what process? Should poverty lawyers develop case selection criteria that enhance access for certain kinds of poor clients and their cases, while limiting access in others? What process should be developed for review of such decisions? What is the role of the community?

f. What are the implications of the Rules of Professional Conduct in all of this?

I do not claim to be the first to visit these questions, nor will I be the last. Neither will I claim to offer definitive answers.

In the midst of this yet most serious crisis faced in recent years by poor people in Ontario, and their legal advocates, my call for a revisiting of the theoretical premises of poverty law and for a rethinking of the contribution of feminist analysis to this area may seem ill-timed. I offer no apology. A commitment to principle and analysis is not something one can afford only when times are good, or at least not so bleak. A true testing ground of one's principles is not good times, but hard times. And to be sure, these hard times will test poverty law advocates to their limits.

2. WHO ARE THE POOR? WHEN WE MEET THE POOR, WHOSE FACES DO WE SEE?

The poor are not a generic gender-neutral category of unfortunate souls. While the majority of low-income families in Canada are headed by men, women are more likely to experience the social and economic deprivation of poverty. In particular, women who are single mothers with children under eighteen experience poverty rates which are disproportionate to their representation in the total population and the ranks of the poor. As Diana Pearce has observed with respect


6. Ibid. at 151. In 1976, the National Council of Welfare reported that 85.5 per cent of single parent families were headed by women and that 66 per cent of female single parents lived below the poverty line: One in a world of twos: A report by NCW on one-parent families (Ottawa: National Council of Welfare, 1976). In 1987, husband-wife families
to similar American figures, "[i]t is not the lack of two adults [in a household] that is associated with higher rates of poverty, but the fact that it is a woman alone, struggling to maintain a household on her own, that is so highly correlated with poverty."7

This observation of the extent of women's poverty is not new, the phenomenon of women's poverty is not a recent development.8 Indeed, as Veronica Strong-Boag has illustrated in her historical work on mothers' allowances, sole support mothers have been "long identified as prime victims of poverty."9 The official explanations offered for women's poverty, and concomitant legislative provisions have tended to assume, and inevitably have reinforced, women's marginal participation in the paid labour market and primary responsibility in the home. In other words, women's poverty was understood to be a private, familial problem, caused by the death or desertion of the primary male breadwinner. And, if a woman on mothers' allowance worked at all, she should arrange "to earn without leaving the home, as by keeping roomers, dressmaking or doing laundry work in the home."10 Women's poverty was visible; women's work invisible.

This tension has a contemporary resonance.11 The current Minister of Community and Social Services in Ontario has suggested that women who work and who are unable to find a child care space should do what was done in the 1950s, a neighbour or relative should be asked to babysit. But, as others have noted,

with one earner had an average income of $34,900; families with female heads had an average income of $18,000. Based on Statistics Canada's Low Income Cut-Offs in 1982, 55 per cent of families headed by women were below the official poverty line, as compared with 11 per cent for all families: Statistics Canada, Women in Canada: a statistical report (2nd ed.) (Ottawa: Supply & Services, 1990) at 11. In 1993, the National Council of Welfare's Poverty Profile Update for 1991 reported at 8, Graph B, that the poverty rate for single mother families in Canada was 57.7% in 1980, 60.6% in 1990 and 61.9% in 1991. See also Women and Poverty in Canada Revisited (Ottawa: Health & Welfare, 1991).

