

# LAW AND CONTEMPORARY PROBLEMS

---

VOLUME 31

WINTER, 1966

NUMBER 1

---

## FOREWORD

Will we have the poor always with us?<sup>1</sup> Many answer "Yes" with Malthusian resignation to the inevitable; indeed, some traditional welfare programs appear to assume this inevitability. A few persons go even further in their reply and glorify the role of poverty as an incentive to achievement; they suggest that without a vivid threat of poverty mankind would degenerate into sloth.<sup>2</sup>

In recent years, however, the view has gained increasing acceptance that substantial inroads against indigency can, and should, be made. Several years ago the Ford Foundation with its "gray areas" program helped evolve the concept of community action as a means for breaking the cycle of poverty.<sup>3</sup> Private and public agencies gave increasing recognition to the importance of education and of vocational training and retraining for this purpose. Then came the Economic Opportunity Act in which new federal forces and funds were committed to the war on poverty—and victory in this war became an important objective of the Johnson Administration.<sup>4</sup> This act purported to require greater coordination of existing federal efforts against poverty,<sup>5</sup> but at the same time it authorized imaginative new programs. Furthermore, it created a new partnership between local communities and the federal government. The recent burst of congressional activity also included legislation relevant to the war on poverty in such fields as education<sup>6</sup> and civil rights,<sup>7</sup> and an Appalachian program under which, largely through new public works, federal assistance would be furnished to an entire indigent region.<sup>8</sup>

---

<sup>1</sup> *John* 12:8; *Mark* 14:7; *Matthew* 26:11.

<sup>2</sup> Max Weber suggested that the protestant ethic and doctrines of salvation by grace were related to the rise of capitalism in that business success became partially equated with spiritual salvation. See MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* (Parsons trans., 1956 ed.) Many persons today consider that poverty is the result of indolence and vice; and that one who is hardworking and virtuous can attain affluence. At the other extreme, there is substantial opinion that "love of money is the root of all evil" and that poverty may even be a goal to be sought, as by entering a monastery.

<sup>3</sup> One of the most successful of these "gray area" programs was initiated in New Haven, Conn. Establishment of The North Carolina Fund represented an effort to apply a similar approach on a broader, statewide basis.

<sup>4</sup> There have been reports that prior to his death President Kennedy, impressed in part by Michael Harrington's *The Other America*, had also made plans to launch a war on poverty.

<sup>5</sup> While coordination among federal agencies is vital, there also must be achieved coordination of federal and local antipoverty efforts, coordination of federal programs with state activities, and coordination of local public and private efforts to combat poverty. The problems in achieving the desired cooperation include: interagency jealousies, professional biases, and difficulties in communicating to the participants the broad goals being sought.

<sup>6</sup> Elementary and Secondary Education Act of 1965, 79 Stat. 27 (codified in scattered sections of 20 U.S.C.A. (Supp. 1965)).

<sup>7</sup> Civil Rights Act of 1964, 78 Stat. 241, 42 U.S.C. §§ 1971, 1975a-d, 2009h-6 (1964).

<sup>8</sup> Appalachian Regional Development Act of 1965, 79 Stat. 5, 40 U.S.C.A. App. A (Supp. 1965).

Enough information is now available to permit a realistic appraisal of current antipoverty programs. And the urgency of the need for this appraisal is heightened by the circumstance that the demands of the Viet Nam conflict may require selective curtailment of domestic federal programs. Moreover, the expanding defense effort may even be changing some of the dimensions of poverty; for instance, it probably mitigates poverty attributable to unemployment but, by inducing inflation, pushes into poverty people, such as the aged and the disabled, who are dependent upon fixed incomes.

