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Access to Justice: The Law and Political Economy of the Legal Services Corporation

Bobby Vanecko

INTRODUCTION

Palestinian-American jurist Noura Erakat has referred to the law as like the sail of a boat, and politics as the wind that puts everything in motion.¹ In her 2019 book *Justice for Some*, Erakat details the Palestinian liberation struggle and the role of power and politics in international law.² Erakat offers the sailboat analogy in the book's introduction as an overarching theme, while the book itself details how politics has shaped the development and enforcement of international law as applied (or not applied) to Palestine and Israel. This article offers a similar analysis of how politics has shaped legal aid in America, and the metaphor of the sailboat serves as a helpful introduction. Specifically, Erakat states, "Think of the law as like the sail of a boat. The sail, or the law, guarantees motion but not direction. Legal work together with political mobilization, by individuals, organizations, and states, is the wind that determines direction."³

Government-funded legal aid programs have contributed to crucial legal and policy changes and provided countless people with essential legal help in the years since the federal Legal Services Program ("LSP") was created in 1965.⁴ The LSP was part of the Johnson administration's "War on Poverty" and was created to reform the law to help the poor and to represent individuals who could not afford a private attorney.⁵ However, the program immediately faced opposition from conservative politicians, and today it lacks the funding and political support to make the kind of impact that the initial architects envisioned.⁶ This retreat began when the Nixon administration created the Legal Services Corporation ("LSC") in 1974 to replace the LSP, with the goal of the LSC being an independent entity that would be insulated from progressive political pressures and solely focused on individual representation.⁷ As a

¹ Noura Erakat, *JUSTICE FOR SOME: LAW AND THE QUESTION OF PALESTINE* (2019).

² *Id.*

³ *Id.* at 11.

⁴ Henry Rose, *Class Actions and the Poor*, 6 *PIERCE L. REV.* 55, 56-57 (2007).

⁵ *Id.*

⁶ Alan Houseman, *A Front-Lines Reflection on Early Legal Services: Lawyering to End Poverty*, 22 *GEO. J. ON POVERTY L. & POL'Y* 469 (2015).

⁷ Rose, *supra* note 4.

result, today the LSC is a far cry from living up to the original goal of acting as “an instrument for orderly and constructive social change, similar to advocacy by lawyers for the civil rights and civil liberties movements.”⁸

The purpose of this article is to advocate for a return to the original vision of legal aid as a government anti-poverty program that addresses the “Justice Gap” with individual representation while also pushing for broad legal and policy change to eliminate poverty. Civil legal aid does not get as much attention as other anti-poverty programs that more directly address people’s material needs, but poverty is exacerbated when poor people cannot afford the legal representation necessary to navigate the myriad legal issues that arise in their lives.⁹ In 2017, the Justice Gap report from the LSC found that seventy-one percent of low-income households had experienced at least one civil legal issue in the past year, including problems with health care, housing conditions, disability access, public benefits, and immigration, to name a few.¹⁰ The LSC researchers also found that twenty-five percent of low-income people had experienced at least six civil legal problems in the past year alone.¹¹ The report determined that for more than half of those issues, the affected person received limited or no legal help because of a lack of resources.¹² When people facing these issues are unable to access legal representation, they are just driven further into poverty. Therefore, increasing funding for legal aid will reduce poverty and the multiplier effect that comes with the intersecting legal issues faced by poor people.¹³ However, we must remember to strive toward fulfilling the original goals of these programs. Increasing access to representation is one crucial component, but the overall goal must be to end poverty and significantly reduce inequality through law reform.¹⁴ In order to fulfill this promise, we must understand the history of legal aid and the forces that have propelled and suppressed these efforts, and present a compelling vision for the future of legal aid in America. Accordingly, Part I of this paper will detail the history of government legal aid programs in America, while Part II will assess the current

⁸ Houseman, *supra* note 6.

⁹ John Bouman, *This is the Handbook on Fighting Poverty*, CLEARINGHOUSE REV. J. OF POVERTY L. AND POL’Y 363-364 (2014).

¹⁰ *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans*, LEGAL SERV. CORP. 13 (June 2017), available at <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>.

¹¹ *Id.* at 21.

¹² *Id.*

¹³ Bouman, *supra* note 9.

¹⁴ Houseman, *supra* note 6, at 472.

state of the LSC from a law and political economy perspective and will suggest changes to the program so that it can better fulfill the original goal of a creating a more just and egalitarian society.