7. "Welfare is not for women: toward a model of advocacy to meet the needs of women in poverty" (1985) 19 Clearinghouse Rev. 412 at 412.
9. (V. Strong-Boag, 1986: 91)
10. Ibid. at 96.
11. Perhaps the early advocates of mothers' allowance would champion the current shift in the garment industry to homework in the site of production—but as did the earliest social policies designed to ameliorate women's poverty. This communion of home and workplace for women of course means that for these women, there is no respite from work.
the Canadian labour market is a changed and changing site. In 1988, the Report of the Social Assistance Review Committee,\textsuperscript{12} observed:

The world of work has not kept pace with the tremendous changes in the composition and nature of families, particularly the changing participation of family members in the labour force. The most obvious and profound change has been in the role of women.\textsuperscript{13}

More recently, \textit{The Canadian National Child Care Study: Parental Work Patterns and Child Care Needs} confirmed that in 1990 most women (58.5\%), even those with young children, were in the labour force or actively looking for work.\textsuperscript{14} The \textit{Child Care Study} also found that the majority of families with preschool-age children were dual-earner families: "established images of family life no longer matching reality."\textsuperscript{15} The \textit{Transitions Report} estimated that by the year 2000 there will be equal numbers of men and women in the labour force.\textsuperscript{16}

Although official figures indicate that women's households are heavily reliant upon government assistance as the source of income (and indeed more so than male-headed households),\textsuperscript{17} in fact a majority of female-headed households (66 per cent) are dependent upon \textit{earnings} as their source of income.\textsuperscript{18} The \textit{Transitions} Report found that

...even with the many hardships poor women face—including delinquent child support payments, lesser access to contributory pensions, lack of affordable child care, and limited job prospects—only a third of the province's female-headed families require [or perhaps more accurately, \textit{receive}] social assistance.\textsuperscript{19}

As Parkdale Community Legal Services observed in its submission concerning employment standards legislation in Ontario, women's labour force participation has more than doubled since the Second World War, women now make up 42.6\% of the Canadian labour force.\textsuperscript{20}

\begin{itemize}
  \item \textsuperscript{12} Ontario, \textit{Report of the Social Assistance Review Committee: Transitions} (Toronto: Queen's Printer, 13 May (1988) at 27 (Chair: G. Thomson) [hereafter \textit{Transitions}].
  \item \textsuperscript{13} \textit{Ibid.} at 92.
  \item \textsuperscript{14} Ottawa, Statistics Canada, (1992) at 23.
  \item \textsuperscript{15} \textit{Ibid.} at 17.
  \item \textsuperscript{16} \textit{Supra}, note 19 at 92.
  \item \textsuperscript{17} Statistics Canada, \textit{Women in Canada, supra}, note 6 at 106.
  \item \textsuperscript{18} \textit{Ibid.}
  \item \textsuperscript{19} \textit{Supra}, note 12 at 30.
  \item \textsuperscript{20} Brief in Response to the "Draft Discussion Paper on Changes to the Employment Standards Act by the Ontario Advisory Council on Women’s Issues." Submitted by
\end{itemize}
Despite this, the clinic observed that women are still overwhelmingly segregated into specific industries and jobs noted for "low pay, little status and minimal prospects for advancement". And, as Judy Fudge has written, "The feminization of the labour force [has been] matched by a complementary feminization of the labour market, the increase in jobs typically associated with women, jobs that are part-time, temporary, poorly paid and insecure." "And, despite their increasing participation in the labour force, in general women continue to bear a greater burden than men do with respect to household labour and the care-giving for children and the elderly." Immigrant women are significantly over-represented in "low-skill, low-wage jobs," such as those in the textile industries, traditionally a female job ghetto, but more significantly than that in the current Canadian context, 36% of all workers in the textile and garment industries are immigrant women. Newly arrived immigrant women tend to be employed (in larger numbers than Canadian-born women) in the textile industries at jobs characterized by low wages, piece work, homework and virtually unregulated working conditions.

This suggests that a gendered division of wage labour and lower income for women in the labour force are directly and significantly implicated in women's poverty. Coupled with predominant responsibility for child care and child rearing, it is clear that the face of the poor in Canada is a female face, a single mother living on sub poverty line income derived either from social assistance or low wages.

