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SOCIAL WORK AND THE LAW—SOME CURRICULUM APPROACHES: A COMMENTARY ON DEAN CHARLES SCHOTTLAND'S ARTICLE

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IF I were seeking a motto for a new school of social work, I would choose: "Be Relevant, Stay Relevant." I believe that it is precisely this motivation that underlies your consideration of curriculum design today. It is certainly a major theme of Dean Schottland's learned presentation which has set the stage for our discussion.

I am going to take the same deck of cards and try to reshuffle them to meet the atmosphere of urgency I sense in this colloquium. I will be guided by John W. Gardner's recent comment: "We are in deep trouble as a people."

Based on Gardner's comment, the New York Times surveyed other Cabinet members. They all spoke of serious domestic ills including the rapid decay of the cities, urban rioting, the mounting crime rate, a shortage of professional manpower, the increasing obsolescence of the nation's hospitals, spiraling medical costs, the stubborn persistence of rural poverty, unemployment of the poor and insufficient funds to finance anti-poverty programs.

Material for a course in social work and the law will utilize these issues as the context for an examination of the benefits, rights and protections afforded recipients of social services.

In reformulating Dean Schottland's questions, it is my hope that, together, our answers might possibly come closer to the pressing realities of social issues confronting social workers today in the arena of social welfare and the law:

1. What qualities do we seek to inculcate in *social workers to be*?
2. What competencies need to be developed?
3. What are the issues on the social welfare-law agenda which must be faced by the professional social worker as he emerges from school with the qualities and competencies we have helped him to develop?

Alvin Schorr and Dr. Kenneth B. Clark, in two separate comments, join in suggesting the need to develop a sense of passion and moral outrage against injustice together with a clear ideological competence in finding democratic solutions to critical domestic and international problems.

This is Schorr's comment:

Only a passion for justice and clarity will make it possible to see people whole and meet their needs in full, despite opposing tendencies in the very framework of our society and profession. Such a passion, when supported by a systematic set of ideas, constitutes an ideology. Arthur Schlesinger, Jr. has observed that everyone professed an ideology in the 1930's, whether he had one or not. In the 1960's the pass-

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word is pragmatism; it is fashionable to deny an ideology. That is too bad, for we are in need of it.¹

This is Dr. Clark as he addressed the conference on "The Higher Education of Negro Americans", held as part of Howard University's centennial year on April 16, 1967:

The major charge that must now be made against American colleges and universities, predominantly white and powerful, is that they have not fulfilled their responsibility and obligation to develop and train human beings with a morally relevant and socially responsible intelligence. They have operated as if it were possible for a detached, a moral intelligence to be adaptive. They have not provided their students with the moral guidelines essential for the effective, creative and adaptive use of superior intelligence. They have not provided their faculties with the stimulation or protection for a socially responsible use or their own critical intelligence. And, above all, they have not provided the moral leadership for society. They have not alerted the public to the urgency of finding moral and democratic solutions to critical domestic and international problems.²

Those inclined to a cynical bent might very well question the singling out of "social work and the law" for focusing concerns which might be more appropriately focused on the entire graduate school, indeed on the entire university.

While we would acknowledge the relevance of these concerns for the entire system of education, the courses we are considering focus these concerns in a unique way. Such a focused view will permit us to look at the basic matrix for the practice of social work. Max Weber tells us why a knowledge of law is of such importance:

Law exists when there is a probability that an order will be upheld by a special staff of men who will use physical or psychical compulsion with the intention of obtaining conformity with the order or of inflicting sanctions for infringement of it. The structure of every legal order directly influences the distribution of power, economic or otherwise, within its respective community.³

As Dean Schottland has indicated, all social welfare services are given under sanction of law by administered organizations and are financed in whole or in part by government. To study the practice of social work, without encompassing the laws that both constrain and promote its services, is to attempt to study life processes without a knowledge of environment or physiology.

1. Schorr, *Poverty, Politics and People*, in Council on Social Work Education, *Anti-Poverty Programs* 35 (1967).

2. K. B. Clark, *Higher Education for Negroes—Challenges and Prospects*, 36 *J. Negro Educ.* No. 3, at 201 (Summer, 1967).

3. M. Weber, *From Max Weber: Essays in Sociology* 180 (H. H. Gerth & C. W. Mills eds. 1958).

To be able to influence, control and modify social welfare services, social workers need to know:

- A. The laws which provide boundaries for organizational action.
- B. The laws which govern the provision of resources to underwrite service delivery
- C. The laws and regulations governing or affecting the administration of services
- D. The processes by which these laws and regulations have been brought into being and by which they may be altered
- E. The basis on which these laws and regulations came into being; the needs being met and those not being met
- F. The constituencies affected by law and regulation, their views as to needed change, and their willingness and ability to act for change.

