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The Meaning of Equal Access to Legal Services

JAMES GORDLEY*

Mr. Bamberger has spoken in support of the staff attorney program of the Legal Services Corporation. Professor Schlesinger seems to favor the use of private practitioners as in the German program. I suggest that the reason for the disagreement is that legal aid performs two tasks. The European programs are better at handling one of these tasks; ours is better at the other. Which program one prefers depends upon which task one wishes to emphasize.

One of these tasks was mentioned by Professor Schlesinger: our program should put all the poor in just the same position to redress their grievances as the rich. Poor clients should have their choice of lawyers. These lawyers ought to give them the same service rich clients can purchase.

The second task is that legal aid must reach people who, as Mr. Bamberger mentioned, have never had access to the legal system. These people must be taught to use the law; the law must be revised so that they can use it; lawyers must move into accessible offices, learn about the problems of poverty, teach potential clients about the law, and work to expand the legal system outwards. Legal aid is not just a matter of removing financial barriers. It is also something of a missionary effort.

Each of these tasks secures respect for the rights of the poor by equalizing access to legal services. But they equalize access to legal services in two different ways: the first, by giving rich and poor the same legal services; the second, by giving the poor legal services which are different from those of the rich and more suited to their special needs. Because of this difference, there is no way for one legal aid program to be perfectly suited to both tasks. Compromises have to be made. In large part, the differences between the European legal aid programs and our own are instances in which, when forced to choose, the Europeans have been more concerned about the first task and we have been more concerned about the second.

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One such difference is the budget. Neither the German nor the English program has a budget. Every applicant who meets the statutory standards is entitled to receive the same legal services as an ordinary paying client, to receive them from an ordinary practicing attorney, and to have the state pick up all or a prescribed part of the bill.¹ As Seton Pollock, Secretary for Legal Aid of the English Law Society, has stated, "within the conditions laid down by Parliament, the help requested must be granted as of right, and, furthermore, it must be of the same quality as would be available to an ordinary paying client . . ." ² Applicants who do not meet those conditions receive no aid at all. Thus every recipient is treated equally: he receives services equal to those of every other recipient and equal to those bought by the rich. Shortage of funds is handled by contracting the class of eligible beneficiaries, not by rationing aid among those who are eligible.

We have the opposite approach. We fund a program at a certain level and send everyone out to do what they can with that amount of money. As a result, we deny aid to a great many people who meet our eligibility standards. By Mr. Bamberger's estimates, there are now four times as many people who are poor and would receive help from a minimally adequate program as there are funds to help them. Who receives help, and how much they receive, is up to the local office within the broad limits of a few national guidelines.³ From the standpoint of a European program this is a denial of equality. From the standpoint of the American program it is a recognition that an effective equality is best promoted by spreading funds around so as to solve as many problems as possible, subject to the requirement that a competent professional job be done for each client.

The Europeans take their eligibility standards very seriously. As Professor Schlesinger pointed out, German standards are administered in a kind of legal proceeding: to obtain aid, the applicant must prove that he qualifies before a regular court.⁴ English applications are screened by

1. In the English program there is a sliding scale, so that people who can afford part, but not all of the costs of litigation, are required to make some payment. Legal Aid Act, 1974, c. 4, § 4.

2. Pollock, *The English Legal Aid System*, in M. CAPPELLETTI, J. GORDLEY, & E. JOHNSON, JR., *TOWARD EQUAL JUSTICE: A COMPARATIVE STUDY OF LEGAL AID IN MODERN SOCIETIES* 343, 345 (1975).

3. The Legal Services Corporation Act of 1974 requires only that there be "maximum income levels" for receipt of aid and "priorities to ensure that those least able to afford legal assistance are given preference." 42 U.S.C. § 2996f(a) (1975). In the past, local offices have been given a fairly free hand provided that they do not take business away from the private bar.

4. In Germany, application for aid is made to the court which is to hear the parties' case. ZPO § 118. The great majority of applicants have the help of a lawyer at the time they apply, and, if they receive aid, are permitted to have this lawyer represent them even

certifying committees composed of volunteer solicitors.⁵ American standards, in contrast, are administered by quizzing applicants informally as they walk in the office. In Germany, disappointed applicants can appeal to a higher court.⁶ In England, they can appeal to area committees charged with supervising the local certifying committees.⁷ In America, there are no appeals. Thus, the English and German programs go to great lengths to ensure that all applicants are treated alike. Applying for aid is like claiming one's rights before a judicial body. In America, the local office can be informal and flexible about its standards, and the program directors have discretion as to which areas will be served by local offices. But, as a result, in America, applying for aid is like pointing out to the welfare administration that you are one of the thousands eligible for aid, and asking them to do what they can.