21. Ibid.
23. Supra note 20 at 2.
25. See Seward and McDade, ibid. at 14-18; R. Ng, "Immigrant Women in Canada: A Socially Constructed Category" (1986) 15 Resources for Feminist Research 13; R. Ng, ibid.; on the unregulated state of working conditions, notwithstanding the existence of provincial employment standards legislation, see Fudge, supra, note 22 at 84.
2.1 Class Tells for Women Too: The Importance of a Feminist Theoretical Framework

Some feminists argue that the family household, with its overarching familial ideology, along with a system of wage labour divided largely along gender lines, are the primary sites of women's oppression in western capitalist societies. In fact, it is clear that the two "sites" are inextricably intertwined, as women's familial responsibilities are used as a rationale for their lower wages, on the clearly ideological premise that their earnings are secondary and supplementary to the main, breadwinning income of a male wage earner. In my view, this all suggests that the image of poverty is phenomenal in the marxist sense, requiring that one investigate further beyond its outward appearance to uncover its underlying essence. If one is prepared to undertake such an investigation it quickly becomes clear, in my view, that one must be prepared to use concepts that are more analytic and specific. That this is imperative is becoming ever more apparent given the clear correlation between unemployment and recourse to welfare assistance.

It is my view that the concern with the definition, extent and measurement of poverty is a concern directed at outward phenomena only. Although it is important to describe the economic facts of poverty, regardless of which is the best measure, the analysis of the statistics and their implication cannot rest with terms which speak of "poor families" or even "single parent families". Even the terms "female-headed" and "male-headed" households imply that these households are essentially the same phenomena, or at least two sides of the same "household" coin. The poverty which can be identified, described by some as the "feminization of poverty", derives from underlying inequality. But what is expressed by the notion of the feminization of poverty? Is the poverty of single mothers caused

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28. The Social Planning Council of Metropolitan Toronto reported that as of March 1985, 52.7 per cent of the General Welfare Assistance cases in Ontario were in receipt of assistance due to unemployment up from 41 per cent in 1979: see Living on the margin: welfare reform for the next decade (Toronto: Social Planning Council of Metropolitan Toronto, 1986) at 16.

29. Pearce, supra, note 7.
by marriage breakdown and inadequate, intermittent and unpaid support.\(^3\) or to use the evocative phrase currently favoured by politicians, 'deadbeat dads'?\(^31\) Or is the poverty of women and children within marriage and the family “most clearly exposed at marriage breakdown or divorce,”\(^32\) because, “...it is at this point that the economic vulnerability of women caused by marriage and the sexual division of labour is most clearly exposed.”\(^33\)

The way in which one conceptualizes the nature of the inequality of poor women is important. It is simultaneously class and gender based, in Canada race and ethnicity are undoubtedly implicated as well. We need to recast “poverty” issues along lines which are attentive to gender, class, race and ethnicity. If we stop relying upon moral criteria and begin to sharpen our analysis, it will become ever more clear that gender and class relations and engagement with feminist and working class problematics and politics are a prerequisite for those of us in poverty law practices.

3. **WHAT ARE LEGAL SERVICES FOR THE POOR?**

No one who witnessed the legal aid funding crisis in Ontario during the early fall of 1995 in Ontario can doubt that the judicare side of the Ontario legal aid plan was under serious attack.\(^34\) While the judicare plan in Ontario has received a reprieve, few people in the Clinics are disposed to the fantasy that the worst is behind us.

Legal Services for the poor, Legal Aid and Poverty Law are often used interchangeably. To a great many lawyers and legal aid administrators, legal services for the poor means criminal defence work, criminal legal aid. In my own experience as a lawyer in Saskatchewan in the 1970s, it also meant criminal defence work, but as a clinic lawyer in a publicly funded, community based legal services clinic.\(^35\) But, as the National Council of Welfare has argued recently, legal aid programmes in Canada which emphasize criminal legal aid do not address the legal needs of most poor people,\(^36\) and not incidentally, poor women.\(^37\)

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35. For a critical history of the Saskatchewan legal assistance clinics, Abell, *supra* note 1.