In appraising antipoverty programs, a significant threshold inquiry concerns the premise on which aid is extended to the indigent. Does society have an obligation or duty to the indigent to extricate him from the morass of poverty? Does he have a correlative "right" to receive a certain minimal income? Certainly the existence of such a right would be inconsistent with imposing numerous conditions and limitations upon the indigent's receipt of assistance. Under such a view, he could not be required to relinquish or waive fundamental rights, such as that of privacy, in order to obtain public assistance.<sup>9</sup> And procedural safeguards, such as an opportunity for a fair and impartial hearing, might be necessary in order to preserve the indigent's "right" to assistance, such as welfare payments or the opportunity to reside in public housing.<sup>10</sup>

Some critics of the present antipoverty programs complain that the Office of Economic Opportunity has often encouraged rigidity, rather than local innovation. However, without substantial intervention from Washington, chiefly through refusal to fund,<sup>11</sup> local programs might have deviated from norms which apparently were accepted by Congress—for example, maximum feasible participation of the poor and nondiscriminatory representation of minority groups. Without some federal control "local autonomy" might become a euphemism for the use of antipoverty funds to achieve the objectives of local political machines. On the other hand, excessive federal control breeds resentment and lethargy which paralyze community action.

Several students of antipoverty programs have been disturbed by failure to involve the States more intimately.<sup>12</sup> In other federally-assisted programs, such as urban

<sup>9</sup> The question has been raised of the extent to which the recipient of public assistance should be subject to "midnight raids" or to inspections made at the whim of public officials. See Reich, *Midnight Welfare Searches and the Social Security Act*, 72 YALE L.J. 1347 (1963); Sparer, *Social Welfare Law Testing*. The Practical Lawyer, April 1966, p. 13. Furthermore, should the dispensers of public assistance make efforts to assure that this assistance is being used only for "necessaries" such as food and clothing, and not for "luxuries" like a television set or an automobile.

<sup>10</sup> The case of Housing Authority of the City of Durham v. Thorpe (Sup. Ct. No. 769), decided by the North Carolina Supreme Court on May 25, 1966, raises the issue whether an occupant of public housing is entitled to procedural protections, such as notice, confrontation, and a hearing, before being expelled from the housing project.

<sup>11</sup> Title six of the Civil Rights Act affords a precedent for refusal to fund local programs that are discriminatory. 78 Stat. 252, 42 U.S.C. §§ 2000d-d4 (1964). Some complaints have been voiced that the Office of Economic Opportunity in refusing to fund certain projects had invoked standards which exceeded the authority delegated to it by the Congress.

<sup>12</sup> See Sanford, *Poverty's Challenge to the States*, *infra*, pp. 77-89. Of course, the governor's veto over

renewal, public housing, and development of airports, state activity has often consisted of the enactment of an enabling act. Perhaps this limited role mirrored the interests and attitudes of state legislators prior to the reapportionment cases. However, the antipoverty programs must now be appraised in terms of the goal of a dynamic federalism, wherein the States are more than vestigial organs.

What about the role of private groups? Private organizations helped stimulate the war on poverty in the first place, and clearly to attain any breakthrough in this war will require their continued support. Participation by industry and labor organizations in developing new training programs for indigents is only one example. Moreover, some of the skilled personnel needed to administer antipoverty programs must be furnished by private groups.

In many government programs significant activities have been contracted out to nonprofit organizations; for example, several defense agencies have utilized nonprofit corporations for research and evaluation functions.<sup>13</sup> Similarly the nonprofit corporation has been frequently used in implementing community action in connection with antipoverty programs. By this means some new personnel and ideas have been introduced into the war on poverty; and several restrictions applicable only to government agencies have been bypassed. However, a comprehensive appraisal of antipoverty programs should include consideration of the extent to which some of the policies applicable to governmental agencies should be applied to nonprofit corporations which are coordinating community action with the aid of public funds. For example, to what degree should community action programs be subjected to statutory and policy restrictions concerning the appointment, compensation, and activities of government employees or the expenditure and use of public funds—restrictions such as those imposed by civil service and merit system legislation, the Hatch Act,<sup>14</sup> or advertised bid requirements. Moreover, in using the nonprofit corporation in antipoverty programs, how can excessive diffusion of responsibility and the establishment of conflicting power structures best be avoided?