The questions of staff attorneys and law reform, which Mr. Bamberger addressed, are easier to think about when these two different ways of promoting equality are kept distinct. The inherent advantage of a staff attorney program such as ours is precisely that it can promote equality by being flexible, that is, by not treating every problem the way a practitioner would treat that of a private client. The state can train the lawyers it employs to perform services which private lawyers never

though the court, in theory, may assign them any lawyer it chooses. Stohr, *The German System of Legal Aid: An Alternative Approach*, 54 CALIF. L. REV. 801, 807 (1966). To qualify for aid, one must "be unable to defray the costs of the litigation without jeopardy to the livelihood of oneself and one's family," and one's claim must have a "sufficient prospect of success" and not appear "capricious." A claim is "capricious" if "the prospects for the prosecution of the claim are such that a party not claiming legal aid would refrain from litigation or assert only a part of the claim." ZPO § 114 (author's translation).

5. The members of these certifying committees are drawn from the "local committee," a pool of private solicitors who have volunteered for the job. The certifying committees, assembled on an ad hoc basis, are the subcommittees through which the local committee acts. THE LAW SOCIETY, *LEGAL AID HANDBOOK* 223-26 (3d ed. 1966) (Legal Aid & Advice Schemes §§ 8-18). The certifying committees rule only on the merits of the applicant's case; his financial eligibility is determined separately by the Ministry of Social Security. The applicant must convince the certifying committee "that he has reasonable grounds for taking, defending, or being a party" to the proceedings in question, and he "may also be refused legal aid if it appears unreasonable that he should receive it in the particular circumstances of the case." Legal Aid Act, 1974, c. 4, § 7(5). Those granted legal aid may choose any lawyer to represent them who has had his name entered on lists of those willing to do legal aid work. The great majority of English lawyers have offered their services. E. MOERAN, *PRACTICAL LEGAL AID* 5 (1969).

6. Orders of German lower courts denying legal aid are subject to one appeal. ZPO § 127.

7. England is divided into over a dozen "areas," each with an "area committee" composed of solicitors who serve without pay. Applicants denied aid by a local certifying committee may appeal to the area committee. On appeal, the applicant is entitled to an informal hearing at which he or his lawyer may appear. The Legal Aid (General) Regulations, STAT. INST. 1971, No. 62, § 10(4).

give their clients. The state need not worry about profiteering when it allows salaried attorneys to educate potential clients about the services available. The state pays the rent on the staff attorney's office, and therefore it can put him where it wants him. Offices can be opened in the poorest areas where people find it the most difficult to recognize their legal problems.⁸ The staff attorney is publicly accountable, and therefore can be given a measure of discretion in rationing aid among potential recipients which no private lawyer is in a position to exercise. He can litigate small claims in matters like debt collection which affect the poor as a group even though no one claim is worth disputing. He can spend more time on matters of general interest to the poor, such as landlord-tenant and welfare cases, and less time on purely personal disputes.

The German courts and English panels of solicitors, in granting aid, and the German and English lawyers, in providing it, have no such discretion.⁹ As a result, things get done in this country that could never even be attempted in England or Germany. By the same token, there is no guarantee in America, as there is in England or Germany, that those least able to afford legal services can, as of right, have the same legal representation as the rich. Flexibility is an advantage when one wants to tailor legal services to the interests of the poor as a class, or to the difficulties the poor have in finding and using legal services, or to the needs of the poor for special services. Flexibility is a disadvantage if one wants to give everyone the same services.