37. *Ibid.* at 12. See also, “Equal Justice for Women and Children: A Report” Ontario Fam-
Why? Because judicare legal aid emphasizes access to private lawyers and the courts. In the Canadian context, legal aid, especially criminal legal aid, has tended to be driven by either the legal profession's vision of how legal services are to be delivered (that is on a fee for service basis by private lawyers) or cost-effective notions (that is, salaried lawyers in staff delivery models, such as duty counsel). The image of the poor in 'legal aid' programmes is a blurred imprecise one. Poverty law, as discussed below, needs to be understood as related to but not collapsible under the heading of legal aid.

Unlike corporate, real estate or tax law, the area of poverty law is neither presented nor understood as a discrete legal category. One might be forgiven for assuming that poverty law implies something other than real estate or corporate law; however, it can be argued with equal force that tax and corporate law are all implicated in poverty.

When Stephen Wexler wrote his pioneering “Practicing Law for Poor People” twenty-five years ago, he took the position that lawyers for the poor need to take the reality of the lives and struggles of 'the poor' and not the law as our starting point. However, as I hope to illustrate, this is something which is easily asserted, and less easily comprehended.

The problem is at least twofold: first, poverty and by extension poverty law varies according to context. In the province of Ontario, the definition of poverty law depends upon the position of the person asked. To a lawyer in a corporate law practice, it most assuredly means that poverty law is work that other lawyers do. At community legal clinics in Ontario, it means social assistance, unemployment insurance, income security and disability issues, landlord and tenant law and mental health. In Toronto clinics, it has long meant immigration and refugee law. Clinic work also encompasses the rights and issues of injured, unorganized and unemployed workers, the homeless and children, youth and the elderly. It has come to mean AIDS/HIV advocacy, and environmental law, and clinics for specific

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communities such as, the African Canadian Legal Services, Aboriginal Legal Services, and Chinese and South-East Asian Legal Services for Metropolitan Toronto.

Whatever the breadth of "poverty law" and the elasticity of its scope, I do want to hold onto a conceptual distinction between poverty law and the judicare face of legal aid. Poverty law is poor people's law. Form and content aside, this means that the pivotal defining criterion is financial or economic. The difficulty in this, Richard Abel once argued, is that "[t]he category of beneficiaries defined by economic indices has no organic coherence, no necessary unity." 40 Whilst acknowledging that there are many different perspectives on the meaning of poverty and many measures thereof, 41 it is my view, as I have argued above, that economic indices, if probed and recast, reveal a coherence not often enough acknowledged.

4. Poverty Law: What is to be Done? Can the Interests of the Poor be Advanced Through the Law, or Is the Law a Site of Defensive Struggle Only for the Poor?

4.1 Formal equality or substantive equality – community clinics

... the clinics are in a position to take the law to those who need it most. It is almost trite to point out that a great many poor people have never been made aware of the right they enjoy under our laws... The clinics, located in,


41. See Ottawa, Canadian Council on Social Development National Task Force on the Definition and Measurement of Poverty in Canada, “Not enough: the meaning and measurement of poverty in Canada” (1984). In the CCSD Task Force’s view, the closest one comes to an “official” definition of poverty in Canada is that developed by Statistics Canada: a family household which spends more than 58.5 per cent of its income on the basic necessities of food, clothing and shelter is said to live below the “low-income cut-off.” The CCSD’s own “poverty line” is calculated at 50 per cent of the average income figure. The CCSD Task Force also referred to the “implied poverty lines” of provincial welfare administrations and that of the Social Planning Council of Metropolitan Toronto. The various 1994 poverty lines for a household of four were:

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<tr>
<td>Social Assistance</td>
<td>$22,010</td>
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<tr>
<td>Social Planning Council of Metro Toronto</td>
<td>$40,560</td>
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<tr>
<td>CCSD</td>
<td>$32,130</td>
</tr>
<tr>
<td>StatsCan Low-Income Cut-Offs (large urban setting)</td>
<td>$31,356</td>
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and run by local communities, can reach out to advise people of their rights. They take the law to the people... In doing all of this, the clinics help convince the poor that they have a stake in this society.\textsuperscript{42}