PART I. HISTORY OF LEGAL AID IN AMERICA

One hundred years ago, Reginald Heber Smith wrote that “the administration of American justice is not impartial, the rich and the poor do not stand on an equality before the law, the traditional method of providing justice has operated to close the doors of the courts to the poor, and has caused a gross denial of justice in all parts of the country to millions of persons.”¹⁵ At that point in history, poor people had little chance of accessing the legal system and the government took almost no role in improving the situation.¹⁶ However, there were a few legal aid societies in larger cities that were funded by private sources and municipal grants, which provided some poor people with individual representation and legal advice.¹⁷ The legal aid movement in the early twentieth century was premised on the idea that the American justice system worked well for those who could afford it, but efforts needed to be made to increase access for those who could not.¹⁸ Reginald Heber Smith recognized that more had to be done. In his 1919 book *Justice and the Poor*, Smith advocated for both increasing the number of legal aid lawyers and encouraging legal aid societies to work towards broader legal reforms to help the poor.¹⁹ Smith recognized that the state had an obligation to secure equality of justice, writing that:

“To withhold the equal protection of the laws, or to fail to carry out their intent by reason of inadequate machinery, is to undermine the entire structure and threaten it with collapse. For the State to erect an uneven, partial administration of justice is to abnegate the very responsibility for which it exists, and is to accomplish by indirection an abridgment of the fundamental rights which the State is directly forbidden to infringe. To deny law or justice to any persons is, in actual effect, to outlaw them by stripping them of their only protection.”²⁰

¹⁵ John M.A. DiPippa, *Reginald Heber Smith and Justice and the Poor in the 21st Century*, 40 CAMPBELL L. REV. 73, 76-77 (2018).

¹⁶ *Id.*

¹⁷ William P. Quigley, *The Demise of Law Reform and the Triumph of Legal Aid: Congress and the Legal Services Corporation from the 1960's to the 1990's*, 17 ST. LOUIS U. PUB. L. REV. 241, 243-244 (1998).

¹⁸ *Id.* at 244.

¹⁹ *Id.*

²⁰ DiPippa, *supra* note 15, at 77.

This searing indictment accurately depicted the country's failure to live up to its purportedly egalitarian founding principles. In the nineteenth century, the federal government and a few states had attempted to provide some legal assistance to the poor, but these efforts failed to secure equality of justice.²¹ The federal government only provided legal assistance during Reconstruction when the Freedman's Bureau retained private attorneys to represent freed slaves, but like so many other progressive changes made in that period it lasted only a few years before being shut down.²² The federal government did not directly fund legal aid programs for almost another century.²³

By the early 1960's, organizations like the NAACP had proven that law reform could be an effective model for progressive change, and legal aid societies began to realize that more could be done beyond the traditional model of limited assistance to individual poor people.²⁴ For example, legal services advocates Edgar and Jean Cahn asserted that the development of anti-poverty policies must include the voices of the poor themselves, and that community law offices provided the perfect vehicle for them to get involved.²⁵ Grassroots advocacy eventually pushed the federal government to provide federal funding for legal aid in 1964, when the Office of Economic Opportunity ("OEO") was established by the Economic Opportunity Act.²⁶ Legal aid services were not specifically mentioned in the original Act, but the Cahn's convinced OEO director Sargent Shriver to provide funding, and the Act was amended to include civil legal aid in 1966 and 1967.²⁷

The Legal Services Program was established by the OEO to further the efforts of legal aid societies, but law reform was also an explicit part of the program's original mission.²⁸ Legal aid lawyers worked to fulfil this mission by bringing class action lawsuits challenging statutes and regulations and engaging in policy advocacy to help the poor.²⁹ Between 1966 and 1974, legal aid law-

²¹ Quigley, *supra* note 17, at 244-45.

²² *Id.* at 243-244; see also W.E.B. DuBois, *Black Reconstruction in America* (1st Ed. 1935).

²³ Quigley, *supra* note 17, at 243-44.

²⁴ Alan Houseman & Linda E. Perle, *Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States*, CTR. FOR L. AND SOC. POL'Y 9-10 (Revised May 2018), available at https://www.clasp.org/sites/default/files/publications/2018/05/2018_securingequal_justice.pdf.

²⁵ Edgar S. & Jean C. Cahn, *The War on Poverty: A Civilian Perspective*, 73 *Yale L. J.* 1317, 1330 (1964).

²⁶ Houseman & Perle, *supra* note 24, at 11.

²⁷ *Id.*

²⁸ Quigley, *supra* note 17, at 246-48.