Added to this knowledge of law, regulation and administrative process, must be an ability to design successful political strategies for change. According to Herbert Kaufman these strategies fall into three classes:

1. Those designed to determine who gets public office and employment.
2. Those designed to manipulate the structure and procedure of government and parties.
3. Those designed to influence policy deliberations, policy adoptions and policy enforcement regardless of who is in office and of organization and procedure.⁴

It is this latter group of strategies which preoccupy social workers most often. What we seek therefore are ways in which students can acquire some competence in the "realpolitik" inherent in this approach.

One interesting observation is that these considerations bring us back to issues similar to those tackled by Mary Richmond, Edward Devine, Jane Addams and other pioneer social workers. While the agendas have shifted, are we not still concerned about tenement house reform, public health and sanitation, outdoor relief and child welfare?

Despite some basic differences we modern social workers might raise in philosophy and method, we nevertheless recognize that these pioneers were able to integrate social reform in their daily work. Putting to work all *we* know about successful learning processes, might we not require students to complete a social reform project on an issue stemming from their work?

Here is a project recommended for students of public administration dealing with issues of social policy before a legislature: On the basis of the public documents and other information the student is asked to present:

1. The material facts of the case as drawn from the evidence.
2. The various views and opinions which have been or might be adopted upon the matter.
3. The conclusions of his own judgment with his views.
4. If he concludes for legislation, a draft of the law by which he would exercise his purposes.

4. H. Kaufman, *Politics and Policies in State and Local Governments* 88 (1964).

5. A draft of the speech with which he would introduce his proposed law.

These suggestions were advanced by Henry Taylor in a book entitled, *The Statesman* in 1836.⁵

What of the agendas of issues facing our young graduates?

We know that government financed and operated social welfare programs will continue to grow. This means the continued enlargement of the scope and power of large complex organizations. The jurisdiction of these organizations will be primarily those individuals and families who lack resources, education and independent access to power.

The most important issue overriding all areas of government service is the need to maximize individual potential for *coping* with such organizations by maximizing the opportunities for preservation of individual liberties. Only in this way is there an opportunity for the development of the myriad innovative actions and ideas which form the basis for individual coping mechanisms.

The most significant concept yet devised for service delivery and maintenance of the liberties of service recipients, is "administrative due process"—or the inculcation of the essence of fairness into administrative procedures.⁶

This means not only advising clients as to their rights, but actively seeing to it that these rights are implemented. It means a constant attention to such aspects of administrative law as proper notice, hearing, the right to adversary procedures, the right to counsel, the right to appeal and the specific definition of rights, responsibilities and obligations on the part of both citizen and government. It means the development of a body of precedent as a basis for the determination of rules and the ultimate escape valve of judicial review. It means a key respect for the concept of due process of law and an identification with these limits on the part of social welfare personnel responsible for administering a particular government financed or operated program.

Conflict is inevitable in the administration of these services. According to Robert Dahl, there are three great alternatives: "Deadlock, coercion, or peace-

5. H. Taylor, *the Statesman* (1836). This book was written to "divert the attention of thoughtful men from forms of government to the business of government. *Id.*, quoted in B. M. Gross, *The Managing of Organizations* 109-10(1964).

6. For discussion of the concept of administrative due process see K. C. Davis, *Administrative Law and Government* (1960).

Dr. Thomas S. Szasz has devoted much attention and intellectual energy to administrative due process as applied to mental illness. "Due process occurs when psychiatrists do not mislead patients to believe that they will help them, when in fact they are agents of another party; and second that in each case in which psychiatry is used as a social force against a person, he will have equal access to psychiatric authority to use on his own behalf. Mental patients are never accorded such protection. Thus, virtually all existing practices involving involuntary patients violate the due process clause of the Fourteenth Amendment." T. S. Szasz, *Law Liberty and Psychiatry* 190 (1963).

See also Remington, *Due Process in Juvenile Proceedings*, 11 Wayne L. Rev. 688 (1965). "The basic issues of due process are, in my opinion, the same whenever there is governmental interference with the freedom of the individual, whether the objective of that interference is to help or to punish." See generally Report of the President's Comm'n on Law Enforcement and Administration of Justice, *The Challenge of Crime in A Free Society* (1967).

ful adjustment of conflict."⁷ Due process—through legitimate means of confrontation—is a guarantee of peaceful adjustment. The question that students must face is not the elimination or avoidance of conflict, but a responsible way of directly facing issues so that peaceful adjustment is the outcome rather than deadlock or coercion.