... I think there are a number of lessons which can be learned from the community legal aid clinics. ... I am satisfied that the clinics have become an important and integral part of legal aid... I am open to suggestions that the role of the clinics be increased and enhanced. Clinics take the law directly to the people. They involve the community in setting service priorities. They ensure that problems are handled by persons with expertise in the subject matter... They promote self-help, and they work actively in public legal education.\textsuperscript{43}

The discussion in the previous section raises an equally important question: what is or ought to be the objective of "poverty law" theory and practice? On the one hand, poverty law advocates have been identified with the "access to justice" movement endorsed by the two Attorneys-General quoted above. At the same time, there has been a longstanding open critique of the legal system and lawyers, coupled with a stated commitment to eliminate, or at least alleviate poverty. The extent to which the law is implicated in poverty and the extent to which lawyers and the legal system ought to be involved and relied upon is rather contested. Richard Abel has argued with some force that there is a dearth of unity of objectives in the access to justice movement and no clear sense of what "justice" is sought, some argue for creative use of law and the creation of new (legal) rights whereas others express a commitment to "substantive justice" rather than formal or procedural justice.\textsuperscript{44}

It has long been an axiomatic theme in the "law and poverty" literature that access to justice must mean more than access to lawyers and courts.\textsuperscript{45} Richard Abel has argued that concern with formal justice and redistribution of lawyers' services reflect lawyers' perspective, one internal to the legal system. It is his position that formal justice cannot be used as a vehicle for achieving social

\textsuperscript{42} The Honourable R. R. McMurtry, Q.C., Attorney-General for Ontario (as he then was), "Notes for a statement to the Ontario Legislature Standing Committee on the Administration of Justice," (December 1 1982) at 30-31, quoted by M. J. Mossman, "Community legal clinics in Ontario" (1983) 3 Windsor Yearbook, Access to Justice 375 at 376.

\textsuperscript{43} The Honourable I. Scott, Q.C., Attorney-General for Ontario, "Legal Aid Statement," (August 17 1985) at 11-12.

\textsuperscript{44} Abel, "Law without politics" \textit{supra}, note 39 at 491.

justice in a capitalist society, indeed, he is convinced that the ideal of formal
justice is unrealizable within capitalism, "Social justice is thus a prerequisite for
formal justice." Abel usefully examined the implications of various ways in
which lawyers' services might be redistributed (including deprofessionalization
and informalism) to illustrate that without a fundamental restructuring of social
and economic relations the impact of access or lack thereof is at best marginal.
His work is particularly relevant for those engaged in poverty law because he
is able to illustrate graphically the limitations of one approach encouraged in
the poverty law literature, client "self-help". Although the encouragement of
"self-help" is framed as part of a commitment to empowering the previously
powerless, and in reaction against dependency upon experts and routine re-
course to formality, Abel suggests that the result is the withdrawal of lawyers
from people who in any event have had limited access to the profession, "...it
may be impossible to restore to individuals the capacity to engage in self-help
as long as they are opposed by adversaries who continue to employ legal
representation." Thus this form of "empowerment" may be mythical at best
and coercive at worst.

As trenchant as Abel's critique of the self-help or deprofessionalization move-
ment is, he nevertheless evinced an ambivalence as to whether the law was an
appropriate or important site for struggle, an ambivalence which in my view
derives from the contradictory nature of law within capitalism. For although he
insists that formal justice cannot precede social justice, still he argues that:

... the only source of power for the poor and disadvantaged [in American
society] is those rights derived from written law. The invocation of those
rights is always a symbolic act, and the symbolic is always formal.