²⁹ Houseman, *supra* note 6, at 469.

yers argued 110 cases before the Supreme Court, winning sixty-two percent and establishing crucial precedent that has helped countless poor people in the years since.³⁰ These include several landmark cases, such as *Shapiro v. Thompson*, which tried to ensure that welfare recipients were not arbitrarily denied benefits; *King v. Smith*, which provided remedies in federal and state courts for those whose benefits were arbitrarily denied or cut off; and *Goldberg v. Kelly*, which recognized welfare benefits as statutory entitlements and afforded recipients the right to a pre-termination evidentiary hearing.³¹ Legal aid lawyers also played a crucial role in the development and enactment of anti-poverty programs at the local, state, and federal levels, including the Food Stamp Program and Supplemental Security Income.³² They also worked on changes to housing and consumer legislation and regulatory developments in existing welfare programs such as Medicaid and Aid to Families with Dependent Children (“AFDC”).³³ In addition to funding these local legal aid offices, the OEO established national “back-up centers” that co-counseled and supported local organizations engaged in test case litigation to develop new areas of poverty law.³⁴ Crucially, these centers also worked with social justice organizations such as the National Welfare Rights Movement and National Tenants Organization to advocate for policy change and contribute to cases that would have national impacts.³⁵

Early welfare-rights lawyers like Alan Houseman believed “that through systemic litigation that both increased the rights of recipients and increased the grants that recipients received, we could create a Fourteenth Amendment right to a minimum amount of income and possible other rights, such as a right to housing.”³⁶ However, in the 1970s the Supreme Court foreclosed that possibility with decisions such as *Dandridge v. Williams*, which allowed states to cap welfare benefits regardless of the number of children in a given family.³⁷ The Court recognized that “the administration of public welfare assistance. . . involves the most basic economic needs of impoverished human beings,” and that “in some AFDC families there may be no person who is employable,” but

³⁰ *Id.* at 470.

³¹ Houseman, *supra* note 6, at 469-470; *Shapiro v. Thompson*, 394 U.S. 618 (1969); *King v. Smith*, 392 U.S. 309 (1968); *Goldberg v. Kelly*, 397 U.S. 254 (1970).

³² *Id.* at 470.

³³ *Id.*

³⁴ Houseman & Pearle, *supra* note 24, at 11-12.

³⁵ *Id.*

³⁶ Houseman, *supra* note 6, at 470.

³⁷ *Id.*

nonetheless concluded that “the Equal Protection Clause does not require that a State must choose between attacking every aspect of a problem or not attacking the problem at all.”³⁸

Conservative backlash to progressive change and government-funded legal aid gained steam in the late 1960s and early 1970s as a result of law reformers’ efforts to reduce poverty.³⁹ Conservative lawmakers in the federal government began to push for the creation of a legal services corporation that would be independent from the EOE in order to isolate the program from political forces driving progressive change through law reform.⁴⁰ By the time Nixon was elected, Congress had finalized a bill that would create an independent LSC, but the initial proposal limited the number of people the president could appoint to the board and authorized a broad range of legal activity without restrictions on law reform efforts.⁴¹ When Nixon did not get the restrictions he wanted, he vetoed the bill.⁴² He then appointed Howard Phillips to run the EOE – a man who was an outspoken critic of legal aid and the War on Poverty.⁴³ Phillips immediately tried to unilaterally defund back-up centers and cancel law reform as a goal of the LSP, until he was stopped by a federal court.⁴⁴

President Nixon finally signed a compromise LSC bill just before his resignation in 1974; this eliminated funding for back-up centers and imposed restrictions on the scope of authorized legal activity.⁴⁵ The bill limited class action and juvenile representation, and prohibited political activity and litigation involving abortion and school desegregation.⁴⁶ Fortunately, the bill did not completely prohibit LSC attorneys from engaging in law reform efforts, and the LSC benefitted from a period of consistent expansion and increased funding from 1975 to 1981.⁴⁷ However, in the 1980s, the LSC once again found itself vulnerable to conservative political pressures; this was largely due to the requirement in the 1974 bill that the LSC renew funding with Congress each year.⁴⁸ President Reagan attempted to privatize the LSC in 1982 by elimi-

³⁸ *Dandridge v. Williams*, 397 U.S. 471, 485-487 (1970).

³⁹ Quigley, *supra* note 17, at 248-50.

⁴⁰ *Id.* at 251-52.

⁴¹ *Id.* at 252.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 253.

⁴⁶ *Id.*

⁴⁷ *Id.* at 254-55.