American research suffers from an unwillingness to recognize that the

8. Goodman and Feullan have concluded that "the trouble with judicare" is that it leads to an unequal distribution of aid between the areas served. They base their conclusion on data drawn from the Wisconsin judicare experiment showing an unequal distribution of aid between rich and poor counties. See L. GOODMAN & J. FEULLAN, *ALTERNATIVE APPROACHES TO THE PROVISION OF LEGAL SERVICES FOR THE RURAL POOR* (1972); Goodman & Feullan, *The Trouble with Judicare*, 58 A.B.A.J. 476 (1972). Brakel has challenged the adequacy of their statistical methods. Brakel, *The Trouble with Judicare Evaluations*, 58 A.B.A.J. 704 (1972). Regardless of whether they have proved their case as between rich and poor Wisconsin counties, their more general conclusion almost has to be valid. If there is any tendency for lawyers to avoid locating in the poorest areas, and for the poorest people to avoid going to a lawyer unless his office is readily accessible, then judicare will not reach the very poorest as effectively as a staff attorney program which plants its offices in their neighborhoods. It is wrong, nevertheless, to say that because the staff attorney program has the flexibility to attack a kind of inequality which is not reached by judicare, judicare is for that reason discriminatory.

9. Thus, in the courts of limited jurisdiction, the English County Courts and the German *Amstgerichte*, aid is granted infrequently. For figures, see THE CONSUMER COUNCIL, *JUSTICE OUT OF REACH* 15 (1970) (on the English courts); Cappelletti, *The Emergence of a Modern Theme*, in M. CAPPELLETTI, J. GORDLEY, & E. JOHNSON, JR., *supra* note 2, at 5, 52 n.164 (on the German courts).

question of staff attorneys versus *judicare* is largely a question of whether one wants this flexibility in the legal aid program. American studies are uncomfortable with questions of what one wants, and like to transform them, when they can, into questions of relative benefit, relative cost, and relative efficiency. Here, that transformation can easily lead to begged questions or to cost studies of advantages which are either not real or not inherent.

The question is begged by assuming at the outset that it is better to have a program which is more flexible. One assumes, for example, that a greater variety of services is high "quality" service because it is "total service."¹⁰ Or one assumes that representation of the interests of the poor as a group, rather than merely of the individual client, is a "high benefit" service, and therefore more "cost-effective" because larger numbers are represented.¹¹ It is then very easy to prove that staff attorney programs are of higher quality or more cost-effective. But this conclusion was implicit in one's choice of a measuring rod.

Recognizing, perhaps, that there is no neutral measuring rod, the studies often skip the question of what legal aid is supposed to do and turn directly to the question of how to do it most cheaply. As one study put it, "the benefits of legal aid involve . . . nebulous qualities" and therefore "it can be expected that advocates will rely heavily on the quantitative, 'hard' data of program costs."¹² But, as the studies recognize, to compare costs one must compare the cost of providing equivalent benefits. If benefits which are dissimilar in kind cannot be made equivalent by resort to some measuring rod, then one can only compare the cost of providing benefits which are the same in kind. At this point, a problem arises for all such studies. There is no inherent reason why legal services which are the same in kind in both programs should cost society different amounts. If the same lawyer spends the same afternoon on the same divorce for the same client, the inherent cost to society ought to be the same whether the state pays his salary or pays his fees.

For example, comparisons are continually made between the salary per case of the staff lawyer and the fee per case of his colleague in *judicare*.¹³ It is difficult to see what can be learned about the merits of

10. Masotti & Corsi, *Legal Assistance for the Poor: An Analysis and Evaluation of Two Programs*, 44 J. URB. L. 483, 496 (1967). To make my remarks concrete, I have chosen examples from the studies which are the best known and, for the most part, the best executed.

11. Johnson, *Further Variations and the Prospect of Some Future Themes*, in M. CAPPELLETTI, J. GORDLEY, & E. JOHNSON, JR., *supra* note 2, at 135, 155-61.

12. Cole & Greenberger, *Staff Attorneys v. Judicare: A Cost Analysis*, 50 J. URB. L. 705, 706 (1973).

13. *E.g.*, L. GOODMAN & FEULLAN, *supra* note 8; S. BRAKEL, *JUDICARE: PUBLIC FUNDS, PRIVATE LAWYERS, AND POOR PEOPLE* (1974); Cole & Greenberger, *supra* note 12. There is

the programs from these comparisons. If both programs pay the going rate, and their lawyer costs differ, one program must be hiring lower priced legal talent than the other. That sort of cost advantage does not make the cheaper program any more "efficient." Moreover, it is not inherent: one can always cancel or reverse it by changing judicare fees and staff attorney salaries and hiring practices. On the other hand, if one program is cheaper because it pays less in comparison to the going rate, it is hard to see any real cost advantage at all. If a lawyer could earn the going rate and decides to do legal aid work for lower pay, as hundreds of the youngest members of the bar now do when they work for the Legal Services Corporation, the lawyer is donating the difference between what he is paid and what he could be earning. To that extent, the legal aid program is being financed by private contributions rather than by public funds. The greater the reliance on private contributions, the cheaper the program is for the taxpayers, and the more expensive it is for the private contributors. Financing a greater percentage of the legal aid program from private contributions does not lower the cost of providing aid; the cost is simply borne by different people.