This is somewhat reminiscent of if perhaps more tentative than E.P. Thompson's
historic defence of the rule of law ("The law may be rhetoric but it need not be
empty rhetoric." at the close of Whigs and Hunters. Thompson insisted that
the equity and universality claimed by the rule of law in capitalist society is
more than sham:

46. Abel, ibid. 7.
47. See Wexler, supra, note 37.
48. Abel, supra, note 44 at 10-11.
49. See also his "Informalism: a tactical equivalent to law?" (1985) 19 Clearinghouse Rev. at 374.
50. Ibid. 382.
It is true that in history the law can be seen to mediate and to legitimize existent class relations. Its forms and procedures may crystallize those relations and mask ulterior injustice. But this mediation, through the forms of law, is something quite distinct from the exercise of unmeditated force. The forms and rhetoric of law acquire a distinct identity which may, on occasion, inhibit power and afford some protection to the powerless.\textsuperscript{52}

If one accepts Thompson's position as theoretically sound, the question which still remains is whether the rule of the law is the \textit{only} form through which the powerful may be inhibited. And here, the experience of poverty law practice surely can be invoked. For while it may be that the legal form may on occasion be used to press a claim or defend oneself, still it is also crystal clear that one cannot confine oneself to legal fora. As Bob Fine has argued, in a friendly critique of Thompson,

It is clear that the “rule of law” does impose effective inhibitions on power. What remains at issue, however, is what kind of inhibitions, what are its limits, what is its base? ... What must be resolved is the relation between inhibitions enforced by the form of law and by forms of extra-legal political organization.\textsuperscript{53}

5. \textbf{Organizing: Is the Role of the Poverty to Stop Poverty? What Sort of Advocacy Should a Poverty Lawyer Do?}

In this section I wish to take up the important question of “extra-legal political organization” by focusing upon and re-examining the pioneering work of Stephen Wexler.\textsuperscript{54} Although based upon American experience and published twenty-five years ago in an American legal journal, Wexler’s explicit critique of traditional lawyering and attendant implicit critique of legal education is still relevant today. Writing in 1970, on the first wave of the “new left bar”, Wexler sought to expose the narrowness of both traditional lawyering (the solving of legal problems and the one-to-one solicitor client relationship) and the self-interest of the legal profession, including poverty law oriented young lawyers. For Wexler, the legal problems experienced by the poor are “the product of poverty and are common to all poor people.”\textsuperscript{55} Poverty then, the cause of the problems, and not the law, must be tackled and stopped. Lest poverty lawyers find the

\begin{itemize}
  \item \textsuperscript{52} \textit{Ibid.} 266.
  \item \textsuperscript{53} “Law and class”, in B. Fine, J. Young \textit{Capitalism and the rule of law} (London: Hutchinson, 1979) 29 at 30.
  \item \textsuperscript{54} \textit{Supra}, note 37.
  \item \textsuperscript{55} \textit{Ibid.} 1009.
\end{itemize}
prospect of attempting to eliminate poverty a daunting one, Wexler insisted that lawyers abandon the notion of heroic white knighthood:

Poverty will not be stopped by people who are not poor. If poverty is stopped, it will be stopped by poor people. And poor people can stop poverty only if they work at it together. The lawyer who wants to serve poor people must put his [sic] skills to the task of helping poor people organize themselves.... Specifically, the lawyer must seek to strengthen existing organizations of poor people, and to help poor people start organizations where none exist.56

Wexler outlined the tasks for poverty lawyers as primarily work in the nature of information, education and training lay advocates, it is clear that he placed direct resort to law very low on his agenda. Again, this is consistent with the theme in poverty law, that legal victories do not amount to real victories, and that legal change does not amount to social change.57 He was concerned to avoid creating "new dependencies" for the apparently already too dependent poor. The underlying question seems to be one of who really instructs whom. Related to this is a concern that poor people will look to lawyers for the solutions to all their problems (Is there historical evidence to warrant this concern?). In my view, this perception of the nature of the relationship between lawyers and their poor clients indicates that Wexler feared that lawyers for the poor could easily become agents of social control of the poor. This notion of lawyers as agents of social control is not peculiar to Wexler,58 but it does rather fly in the face of the professional ideology of lawyer as advocate for rather than controller of the client who retains the lawyer's services. The adequacy of this formulation needs to be interrogated, because one wonders whether it is appropriate to think of all lawyers as agents of social control, or whether only certain kinds of lawyers dealing with certain kinds of clients would fall within this category. Does Conrad Black's lawyer control him? Does it perhaps depend upon who possesses the greater economic power in the relationship?