⁴⁸ Quigley, *supra* note 13, at 254-55.

nating the program from the budget and proposing a return to a local system of pro bono assistance from private attorneys, funded in part by block grants to the states.⁴⁹ But privatization was vigorously opposed by the legal profession, with past ABA presidents, local bar organizations, judges, and law school deans making statements in support of the LSC.⁵⁰ Once Reagan realized that it would be impossible to abolish the LSC, he tried to reduce its effectiveness as much as possible by appointing to the board people who were hostile to the mission of legal services, who imposed extensive restrictions on the scope of legal work that LSC-funded organizations could engage in.⁵¹ Congress also consistently decreased the LSC's annual appropriation throughout the 1980s, going from \$321 million in 1981 to \$308 million in 1989.⁵²

Funding and support for the LSC rose during the first half of the 1990s, but once conservatives took control of Congress in 1995, the House Judiciary Committee passed a bill that sought to abolish the LSC by again attempting to replace it with block grants to the states.⁵³ Once again, it proved impossible to completely abolish the LSC, but in 1996 Congress cut funding by 30% and imposed the most draconian restrictions yet. These barriers to justice prohibited LSC-funded organizations from engaging in class actions, redistricting, lobbying, training for political activities including strikes and demonstrations, and litigation involving abortion, prisoners' rights, undocumented immigrants, and efforts to reform state and federal welfare systems.⁵⁴ Responding to these extreme measures, Professor William P. Quigley wrote that "Law reform by poor people's lawyers has all but ceased and LSC has been returned to the legal aid model of the first half of this century."⁵⁵ These restrictions remain in place today, and for the third year in a row the White House's proposed 2020 budget calls for the elimination of the LSC.⁵⁶ The LSC is optimistic that Congress will continue its funding despite the President's efforts, but the prohibition on law reform survives and the LSC remains restricted to the totally inadequate model of individual representation.⁵⁷

⁴⁹ *Id.* at 256.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 257-58.

⁵³ *Id.* at 260.

⁵⁴ *Id.* at 261.

⁵⁵ *Id.* at 264.

⁵⁶ *Legal Services Corporation Optimistic About Bipartisan Support in Congress Despite White House Proposal to Defund*, LEGAL SERV. CORP. (Mar. 18, 2019), available at <https://www.lsc.gov/media-center/press-releases/2019/legal-services-corporation-optimistic-about-bipartisan-support>.

⁵⁷ LEGAL SERV. CORP., *supra* note 56.

PART II. THE FUTURE OF LAW REFORM

The Legal Services Corporation has survived this multi-decade assault because enough people recognize that it is an essential program, and that eliminating it would be a direct repudiation of the country's purported commitment to equal justice under law.⁵⁸ However, we cannot be satisfied with the mere survival of the program. The United States has essentially made no progress in the fight against poverty in the decades since the LSC was created, and inequality has skyrocketed as wages stagnate while wealth continues to concentrate at the top.⁵⁹ In addition, these crises of inequality continue to be exacerbated by the constantly-worsening climate crisis. Legal scholars have recognized that "Law is central to how these crises were created, and will be central to any reckoning with them. Law conditions race and wealth, social reproduction and environmental destruction. Law also conditions the political order through which we must respond."⁶⁰ These existential crises threaten the future of all life on earth, and they will require massive legal and political mobilizations to address. For example, increased extreme weather events and food shortages are already driving migration throughout the world, and in the United States people must face our inhumane immigration law system without the right to a lawyer. In order to adequately address these issues, we must strengthen the effectiveness of the LSC by increasing funding and removing unnecessary restrictions. We must return to the original vision of law reform to address these interconnected crises while securing equal justice for all.

ACCESS TO JUSTICE

Fortunately, many legal aid organizations and progressive politicians are already undertaking this essential work. In the face of hostility towards spending on legal aid from conservatives in the federal government, state legislatures have strengthened legal aid programs through their own budgets. In the spring of 2019, the Illinois General Assembly, through the Access to Justice Grant Program, committed to a \$10 million grant for legal aid organizations "to increase outreach, education on legal matters, and access to legal services to

⁵⁸ DiPippa, *supra* note 15, at 77.

⁵⁹ John Creamer, Melissa Kollar, Abinash Mohanty, & Jessica Semega, *Income and Poverty in the United States: 2018*, U.S. CENSUS BUREAU 12 (Sept. 2019), available at <https://www.census.gov/content/dam/Census/library/publications/2019/demo/p60-266.pdf>.

