

FINDING SOCIAL JUSTICE AT THE POINT WHERE THE LEGAL SYSTEM AND CHRISTIANITY MEET: THE ROLE OF A CHRISTIAN ATTORNEY IN SEEKING JUSTICE FOR THE POOR

I. INTRODUCTION

This comment is intended to serve as a conduit to effect change in the minds of both Christian and non-Christian attorneys. For the Christian attorney, this comment should prompt participation in providing legal services for the poor. For the non-Christian attorney, it will demonstrate the true commitment that Christians should have to social justice¹ despite many of the anti-poor stereotypes that surround conservative Christianity.² Finally, those who do serve the poor are encouraged to adopt a holistic approach to advocacy, fostering permanent positive change in the lives of clients, rather than using the legal system to ameliorate problems only temporarily.

Jesus says, "From everyone who has been given much, much will be demanded; and from the one who has been entrusted with much, much more will be asked."³ Attorneys are entrusted with keys to the legal system, a complex and confusing system to which some have no access. God has high standards for those who have been entrusted with much, and a key to justice here on earth is no small matter. Jesus came to bring justice on earth. In *Isaiah*, it is written:

Here is my servant, whom I uphold, my chosen one in whom I delight; I will put my Spirit on him and he will bring justice to the nations. He will not shout or cry out, or raise his voice in the streets. A bruised reed he will not break, and a smoldering wick he will not snuff out. In faithfulness he will bring forth justice; he will not falter or be discouraged till he establishes justice on earth.⁴

The Christian attorney must recognize and appreciate all that God has entrusted to him, and subsequently follow up by pursuing goals that have eternal significance.

This comment provides an overview of poverty in the United States and how poverty affects access to justice. It discusses the various solutions available and includes an analysis of the mandatory pro-bono debate versus expansion of governmental funding through Legal

¹ See generally Gary North, *Free Market Capitalism*, in *WEALTH & POVERTY: FOUR CHRISTIAN VIEWS OF ECONOMICS* 27 (Robert G. Clouse ed., 1984).

² See Michelle S. Jacobs, *Full Representation for the Poor: The Clash Between Lawyer Values and Client Worthiness*, 44 *HOW. L.J.* 257, 281 (2001).

³ *Luke* 12:48b.

⁴ *Isaiah* 42:1-4.

Services Corporation. In addition, it addresses the serious implications of new lawyers' law school debts on the future of public interest law from the perspective of the current development of debt management programs. Finally, a challenge is given to promote permanent, positive societal change through the adoption of holistic advocacy to the poor.

II. THE CURRENT STATE OF POVERTY IN THE UNITED STATES

As a foundation, it is important to have a fundamental understanding of how poverty statistics are determined. The way an individual is categorized has direct implications on welfare assistance and access to the legal system.⁵ There are currently two different versions of the federal poverty measure: poverty thresholds and poverty guidelines.⁶

Poverty thresholds and guidelines are similar, yet have unique functions in measuring poverty. Poverty thresholds, issued by the U.S. Census Bureau, are the statistical version of the poverty measure. Poverty thresholds are used to calculate the number of persons living in poverty in the United States.⁷ The government establishes poverty thresholds with which a family's total income is compared.⁸ If the total family income (before taxes) is less than the threshold amount for a family of its size, every person in the family is considered poor.⁹ Poverty guidelines, issued by the U.S. Department of Health and Human Services and published in the Federal Register, are the administrative version of the poverty measure.¹⁰ They are used to determine financial eligibility for federal programs. In short, the guidelines are a simplification of the thresholds for administrative purposes.¹¹ Following are tables of the poverty thresholds and guidelines.

⁵ LEGAL SERVICES FOR THE POOR, at xiii (Douglas J. Besharov ed., 1990).

⁶ INSTITUTE FOR RESEARCH ON POVERTY, FREQUENTLY ASKED QUESTIONS: WHAT IS THE DIFFERENCE BETWEEN POVERTY THRESHOLDS AND POVERTY GUIDELINES? (2000), at <http://www.ssc.wisc.edu/irp/faqs/faq7.htm> (July 2000).

⁷ *Id.*

⁸ U.S. CENSUS BUREAU, POVERTY IN THE UNITED STATES: 2000, at 5 (2001).

⁹ *Id.*

¹⁰ Annual Update of the HHS Poverty Guidelines, 66 Fed. Reg. 10,695 (Feb. 16, 2001).