Just as there is no inherent reason for either program to have a lower cost per hour of lawyer time, so there is no inherent reason for either program to be able to produce more work per lawyer per hour. Staff attorneys, it is true, have been able to specialize and use techniques which are only economical for handling large numbers of similar cases.¹⁴ Channel the same number of cases through the private bar, however, and there would be a strong incentive to specialize whenever it was economic to do so, since private lawyers are allowed to keep the money they save. If central facilities to explore new ways to save time were not developed spontaneously, they could certainly be provided without directly employing the lawyers who use these techniques.

Peel away all the cost advantages which are not real or not inherent, and the only substantial reason for the low cost of staff attorney programs is that the staff attorney need not give each assisted client the

some recognition in these studies that the conclusions are dependent upon the amount staff attorneys are paid relative to judicare lawyers. Brakel concludes that "[i]n terms of legal services, the Upper Michigan [staff attorney] program is somewhat cheaper than Wisconsin judicare, and quite likely this is characteristic of the models rather than just the two programs specifically compared here. Staff attorneys simply are not paid very much." S. BRAKEL, *supra* at 118. Cole and Greenberger draw their conclusion in a qualified form: the "staff attorney approach would be a much less costly way of meeting the legal needs of the poor if judicare charges remained the same," that is, at the rate of sixteen dollars per hour at which they were pegged. Cole & Greenberger, *supra* note 12, at 715. Both studies, however, are willing to base the conclusion that the staff attorney program has a cost advantage on the fact that staff attorneys are paid less than judicare lawyers.

14. S. BRAKEL, *supra* note 13, at 118-19; Johnson, *supra* note 11, at 144-55.

same attention which paying clients receive from the private bar. But, strictly speaking, that doesn't affect the cost of delivery. It affects what is being delivered.

The question of law reform which Mr. Bamberger addressed is another illustration of the same contrast between the European and American programs. The Europeans do almost nothing in that direction.¹⁵ The *judicare* lawyer is not studying problems of interest to the poor as a class, voicing their grievances, lobbying with the legislatures, and trying to find remedies. That's not his function. He is treating them just as he does his private clients. The staff attorney is in a much better position to be a missionary, and missionaries are certainly needed if the law is to reach new problems and new groups. But conversely, the time spent reaching new problems and new groups is not spent litigating old problems for individual clients.

I agree with Professor Schlesinger that the best solution would be to have two different programs, one to pursue each of the tasks I have discussed. Two tasks require two instruments. Otherwise a single tool must do two jobs, and it won't do either of them as well as the specialized tools. In this country, however, we are not likely to have even one adequately funded program in the near future. Therefore, we have to compromise between two different ways in which we can equalize access to legal services: we can treat everyone the same; or we can recognize that if you treat everyone the same way, the poor will be disadvantaged because they are not used to the workings of the legal system, and because much of the legal system was not formed with them distinctly in mind.

Just as each program has its own inherent advantages and disadvantages, each has its own potential for aberration, its own way of sacrificing the advantages and multiplying the disadvantages without reason. Because the European programs look so court-like, there is a danger that people will come to think that the granting of aid is an instance of normal adjudication, and aid will be choked off by formality. Because our program looks so little like a court, there is a danger that people will come to think of legal aid as one more piece of public welfare to be handled as roughly by the political process as welfare matters usually are.