⁶⁰ David S. Grewal, Amy Kapczynski & Jedediah Purdy, *Law and Political Economy: Toward a Manifesto*, L. & POL. ECON. (Nov. 6, 2017), <https://lpeblog.org/2017/11/06/law-and-political-economy-toward-a-manifesto/>.

low-income communities of color, including immigrant and African-American populations.”⁶¹ Through the Access to Justice Act, the IL General Assembly recognized first that, “increasing numbers of people throughout this State. . . are coming into the courts without legal representation for cases involving important legal matters impacting the basics of life such as health, safety, and shelter,” and concluded that, “the justice system in this State can only function fairly and effectively when there is meaningful access to legal information, resources, and assistance for all litigants, regardless of their income or circumstances.”⁶² The Access to Justice grant is going to be administered in 2020 by two Chicago-based legal aid organizations, the Resurrection Project and the Westside Justice Center (“WJC”).⁶³ I interviewed WJC Executive Director Tanya Woods – who co-founded the organization in 2015 to address the dearth of legal resources in low-income communities on the Westside of Chicago. In a press release responding to the announcement of the \$10M grant, Woods stated:

“The chance to live healthy and prosperous lives should be a reality for all Illinoisians. But far too often, unemployment, lack of education, economic opportunity, and housing, and crime and violence continue to unduly burden historically oppressed people. Now, thanks to our courageous legislators and our Governor, the comprehensive resources of the Access to Justice Program can aid in redirecting power and restoring promise to those communities so that they can evolve from just surviving to thriving.”⁶⁴

The WJC’s mission has always aimed beyond individual representation, although providing free legal and quasi-legal assistance to individuals in the community is a large part of the daily operation.⁶⁵ Through regular “Know Your Rights” workshops and resource fairs, the WJC seeks to establish and nurture community trust, while educating individuals about their rights and connecting them to legal services and employment resources.⁶⁶ Importantly, Woods and the other WJC co-founders did not come up with this idea alone; they responded to a need that the community expressed.⁶⁷ Woods acknowl-

⁶¹ *Lightford highlights investment in Access to Justice program*, ILL. SENATE DEMOCRATS (June 7, 2019), <http://www.illinoisenedemocrats.com/10-senate-democratic-caucus-news/7563-lightford-highlights-investment-in-access-to-justice-grant-program>.

⁶² Access to Justice Act, 705 ILCS 95/5 (2015).

⁶³ ILL. SENATE DEMOCRATS, *supra* note 61.

⁶⁴ *Victory: Access to Justice Funded at 10M*, THE RESURRECTION PROJECT (June 3, 2019), <https://resurrectionproject.org/victory-access-justice-funded-10m/>.

⁶⁵ Interview with Tanya Woods, Executive Director, Westside Justice Center (Oct. 4, 2019).

⁶⁶ *Id.*

⁶⁷ *Id.*

edged that this may differ from how other organizations get started, but it is a point of pride for the WJC, and the organization plans to continue to grow organically through community input and by responding to changing needs and priorities.⁶⁸ However, like every legal aid organization in America, the reach of the WJC's impact has grown according to the level of funding available. Funding initially came from private donors and individual attorneys who volunteered their services for months at a time.⁶⁹ Fortunately, the WJC is located in a building that also houses law firms and nonprofits such as First Defense Legal Aid, Shiller Preyar Law Offices, Chicago Community Bond Fund, and Moms United Against Violence and Incarceration, so there are always committed community organizers and movement lawyers around to assist WJC clients.⁷⁰

Describing how she got involved with the legislative push for the Access to Justice bill in 2019, Woods said that the idea this time came from industry, “to fill jobs and find new ways of supporting the workforce so they could get and keep jobs.”⁷¹ That need was expressed to policymakers, and “forward-thinking, like-minded” legislators decided that the best way to administer the proposed grant would be through legal aid organizations that were already based in disadvantaged communities, employed community members, and were committed to the long term sustainability of the area.⁷² Fortunately for the WJC, that made the list pretty short, but the fact that there were not many other organizations that fit this description demonstrates the lack of funding and access to legal services which exacerbates poverty in communities across the state.

Once Woods got involved working on the bill, she “joined forces with the Resurrection Project and created a Black and Brown coalition dedicated to finding the money needed to uplift and elevate agencies [like the WJC] across the state in an effort to address the twin scourges of mass deportation and mass incarceration.”⁷³ Although the bill initially faced opposition from conservative lawmakers, it eventually gained the endorsement of over 200 organizations throughout Illinois and was passed in the Summer of 2019 as a result of dedicated and tireless advocacy.⁷⁴ Moving forward, Woods hopes that the Access to Justice grant is able to expand access to legal services across the state while

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ Woods, *supra* note 65.