56. Ibid. 1009-1010.
57. See Gathercole, supra, note 44, discussion of the successful advocacy and litigation waged by Parkdale Community Legal Services on behalf of tenants in the mid-1970s, and the remaining untouched issue of adequacy of the accommodation of the rental premises which were the subject matter of the litigation.
It was, however, Wexler's call to organize that was both most challenging and most problematic. His insistence that lawyers essentially take a back seat in the poor people's organization is as critically important today as when he wrote it. It is troubling enough that lawyers and legal academics are disposed to the conceit that they hold the monopoly on knowledge about law. But, lawyers display a propensity to see themselves as experts on the world in general, and all aspects of human affairs in particular. This, Wexler argued, imperils the organizations with and in which lawyers are involved, "The lawyer must help them do their thing, or get out." And yet, in his effort to bring home the importance of organizing, Wexler relied upon the following example, told to him by a "very successful welfare rights organizer" to illustrate "the 'proper' mentality for a poor people's lawyer:"

I found a recipient who worked hard at organizing, and was particularly good in the initial stages of getting to talk to new people. I picked her up at her apartment one morning to go out knocking on doors. While I was there, I saw her child, and I noticed he seemed to be retarded. Because the boy was too young for school and the family never saw a doctor, the mother had never found out something was seriously wrong with her son. I didn't tell her. If I had, she would have stopped working at welfare organizing to rush around to look for help for son. I had some personal problems about doing that, but I'm an organizer, not a social worker.

Wexler conceded that this organizer has taken a very hard line and that the retelling of this story invariably makes listeners recoil, however, it is his view that the more that one can accept this organizer's model, "the more he [she] can give poor people the wherewithal to change a world that hurts them." This model reflects more than a hard line. It reflects a dearth of analysis. It implies that real organizing and real politics can only take place around issues "out there"—somewhere else. Although perhaps written before the most recent generation of feminists had begun to criticize the "public/private" split, the organizer lacked both imagination and vision with respect to organizing issues. From the brief example, it would appear that access to health care and child care could easily have been taken up. Beyond that, the organizer's ridicule of a woman who would "rush around looking for help for her son" most assuredly

59. Wexler, supra, note 37, 1021.
60. Ibid. 1010.
61. Ibid.
62. Ibid.
63. Ibid.
implicates him (her?) as part of a world that hurts her and limits his (her?) ability to assist in change.

In embracing this organizer’s model, Wexler made the mistake of equating individual legal right with individual human need. In his attempt to distance himself from the individualization and isolation of social relations which may result from invoking the law, the legal subject, and attendant individual legal rights, he neglected the fact that human needs are both individual and social. To sacrifice individual need without reflection and analysis is, in my view, to imperil the success of a strategy for social change.

I challenge Wexler’s example of an “organizer’s dilemma” not to eschew the place of organizing in poverty law, but rather to endorse it, to insist upon its continuing relevance in the current context. However, as I hope to have demonstrated in the earlier sections, an understanding of the face and place of the poor, and a feminist analysis thereof, clarifies the strategic position of organizing in poverty law. An analysis of the basis for the poverty of our clients, and an understanding of the inter-relatedness of gender, class, race and ethnicity, must inform both legal and organizing strategies designed to get at the root(s) of the problem. One must understand why one is committed to organizing.