A major goal for us as educators is that students come to regard clients as living embodiments of rights, privileges and immunities. This is the essential significance for social welfare services of the Constitution and the Bill of Rights.⁸ When this approach is incorporated into our educational processes, we will have gone a long way towards creating the preconditions for changing the form and content of service delivery. This demand for change seems to be part of the air we breathe these days coming from such diverse sectors as welfare rights groups, anti-poverty organizations, groups of businessmen, political parties and so on. An agenda for such changes was recently incorporated in a major article in *Newsweek* magazine called *The Negro in America, What Must be Done*.⁹

So far we have been talking about what James Madison called the need to guard society "against the oppression of its rulers."¹⁰ Other themes uniting social work and the law include what Madison referred to as the need to "guard one part of the society against the injustice of the other part."¹¹ Still another theme is what Max Weber referred to as "substantive rationality," which he defined as meeting the basic needs of people in a nation.¹²

The knowledge base of our students must be sufficient to provide them with a keen appreciation of the need to eradicate poverty and the proposals now being suggested towards this end.

Poverty is tied hand and foot to the existence of a racist society. "Half of the Negro population lives in poverty compared with one out of every seven whites."¹³ Social work students need to know the reasons for the transition of the civil rights movement into the Black Power movement and its connection with

7. R. Dahl, *Modern Political Analysis* 73 (1963).

8. Alexander Hamilton's comment in *Federalist No. 80* is that "citizens of the Union are entitled . . . to the inviolable maintenance of equality of privileges and immunities." *The Federalist, No. 80*, at 283 (R. P. Fairfield ed. 1961).

9. *The Negro in America—What Must Be Done*, *Newsweek*, Nov. 20, 1967, at 32-65.

10. *The Federalist No. 51*, at 161 (R. P. Fairfield, 1961) (J. Madison).

11. *Id.*

12. M. Weber, *The Protestant Ethic and the Spirit of Capitalism* 181-82 (1961), *quoted in* B. M. Gross, *supra* note 10, at 142 where he also remarks that Weber "makes a major qualification concerning the rationality of the super-rational bureaucracy. Its rationality is merely formal rationality which deals with the adaptation of means to the given and clearly established ends of an organization. 'Substantive rationality,' on the other hand, deals with meeting the basic needs of people in a nation. In both economic activity and law there is a continuous tension between formal and substantive rationality."

13. S. Levitan, *Programs in Aid of the Poor* 59 (W. E. Upjohn Inst. for Employment Research 1965) *See also* Miller, *Who Are the Poor?*, 20 *The Nation* No. 23, at 610 (June 7, 1965) where he remarks that "[o]fficial estimates show that about 25% of the poor families are not white (the non-white population of the country is 11.8% of the total). These figures, however, understate the dynamic role of non-whites (Negroes) in the drive against poverty. The non-whites constitute about one-third of the non-aged poor and a much larger proportion of the chronically poor."

the need to eradicate poverty. They must be able to understand the growing militancy of such groups and what they really are demanding. A recent statement by Rev. H. Carl McCall is perhaps typical of many which will be made to many government sanctioned and financed social welfare agencies in the near future: "There is no turning back from the demands of poor people to begin running their own affairs, and they will fight back with all their strength against attempts to limit the growth of their power."¹⁴

I am not at all sure how I would handle the organization of courses to incorporate the material suggested earlier. I suspect we are dealing with a great deal of material which either already is integrated or could well be integrated in many other aspects of existing course content. In some respects this might be a superior solution.

I am however convinced that there is a basic urgency and validity today in the creation of a course which would focus attention on key issues of social work and the law.

EPILOGUE

The most insidious erosion of liberty can take place in the name of provision of social services. The most arbitrary restriction of income can take place in the name of the provision of Public Welfare benefits. The most capricious invasion of freedom can occur in the name of protection of clients.

Montesquieu suggested that "virtue itself hath need of limits." Social services addressed to the poor and the powerless require the safeguards of due process and the clearest definition of rights and benefits. Advances in this aspect of social welfare administration can only be made on the basis of increased knowledge and appreciation of the basis of due process protections. A curriculum of the kind we have been discussing can be a vital contribution in the overall education of social workers and others interested in social welfare law.

Curriculum material for all of social work education including the projected course on social work and the law is implicit in this statement by former Secretary of Health, Education and Welfare, John W. Gardner:

"The scope of our social goals today is breathtaking. We have declared war on ignorance, disease, poverty, discrimination, mental or physical incapacity—in fact on every condition that stunts human growth or diminishes human dignity."

"It is a struggle all the way, and there are grave problems ahead."¹⁵ It is in the examination of the administration of present programs, evaluation of needs met and unmet, and the need for planned change that much material relevant to a consideration of social work and the law can be provided. Gardner's concept of struggle and his notation of grave problems ahead can be great challenges to both student and faculty in the process of curriculum development.

14. McCall, *Politics and Poverty*, New York Amsterdam News, Nov. 11, 1967.

15. New York Times, Jan. 2, 1968, at 18.