⁷⁴ *Id.*

uplifting the efforts of community-based organizations who typically do not get enough funding to meet the needs of their communities.⁷⁵ Again thinking beyond individual legal aid efforts, Woods concluded by stating that, “Reform is necessary in the short term, but dismantling and disrupting systems that do not work and replacing them with better systems that honor and respect the dignity of every man is paramount.”⁷⁶

BEYOND INDIVIDUAL REPRESENTATION

Although this grant is a significant step that will improve the lives of many people, the Access to Justice Act still includes restrictions that preclude broader policy reform efforts. Section 15 states that “No moneys distributed by the Foundation from the Access to Justice Fund may be directly or indirectly used for lobbying activities.”⁷⁷ This unnecessary and unjust restriction is a betrayal of Edward and Jean Cahn’s vision of community legal aid offices as a vehicle for the poor to assert their voices to influence anti-poverty policy.⁷⁸ Furthermore, if the WJC had already been receiving funds under the Act in 2019, this restriction would have prevented Woods from contributing her essential advocacy that made the expanded grant possible. Most Chicagoans in need of legal aid do not have the time or resources necessary to travel to Springfield and meet with state legislators, but Woods was able to communicate the needs of the community to those lawmakers due to her direct experience representing WJC clients.⁷⁹ This lobbying restriction unnecessarily silences the voices of citizens who are already left behind by legislators far too often. Poverty will not be eliminated as long as U.S. policymakers ignore the voices of the people who directly experience poverty and the implementation of anti-poverty programs.

As mentioned above, government-funded legal aid has not gained as much attention as other anti-poverty programs, even in the woefully inadequate U.S. welfare state. Yet, community members on Chicago’s Westside recognized a need and helped start an organization that was appointed to be the administrator of a \$10M grant from the IL legislature just four years later.⁸⁰ People in poverty are made painfully aware of the necessity of access to legal services because they often face multiple legal issues but typically receive limited or no

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Access to Justice Act, 705 ILCS 95/15 (e) (2015).

⁷⁸ Cahn, *supra* note 21, at 1348.

⁷⁹ Woods, *supra* note 65.

⁸⁰ Woods, *supra* note 65.

legal assistance due to a lack of resources.⁸¹ Lawmakers could learn a few things from their perspective, because this justice gap reflects the shameful state of U.S. anti-poverty policy more broadly. Even when they are not threatened with complete defunding like the LSC, most public benefit programs are means-tested and unnecessarily exclude the poorest people.⁸² In addition, the two biggest anti-poverty programs that are not means-tested – Social Security and Medicare – have been subject to privatization attempts by Republican administrations.⁸³ However, even in the face of this relentless political and ideological opposition to government assistance programs, the U.S. welfare state cut poverty by sixty-six percent in 2018.⁸⁴

Countless laws and policies have proven to be extremely effective at reducing poverty, but a lack of funding and political will has prevented their full implementation.⁸⁵ As a result, the United States has unconscionably high rates of poverty and inequality for the richest country in the history of the world.⁸⁶ Modifying Noura Erakat’s metaphor, U.S. anti-poverty policy since the Nixon administration has essentially been a sailboat sitting in the middle of a lake, never moving forward but constantly fighting against political winds that are trying to ensure that the boat is sunk. This sailboat metaphor illuminates some of the flawed approaches that have led us to this point. It offers an alternative legal theory that critiques the dominant narrative of the law as a neutral arbiter, because that approach artificially separates the law and courts from politics and economics. This neutral theory is impossible to reconcile with clearly ideological decisions like *Dandridge* and the political forces that have shaped the entire history of the LSC’s struggle for survival.⁸⁷

Politics and ideology are inherent to anti-poverty law and policy. We must acknowledge that fact and work towards an agenda that, in the words of author and poverty scholar Jamila Michener, “centers on the material and political

⁸¹ LEGAL SERV. CORP., *supra* note 10; Bouman, *supra* note 9, at 363-64.

⁸² Matt Bruenig, *Are Benefit Phase-Ins Completely Pointless?*, PEOPLE’S POL’Y PROJECT (May 9, 2019), <https://www.peoplespolicyproject.org/2019/05/09/are-benefit-phase-ins-completely-pointless/>.

⁸³ Nancy Altman, *Trump’s Executive Order is Backdoor Privatization of Medicare*, SOC. SECURITY WORKS (Oct. 3, 2019), <https://socialsecurityworks.org/2019/10/03/trumps-executive-order-is-backdoor-privatization-of-medicare/>.

⁸⁴ Matt Bruenig, *The US Welfare State Cut Poverty by Two-Thirds in 2018*, PEOPLE’S POL’Y PROJECT (Sept. 16, 2019), <https://www.peoplespolicyproject.org/2019/09/16/the-us-welfare-state-cut-poverty-by-two-thirds-in-2018/>.

⁸⁵ *Id.*

⁸⁶ Bouman, *supra* note 9, at 364.