¹¹ *Id.*

	Average poverty thresholds ¹²	Poverty guidelines ¹³
One person	\$8,794	\$8,590
Two people	\$11,239	\$11,610
Three people	\$13,738	\$14,630
Four people	\$17,603	\$17,650
Five people	\$20,819	\$20,670
Six people	\$23,528	\$23,690
Seven people	\$26,754	\$26,710
Eight people	\$29,701	\$29,730

There are several problems with using this type of threshold standard. These thresholds are used as the standards for evaluating poverty regardless of where in the United States the family lives. Therefore, a family living in New York City is compared to the same threshold as a family living in Bismark, North Dakota, even though the disparity in the cost of living is massive. Moreover, the levels are so low that any family that comes close to these levels is in no way able to sustain itself adequately.¹⁴ Despite major flaws with these calculations, the numbers shed light, albeit a gross underestimation, on the number of people living in poverty in this country.

According to the most recent census, about 31.1 million people were living in poverty in 2000.¹⁵ There were 6.2 million poor families.¹⁶

Anyone who thinks American poverty is not a problem should try living on \$16,660 a year for a family of four. \$525 for a two-bedroom apartment. \$47 a week for transportation. \$385 a person for clothes. Per Year! About a dollar a meal per person for food. \$40 a month for utilities and \$788 a year for Social Security taxes. Nothing for a doctor, dentist, vacation or special celebrations.¹⁷

Poverty statistics also indicate that full-time employment does not guarantee an escape from poverty. Approximately forty-five percent of poor families had one full-time worker in the family.¹⁸ Therefore, it cannot be assumed that if people would get jobs, taxpayers' money would be saved from welfare recipients. Often, minimum-wage earners cannot

¹² U.S. CENSUS BUREAU, POVERTY 2000 <http://www.census.gov/hhes/poverty/threshld/thresh00.html> (last modified Aug. 22, 2002).

¹³ Annual Update of the HHS Poverty Guidelines, 66 Fed. Reg. at 10,695 (Feb. 16, 2001).

¹⁴ Elizabeth Simpson, *Study Shows Region's Basic Cost of Living*, VIRGINIAN-PILOT, July 11, 2002, at B1.

¹⁵ U.S. CENSUS BUREAU, *supra* note 8, at 1.

¹⁶ *Id.* at 7.

¹⁷ Ronald S. Sider, *Poverty Can Be Eased; Do We Care to Do It?*, PHILA. INQUIRER, Jan. 3, 2000, at A11.

¹⁸ U.S. CENSUS BUREAU, *supra* note 8, at 8.

make ends meet.¹⁹ Though we live in a country that symbolizes freedom and the American dream, millions of people are living on a daily basis with no security of food, shelter, clothing, or a job.²⁰ This reality should shake the heart of the nation. Something must be done to turn the statistics around.

III. THE EFFECT OF POVERTY ON THE LEGAL SYSTEM

Access to the legal system is directly related to the economic well-being of the nation. One cannot argue that a lack of access to the legal system causes poverty; it can be said, however, that not having access to the legal system exacerbates the existing problem.

Deny a poor family counsel in an eviction proceeding and it greatly increases the likelihood that the family will become homeless; it will then cost society much more to resolve the ensuing homelessness and undo the result of inadequate shelter. Denying poor persons the ability to obtain divorces and form new marriages or denying them the ability to obtain protective orders or parental custody or child support because they cannot afford a lawyer will result in more domestic violence, more broken homes, more abused children and higher cost for public education and child care. Denying poor persons access to federal social security disability benefits will require the state to foot a higher portion of the bill in home relief.²¹

Often when poor people are denied access to the legal system, they are being denied access to the very basic necessities of life. Walk into any Legal Aid office across the United States and the clients' deprivation of basic necessities will become readily apparent. In the state of Virginia alone, from 1999 through 2000, Legal Services provided for approximately 25,000 cases dealing with basic needs.²² The legal problems in the cases involved domestic violence, divorce, child custody, parental rights, guardianships, illegal taking of property, wage garnishment, denial of credit and fraudulent consumer practices, unlawful eviction, denial of access to public or government-subsidized housing, illegal foreclosure, eligibility or termination of disability, supplemental security, unemployment compensation, and public benefits.²³ Ensuring access of the legal system to the poor is, therefore, ensuring the right not to be deprived of basic needs.

¹⁹ Simpson, *supra* note 14, at B3.

²⁰ U.S. CENSUS BUREAU, *supra* note 8, at 1.

²¹ Victor Marrero, *Final Report to the Chief Judge of the State of New York*, 19 HOFSTRA L. REV. 755, 774-75 (1991).