The European programs would quickly become unworkable if the Europeans treated applications for legal aid just as they do suits over life, limb, money, and property. The Europeans have to relax the normal judicial formalities while preserving the fair and impartial screen-

15. For contrasting views on this limitation in the English program, compare Pollock, *Legal Aid as a Social Service—The Cobden Trust Report*, 67 L. SOC. GAZ. 399, 400 (1970) with Liell, *Why Not Neighborhood Law Offices?* 111 SOLICITOR'S J. 763, 765 (1967).

ing of requests for aid which is the great advantage of their system. I gather from Professor Schlesinger's remarks that the Germans preserve the balance rather well. The few judges who have tried to convert the proceedings into a sort of preliminary trial have met with criticism.¹⁶ When I was in England six years ago I watched a number of local certifying committees pass on several hundred applications for aid, and I thought the proceedings were reasonably simple and fair. Simplicity has been preserved by a refusal to encumber the local committees with written opinions, appearances by the applicant's lawyer, and the like.¹⁷ Fairness has been preserved by the remarkable attitude of the solicitors who screen these applications. Other countries have had a less fortunate experience: an example is Italy, where the requirement that the applicant have "the smoke of a good case" (*fumi boni iuris*) practically led to trial on the merits.¹⁸

In America, there is no danger of over-judicializing legal aid. There is a danger that the legal aid program will be lost among the offspring of political movements to enlarge the rights of the poor. Other kinds of public assistance and other efforts at law reform help the poor to obtain new rights; in contrast, legal aid enables them to protect the rights they already have.

Opponents of public assistance have neglected this distinction and have been as willing to slash the legal aid budget as that of any other program. From 1972 to 1976 the budget was frozen during an inflationary period at \$70 million, 41 percent of the neighborhood offices were closed, and the number of field attorneys dropped from twenty-five to twenty-one hundred.¹⁹ Those suffering from these cuts were not being given less; they were losing access to the courts which protect their

16. The German Civil Code permits fairly extensive proceedings:

The court may require the applicant to support the credibility of his factual allegations. It shall hear the opponent prior to the grant of legal aid unless special reasons seem to render this course of action inapposite. It may take evidence, if this is possible without substantial delay, and, in particular, order the production of documents and procure information from public authorities. The examination of witnesses and experts is permissible only if the facts upon which the decision to grant legal aid depends cannot be ascertained sufficiently in other ways.

ZPO § 118a (author's translation). In practice, the procedure tends to resemble the hearing of a general demurrer, and judges who insist on calling witnesses have been criticized. Stohr, *supra* note 4, at 802-03. Commentators, emphasizing the need to avoid delay, have said that witnesses should be summoned only if the decision to grant or deny aid hinges on their testimony. L. ROSENBERG & K. SCHWAB, *ZIVILPROZESSRECHT* 432 (1969); A. BLOMEYER, *ZIVILPROZESSRECHT* 742 (1963).

17. For a defense of this policy, see Pollock, *Legal Aid: Giving Reasons*, 115 *SOLICITOR'S J.* 898 (1971).

18. Vigoriti, "*Fumus boni iuris*" a diritto d'azione e di difesa (art. 24 Const. e art. 15, n.2, legge sul gratuito patrocinio), 21 *RIVISTA DI DIRITTO PROCESSUALE* 284 (1966).

19. Bregger, *The Legal Services Corporation: A Report to the Bar*, 39 *TEX. B.J.* 423, 424, 426 (1976).

rights. It is inconsistent, to say the least, to treat access to the courts as though it were one more welfare benefit.

Those who favor more public assistance have been as susceptible to this type of confusion as those who are opposed. With them, the confusion is, if anything, more dangerous, since it threatens the structure of the legal aid program rather than merely the program budget.

One form of this confusion might be called the "technocratic aberration": legal aid is thought of primarily as a way to maximize some aggregate of social welfare. To adhere consistently to this conception of legal aid would be to forget that the rights of the poor should be respected whatever the effect may be on anyone's welfare. Private rights, in this society, are not a public trust: one need not exercise them in the manner which best promotes public welfare, and one may exercise them without accounting to anyone else. The rights of the poor should not be treated differently. In the past, they have been treated very differently, particularly by the social planners responsible for running organizations like the welfare department. One of the purposes of legal aid, as Edgar and Jean Cahn noted at the inception of the program in their seminal article,²⁰ is to protect the poor from the planners.