⁸⁷ See *Dandridge v. Williams*, 397 U.S. 471 (1970); Quigley, *supra* note 17.

well-being of economically and racially marginal groups and that pushes for public policy and political institutions to cultivate, incorporate, and respond to the needs of those who too often fall through the cracks of our fragmented democracy.”⁸⁸ Michener’s essential qualitative research demonstrates the imperative of including the voices of the poor in the conversation regarding anti-poverty policy. Her 2018 book, *Fragmented Democracy*, analyzes differing Medicaid policies across states and their effects on political participation, but unlike many mainstream scholars and lawmakers, Michener made sure to include the voices and insights of the beneficiaries of these programs.⁸⁹ She found an increase in political participation in states that expanded Medicaid, but decreased participation in states that declined to expand Medicaid, which in turn reinforced existing inequities.⁹⁰ Michener found that most Medicaid beneficiaries connected their experience to politics, but “when we design policy that is capricious, or that is ungenerous, or that is administratively burdensome, it contributes to experiences that alienate people from government and politics.”⁹¹

All means-tested benefits are capricious, ungenerous, and administratively burdensome, and many of the legal issues that low-income people face arise from complications with these unnecessarily convoluted programs.⁹² Therefore, community legal aid offices are essential to ensuring that people are not driven further into poverty by a lack of access to legal services. Moving forward, it will certainly be a struggle to build the political will necessary to commit to the level of funding that would adequately meet communities’ needs. However, community legal aid offices themselves can help to foster political participation in order to build that constituency. The WJC is a great example; community members have a voice and have helped to develop programs that go beyond individual representation.⁹³ Unfortunately, as long as there are arbitrary restrictions on the operations of government-funded legal aid organizations, community members will never have the opportunity to influence anti-poverty policy more broadly.

⁸⁸ Jamila Michener, *FRAGMENTED DEMOCRACY: MEDICAID, FEDERALISM, AND UNEQUAL POLITICS* 18 (Cambridge University Press, 1st ed. 2018).

⁸⁹ *Id.*

⁹⁰ Dwyer Gunn, *How Unstable Medicaid Programs Discourage Recipients from Engaging with Politics*, PAC. STANDARD (May 24, 2018), <https://psmag.com/economics/how-an-unstable-medicaid-program-discourages-recipients-from-engaging-with-politics>.

⁹¹ *Id.*

⁹² Cahn, *supra* note 21, at 1341-42.

⁹³ Woods, *supra* note 65.

Accordingly, we must demand the removal of unnecessary barriers to justice in the operations of these programs. Beginning with Illinois, there is no justification for the ban on lobbying activities in the Access to Justice Act. Community clinics like the WJC are the perfect place for people in poverty to make their needs and experiences known, while also learning more about how these policies are formulated.⁹⁴ Lawyers could learn from the experiences of community members to see what works and what doesn't, and this partnership could empower communities and lawyers alike to work together to eradicate poverty. As Edward and Jean Cahn wrote in 1964, "The neighborhood law firm, if it is to affect the respect which members of a community are accorded, must not only assert rights; it must also create a widespread consciousness of such rights within the community."⁹⁵

This ban on lobbying prevents legal aid organizations from vindicating the rights of poor communities and ensuring that basic human needs are met.⁹⁶ Furthermore, none of the law reform restrictions placed on the LSC in 1996 are justifiable. The ban on political activities such as strikes and demonstrations is inequitable for the same reasons as the lobbying ban, but it is especially unjust today given the Roberts Court's willingness to preserve unrestrained political influence only for the most wealthy, which only worsens the country's already massive disparities in wealth and political power.⁹⁷ Likewise, the ban on law reform efforts to improve state and federal welfare policy was inequitable in 1996, but it is even more so today given the complete failure of welfare "reform."⁹⁸ Coupled with the Prison Litigation Reform Act, the LSC ban on prisoners' rights litigation is simply unconscionable given the perpetual overcrowding and inhumane conditions in U.S. prisons.⁹⁹ Similarly, the United States' cruel immigration system has been made even worse by the LSC ban on working with undocumented immigrants and the Illegal Immigration Reform

⁹⁴ Cahn, *supra* note 21, at 1332.

⁹⁵ *Id.* at 1338.

⁹⁶ *Id.*

⁹⁷ Jedediah Purdy, *The Roberts Court v. America: How the Roberts Supreme Court is using the First Amendment to craft a radical, free market jurisprudence*, DEMOCRACY (Winter 2012, No. 23), available at <https://democracyjournal.org/magazine/23/the-roberts-court-v-america/>.