In combating poverty, mere paternalism is clearly inadequate—and perhaps even self-defeating. Unless the indigent themselves participate in the war on poverty, they may retain feelings of anonymity, frustration, hostility, and despair—feelings manifested occasionally by senseless rioting. With this in mind, the Office of Economic Opportunity has insisted on broadening the boards of directors of community action programs to include substantial representation of the indigents—which, in many instances, has been equated to one-third membership on a board. Sometimes

---

community action programs—a veto which has recently been restricted—does not assure affirmative participation by the state in formulating these programs.

<sup>13</sup> For example, the Rand Corporation has performed some vital research and evaluation tasks for defense agencies. For an interesting symposium on the whole problem of contracting out governmental activities and functions to private organizations, see Symposium—*Administration by Contract: An Examination of Governmental Contracting-Out*, 31 GEO. WASH. L. REV. 685-783 (1963).

<sup>14</sup> 53 Stat. 1139 (1939), 54 Stat. 767 (1940), 5 U.S.C. §§ 1181, 1181k-n (1964).

the poverty-stricken have participated in elaborate elections to choose their representatives on the board. "Community organizers" have been provided to mobilize the indigent—occasionally with resulting criticism of the political implications of their organizational activity. Emphasis has been placed on hiring indigents whenever possible to perform tasks with antipoverty programs.

Even with all these measures, has sufficient participation by the poor been obtained? Some who have studied the "politics of the poor" give a negative answer to this query; and they may suggest that it is unrealistic to expect that local politicians and officials will relinquish to the indigent any significant control over the expenditure of antipoverty funds. Other observers consider that participation by the poor has been only a slogan employed by cynical persons seeking to use the poor as an instrument to attain or retain political power.

Examining the participation of the poor in antipoverty programs leads readily to consideration of the relationship to these programs of the civil rights movement. There is a disproportionate incidence of poverty among minority groups; indeed, some view the federal war on poverty as an answer to demands by these groups. On the other hand, federal civil rights legislation may help lessen conditions of poverty by destroying barriers to economic opportunity. And at the same time some of the assistance available through antipoverty programs may place members of minority groups in a better position to utilize opportunities newly afforded by civil rights legislation.

Antipoverty programs have their own bureaucracy; and the success of the programs hinges on the effectiveness of that bureaucracy. Difficulties in obtaining qualified personnel have often impaired this effectiveness; and a necessity is now being recognized to develop new professions and subprofessions in order properly to staff antipoverty programs. Moreover, since indigents are often especially helpless and vulnerable in their dealings with any bureaucracy, a need exists for developing better methods to prevent or remedy arbitrary action on the part of the public officials with whom they must deal.<sup>15</sup>

Since this symposium appears in a legal periodical, it is not amiss to emphasize that the legal profession is one of the greatest potential allies of indigents in implementing effective nondiscriminatory antipoverty programs. Of course, the Bar may itself require some restructuring and some reexamination of its own standards. For example, canons of ethics designed to prevent solicitation of clients should not be applied to curtail the availability of legal services to the genuinely indigent.<sup>16</sup> However, we trust that once again the legal profession will meet the challenge posed by

<sup>15</sup> To a considerable extent the congressional committee has performed functions in connection with antipoverty programs that might have been performed by an ombudsman or a citizens' advice bureau under other systems. See Rosenblum, *Controlling the Bureaucracy of the Antipoverty Program*, *infra*, pp. 187-210; and Leach, *The Federal Role in the War on Poverty Program*, *infra*, pp. 18-38.

<sup>16</sup> The American Bar Association is apparently aware of the need for efforts along these lines and has undertaken reexamination of the Canons.

its acknowledged and time-honored duty to assist the underprivileged and down-trodden. And, in performing this responsibility, lawyers and judges may find reawakened their interest in helping society evolve through law to meet changing conditions and needs and to solve contemporary problems.<sup>17</sup>

ROBINSON O. EVERETT.

---

<sup>17</sup>The increased responsibilities recently placed upon the Bar in representing indigent defendants in criminal cases have apparently rekindled the legal profession's interest in the administration of criminal justice and may ultimately produce some much-needed changes. The recently installed law school courses and seminars concerning law and poverty may similarly help induce overdue changes in our legal system.