²² LEGAL SERVS. CORP. OF VA., REPORT TO THE GENERAL ASSEMBLY FY 1999-2000, at 1 (2000).

²³ *Id.* at 2.

The following is just one example provided in the Virginia Legal Services Corporation Report that clearly exemplifies the basic needs of which so many in our country are being deprived.²⁴

Velma was an elderly woman living in a rented, run-down house trailer in an isolated rural part of Campbell County. The trailer had no running water, no installed lighting and only two electrical outlets. Virginia Legal Aid Society helped her to reverse an old mistake by Social Security which had given her less income than she needed to live. With a lump sum payment for back benefits and a \$200 higher monthly SSI check, Velma was able to buy a new mobile home closer to town and began receiving daily meals at a nearby senior nutrition site.²⁵

Despite the significance of using the legal system as an instrument to alleviate some poverty, the more fundamental purpose for providing the poor with access to the legal system is to render justice.

Our justice system cannot proclaim in the bold letters of the law that it is just, but then block access to justice. We cannot promise due process, but raise insurmountable odds for those who seek it. Nor can we say that we stand for equality before the law, but honor this right only for those who can afford to pay their own way. To give with one hand and take away with the other is mean deception. A justice system that celebrates truth, that legitimizes fairness, that exalts principles of equality and human worth cannot, overtly or by neglect, engage in empty promises towards vast numbers of its citizens, particularly the neediest, without undermining the confidence of all citizens and the very values upon which it stands.²⁶

There is disagreement about the definition of justice.²⁷ There should be agreement within the legal community, however, that it is unjust to allow only a certain percentage of the population access to the legal system. Denying justice cracks the very foundations of the Constitution upon which our country was founded.

IV. THE COURT'S RESPONSE

The decision in *Lassiter v. Department of Social Services* demonstrates the Court's value of the representation of the indigent in civil cases.²⁸ The Supreme Court held against the necessity of appointing counsel for an indigent mother in a civil case.²⁹ The plaintiff was indicted for murder charges. While an attorney was appointed to represent her in the criminal case, one was not appointed to represent her in the parental

²⁴ *Id.* at 4.

²⁵ *Id.*

²⁶ *Marrero, supra* note 21, at 779.

²⁷ *See generally* CHRISTIAN JUSTICE AND PUBLIC POLICY 7-60 (Duncan Forrester & Alistar Kee eds., 1997).

²⁸ *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18 (1981).

²⁹ *Id.* at 33.

rights proceeding.³⁰ The Court stated that there is a presumption against the right to counsel when there is no potential deprivation of physical liberty.³¹ The court concluded that due process does not require representation in the civil proceeding.³²

Consequently, many courts are encouraging pro se, or self-representation, in civil proceedings. Although outwardly this may look as though it behooves the indigent, in fact, it can impair justice by tipping the scales in favor of the party who can afford representation. For example, Pennsylvania has recently enhanced its pro se system to the peril of domestic violence victims. In January 2000, Pennsylvania cut funding for legal assistance for victims of domestic violence.³³ A pro se system was implemented for victims of domestic violence seeking "protection from abuse" orders.³⁴ Essentially victims now must choose between hiring private counsel or representing themselves. Because of this pro se system, there are no longer trained legal advocates who can review and explain protection orders to victims, or craft an order that directly meets the victims' individual needs. This situation can become blatantly unjust when the defendant hires a defense attorney to represent him in court. The victim, overwhelmed and nervous about being in court, must not only maneuver through the legal system alone, but she must bear the emotional burden of seeing her abuser. In many cases, the court allows the victim to once again be beaten by the abuser if the judge rules in the abuser's favor.³⁵

³⁰ *Id.* at 22-23.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. CONST. amend. VI. Therefore, since a right to counsel in civil cases is not express and the Court found that it is not implied under substantive due process, there is no constitutional support for the right to counsel in civil cases.

³¹ *Lassiter*, 452 U.S. at 26-27.

³² *Id.* at 33.

³³ Liz Hrenda, *Protection From Abuse – Somebody Has To Pay, Now It's You!*, MODE WKLY., Apr. 27, 2000, at http://www.modeweekly.com/2000/00.04.27/00.04.27_protection_from_abuse.htm (last visited Oct. 16, 2002).

³⁴ 23 PA. CONS. STAT. §§ 6101-17 (2001). A "protection from abuse" order is a court order that restricts an abuser's contact with the victim. It may order the abuser to pay temporary child support or spousal support, and it can grant the victim temporary custody of any children. *Id.* § 6108.

³⁵ This example is based on my personal observations from the Dauphin County Courthouse in Pennsylvania.