⁹⁸ Ashley Burnside, Ife Floyd, & Liz Schott, *TANF Reaching Few Poor Families*, CTR. ON BUDGET AND POL'Y. PRIORITIES (Nov. 28, 2018), available at <https://www.cbpp.org/research/family-income-support/tanf-reaching-few-poor-families>.

⁹⁹ John Pfaff, *The 1994 Crime Law Hogs the Legal Reform Spotlight. But a Lesser-Known Law Deserves More Attention*, THE APPEAL (Oct. 2, 2019), <https://theappeal.org/1994-crime-law-biden/>.

and Immigrant Responsibility Act of the same year.¹⁰⁰ In addition, the ban on LSC abortion litigation was always egregious, especially when considered alongside the Hyde Amendment which prevents low-income Medicaid recipients from obtaining abortions.¹⁰¹ Coupled with the *Dandridge* decision, these clearly ideological restrictions have unnecessarily guaranteed a life of poverty for countless children in the years since.¹⁰² As a direct result of these restrictions and our country's refusal to build an adequate welfare state, in 2018 children were the largest group of people living in poverty in America.¹⁰³ It is imperative that we remove this ban on abortion litigation as soon as possible, especially given the hostile takeover of the federal judiciary by the Federalist Society and the likelihood of the Supreme Court restricting abortion rights even further in the upcoming term.¹⁰⁴ Finally, as Loyola Law Professor Henry Rose has demonstrated, "The prohibition on class actions relegates the poor to second class justice, a fundamental wrong in a legal system that seeks to guarantee all equal justice under law."¹⁰⁵

CONCLUSION

By inadequately funding the LSC and relegating the poor to second class justice, the American government has "abnegate[d] the very responsibility for which it exists, and. . . accomplish[ed] by indirection an abridgment of the fundamental rights which the State is directly forbidden to infringe."¹⁰⁶ By prohibiting law reform, the U.S. has precluded efforts to address "the ways in which law and policy operate in the background to produce structural forms of concentrated private power, patterns of discrimination and segregation, and

¹⁰⁰ Dara Lind, *The disastrous, forgotten 1996 law that created today's immigration problem*, VOX (Apr. 28, 2016), <https://www.vox.com/2016/4/28/11515132/iirira-clinton-immigration>.

¹⁰¹ Ally Boguhn, *Here's What You Need to Know About the Hyde Amendment and Efforts to End It*, REWIRE.NEWS (June 21, 2019), <https://rewire.news/article/2019/06/21/heres-what-you-need-to-know-about-the-hyde-amendment-and-efforts-to-end-it/>.

¹⁰² Bruenig, *supra* note 83.

¹⁰³ *Id.*

¹⁰⁴ Jennifer Bendery, *Unqualified And Ideological: A Guide To Trump's Worst Judges*, HUFFINGTON POST (Sept. 8, 2019), https://www.huffpost.com/entry/trump-courts-judges-abortion-lgbtq-voting-rights_n_5d669025e4b063c341f8fde9; Mark Joseph Stern, *Here's How We Know the Supreme Court Is Preparing to Devastate Abortion Rights*, SLATE (Oct. 4, 2019), <https://slate.com/news-and-politics/2019/10/supreme-court-louisiana-abortion-roe-v-wade.html>.

¹⁰⁵ Rose, *supra* note 4, at 73.

¹⁰⁶ DiPippa, *supra* note 15, at 77.

barriers that exclude access to foundational goods and services.”¹⁰⁷ This must change. LSC funding must be expanded to adequately meet the need for legal resources in low-income communities, and all restrictions on law reform must be removed so that these communities can collaborate with lawyers to develop the policies necessary to eliminate poverty. Reginald Heber Smith warned 100 years ago that to deny equal justice “is to undermine the entire structure and threaten it with collapse.”¹⁰⁸ In 2019, Smith unfortunately seems to have been proven correct; as democracy continues to erode at home and abroad, inequality continues skyrocket, and the constantly-worsening climate crisis threatens all life on earth. Law is central to how these crises were created, and they can only be adequately addressed through “legal work together with political mobilization, by individuals, organizations, and states.”¹⁰⁹ That will be impossible to accomplish as long as the United States continues to ignore the voices of the oppressed and relegate the poor to second class justice.

¹⁰⁷ K. Sabeel Rahman, *Structural Inequality and the Law: part II*, L. AND POL. ECON. (Mar. 5, 2018), <https://lpeblog.org/2018/03/05/structural-inequality-and-the-law-part-ii/>.

¹⁰⁸ DiPippa, *supra* note 15, at 77.

¹⁰⁹ Erakat, *supra* note 1.