An unhealthy byproduct of the social engineering approach to legal aid is the bias, mentioned earlier, toward "quantitative hard data" as a substitute for normative judgment. One obviously wants to look at the facts before making a decision. The danger is to think the facts themselves will make the decision, or that the only important facts are those one can enter on a pocket calculator. As an example, take the question of whether it is so important that the poor be able to choose their own lawyers that we should revise or discard our staff attorney program to enable them to do so. At some point, in answering that question, elected officials will have to make a normative judgment about the importance of choosing one's own lawyer. American research is peculiarly anxious to relieve the Congress of that responsibility. Statistical methods have been applied to determine whether free choice of counsel "adds to the client's subjective satisfaction with the services received" and thereby adds to the "psychological value" of the program.²¹ Random samples of aid beneficiaries have been polled and the tabulated responses said to contain "the views of the poor" on the matter, which only "paternalism" would disregard.²² These studies would have their difficulties even if

20. Cahn & Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317 (1964).

21. Johnson, *supra* note 11, at 167, 170.

22. Brakel, *Free Legal Services for the Poor: Staffed Office v. Judicare: The Client's Evaluation*, 1973 WIS. L. REV. 532, 533, 553. In his earlier writing, Brakel recognized that more is involved in the question of free choice of counsel than "the narrow issue of whether choice as such is or is not 'appreciated' by clients." S. BRAKEL, *supra* note 13, at 39.

anyone thought that the reason for allowing a poor person to choose his own lawyer was to make him psychologically satisfied or to commend the program to a majority of the poor. The argument for free choice of counsel, however, is that rich and poor alike should have the opportunity to choose who represents them. The argument is not quantitative, and to approach it with quantitative methods, as though the problem were how many people attach how much importance or find how much satisfaction in making such a choice, is to lose sight of the real issue.

No one can tell whether program directors have biased their decisions toward whatever can be measured. It may be observed, however, that the average caseload has now reached four to five hundred cases per lawyer per year, and the turnover rate for staff attorneys has risen to thirty percent.²³ There seems to be a policy of raising caseload and lowering salaries to the limit that any concern for professional competence can bear. In part, this may be an attempt to spread funds to reach as many problems as possible. But it may also be due to the discovery by project directors that salaries paid and cases handled are readily quantifiable. Quality of service is not. Neither is the cost of failing to build up a body of staff lawyers with experience and on-going interest in extending the legal system to those outside it. Moreover, the tendency to spread legal talent ever more thinly may be due to a willingness of staff attorneys to do their own private cost-benefit analysis, and to give a client only what that analysis will support.

At the opposite extreme from the technocratic aberration is another, which might be called the "romantic aberration." In contrast to the technocrat, who doesn't want to make any normative judgments, the romantic wants to make all of them at once. The technocrat is constantly weighing costs against benefits. The romantic doesn't care about the costs. They will be outweighed a thousand times over by the great benefit of ending injustice across the nation. Different ways of ending injustice, and different kinds of fairness are splashed together like fruit juices in a punch mixed by someone who wasn't particular as long as it carried a wallop.

As much as this outlook seems to differ from that of the social engineers, there is the same confusion between legal aid, which protects existing rights, and all the other measures one might take to promote a more just society. As Geoffrey Hazard has pointed out, those who romanticize the legal aid program tend to forget that there is a difference between distributive justice, which provides everyone with a fair share of the social wealth, and commutative justice, which ensures that a person will receive the share provided for him.²⁴ The most that can be

23. See Breger, *supra* note 19, at 426.

24. Hazard, *Social Justice Through Civil Justice*, 36 U. CHI. L. REV. 699 (1969).

expected of a legal services program is a better degree of commutative justice. The distribution of wealth is not going to be radically changed by resort to litigation, and litigation, in any case, would be the clumsiest way to change it.

Not only can legal aid do little about the way society has divided the wealth, it can do even less about the way individuals spend the wealth they have. Commutative justice simply protects a person's power to dispose of a given share of resources. What he does with that power depends on him. Matthews and Weiss have written that, as staff attorneys, they had to learn that their job was not to improve a client's life but to make sure his rights were respected.²⁵ That is a modest and limited goal.

Commitment to that goal, however, is the main feature which European and American programs share. The American program recognizes that the rights of the poor are not going to be genuinely respected without a sort of missionary effort. The European programs recognize that the rights of rich and poor will not be equally respected until they receive the same kind of representation. There is a tension between different ways of seeking a common goal. The aberration, in each case, is to sacrifice pursuit of the goal to something else: in the European case, to more exact and formal conceptions of fairness; in the American case, to more general notions of social welfare. Once that sacrifice is made, one is either protecting the poor man's rights in courts he can never reach, or trying to give him more in a society in which nothing he has is protected.

25. Matthews & Weiss, *What Can Be Done: A Neighborhood Lawyer's Credo*, 47 B.U.L. REV. 231 (1967).