6. **Case Selection Criteria: Should Poverty Law Clinics Develop Case Selection Criteria That Enhance Access to Certain Kinds of Poor Clients and Their Cases, While Limiting Access in Others?**

In this last section of the paper, I want to consider the implications of an insistence upon the centrality of gender both in poverty and poverty law through issue(s) relating to case selection criteria. Simply put, can clinics deliver gendered services and in a poverty law context? If women are more at risk of experiencing poverty than are men, should our clinics serve only women clients? Ought we to restrict our services to addressing the needs of single mothers, who

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64. For an excellent account of the relationship between the individual and the social context, around the issue of abortion, see R. P. Petchesky, *Abortion and woman’s choice: The state, sexuality and reproductive freedom* (Boston: Northeastern University Press, 1985) at 1-18.

65. For an excellent illustration of feminist scholarship that has done this successfully in the British context, see S. Cook & J. Watt, “Women, Racism and Poverty,” in *Women and Poverty in Britain*, C. Glendinning and J. Millar, (Brighton: Wheatsheaf Books, 19987) at 53. Cook and Watt argue that “racism and sexism complicate women’s relationship to class and poverty” and illustrate with reference to black and Asian women’s experience with social security, labour and immigration law how complex and contradictory these inter-relations are.
are employed in unorganized work places or who are on social assistance? If we learn that access to child care is a central issue for working and unemployed mothers, ought we to incorporate this issue into our practices, even if it does not fit neatly into current legal categories or casework?

It is clear that many clinics have turned their minds to gender issues in a number of important ways, hours of service and timing of mini-clinics are extended to accommodate the needs of women with children. In many clinics, the request by a woman client to be served by a female lawyer, community legal worker, or student is accommodated. We are attentive to personal security issues when attempting to telephone or correspond with women clients who are experiencing or at risk of domestic violence. The contribution of these initiatives to enhancing access to justice for poor women cannot be underestimated.

Some clinics have made domestic violence a part of the work of the clinic, and indeed some student clinics associated with law schools have divisions or cells that are called "Women's Divisions." There are compelling reasons for doing this, but in my view, clinic case criteria or policies which characterize gender issues as women's issues risk blurring the class and race dimensions of poor women's life experiences. Poverty is not simply that part of financial eligibility criteria that gets clients beyond the receptionist to see someone on intake. It is not the fact of limited financial resources but the why of that we must keep in our sights.

At the same time, rather than jettison the current areas of poverty law, I want to argue for the reconceptualization of our understanding of "tenants," "workers," and "welfare recipients," "immigrants and refugees" and "sole support parents" that challenges the implied gender and race neutrality of those clients. I am not unmindful of the fact that, for instance, clinic welfare clients are primarily women. This is not a coincidence, but nor is the explanation self-evident. If we can move beyond the appeal of the obvious, we will be better positioned to focus what is to be done. We will be better able to respond, for instance, to the 'deadbeat dads' sorts of government initiatives which consistently misrepresent and reinforce in the public mind that single mothers are poor because of unpaid child and spousal support or because they are promiscuous.

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66. For an account of the experience of one student clinic with a 'Women's Division cell' and a new violence against women policy, see J. Abell, "Women, Violence and the Criminal Law: It's the Fundamentals of Being a Lawyer that are at Stake Here," (1993) 17 Queen’s L.J. 147.

67. Once again, this is the easiest and most often resorted to official explanation for the poverty of women who are single mothers: see the Axworthy discussion paper, supra, note 30.

68. See Little, supra, note 8. This is why the spouse in the house issue never disappears
Finally, there continues to be a host of professional and ethical challenges that need to be addressed if we proceed to reconceptualize the work that we do. I leave that important question to another day.

from the discussion of women’s entitlement to welfare. I have argued elsewhere that the experience of women on welfare illuminates so clearly that the various legislative definition of spouse are shaped and driven by class as much as gender and sexual orientation; see Gavigan, supra, note 26. The Conservative Ontario government is poised yet again to breathe new breadth into the definition of ‘spouse’ in welfare law.