As the above example points out, the problem with pro se representation is most acute in domestic relations court.³⁶ The increasing numbers of pro se plaintiffs and defendants in domestic relations court is both a detriment to those seeking justice and a burden on the court system.³⁷ There is not much justice for pro se plaintiffs or defendants due to the many problems they face in the complex legal system.

There are numerous barriers to a successful outcome [that a] pro se litigant will encounter in many jurisdictions. These include the lack of domestic pleading forms geared for pro se litigant use, such as complaints and requests for hearings or discovery requests; the difficulty pro se litigants face in navigating the complexities of completing and providing the court with proof of service; the discovery burden a pro se litigant carries, in terms of discovery document and pleading preparation, in order to obtain the financial information which is required for child or spousal support; the potential requirement that the pro se litigant may have to compel discovery; and the inability of the pro se litigant to fund the costs of litigation (filing fees, cost of private process service, fees of professional appraisers, etc.).³⁸

Thus, although it can be argued that the indigent are not locked out of the court system because of the choice of pro se representation, the pro se choice is not a fair alternative in the eyes of justice.

V. THE NEED FOR AND THE HISTORY OF LEGAL SERVICES

A. *The Need for Legal Services*

Given current poverty levels and a shaken economy, the need for public interest lawyers is unquestioned. Only twenty-five percent of the legal needs of the poor are currently being met.³⁹ Unmet needs are defined as “all legal needs that are reported but not brought into the justice system, or are in the justice system without representation by an attorney or the presence of a mediator.”⁴⁰ In an analysis of “unmet” need, the American Bar Association found that seventy-five percent of all low-income legal needs are unmet.⁴¹ Legal service organizations are meeting as many needs as possible, but the resources are very limited.

³⁶ Jane C. Murphy, *Access to Legal Remedies: The Crisis in Family Law*, 8 BYU J. PUB. L. 123, 124 (1993-94).

³⁷ *Id.*

³⁸ *Id.* at 130-31.

³⁹ ALGDONES ASSOCS., THE AMERICAN BAR ASSOCIATION LEGAL NEEDS STUDY 6 (1998), at http://www.algodonesassociates.com/legal_services/assessing_needs/assessin.pdf

⁴⁰ *Id.*

⁴¹ *Id.*

B. The History of Legal Services

Congress enacted the Legal Services Corporation Act in 1974.⁴² The Act created the Legal Services Corporation (LSC), a “private, nonmembership, nonprofit corporation for the purpose of administering federal funds to support legal services for poor persons in civil matters.”⁴³ LSC itself does not represent clients; rather, it funds legal services programs in all fifty states.⁴⁴ Congress stated that the purpose of LSC is “to provide high quality legal assistance to those who would otherwise be unable to afford adequate legal counsel.”⁴⁵ Congress also stated that “providing legal assistance to those who face an economic barrier to adequate legal counsel will best serve the ends of justice and assist in improving opportunities for low-income persons.”⁴⁶ The mission of LSC is carried out on the local level by smaller legal aid offices that are accessible to the indigent.⁴⁷

Since its inception, LSC has been highly controversial and subject to the whims of each succeeding administration.⁴⁸ In 1977, the Corporation’s initial reauthorization was passed without significant controversy.⁴⁹ The subsequent Reagan administration, however, sought to abolish LSC.⁵⁰ While the administration was unsuccessful in completely eviscerating LSC, it did cut funding for the Corporation by twenty-five percent.⁵¹ An increase in poverty levels, coupled with a substantial cut in resources, resulted in devastating numbers of people at or below poverty level being denied access to the legal system.⁵² George Bush, while not overtly an advocate of the LSC, did consistently recommend funding for it.⁵³ The Clinton administration increased funding for the Corporation.⁵⁴ It is uncertain how the current administration will respond.

While LSC has become a political struggle, it is incumbent upon the nation to understand that justice should not be determined by the whims of the executive branch. For those who are staunchly against federal

⁴² LEGAL SERVICES FOR THE POOR, *supra* note 5, app. at 209.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ 42 U.S.C. § 2996 (1994).

⁴⁶ *Id.*

⁴⁷ Murphy, *supra* note 36, at 218.

⁴⁸ NAT’L LEGAL AID & DEFENDER ASS’N, HISTORY OF CIVIL LEGAL AID, at http://www.nlada.org/about/About_HistoryCivil (last visited Nov. 30, 2001).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

funding for legal services, there must be creative thinking to determine how the needs of the poor will be met.

VI. THE MERIT OF THE CRISIS: QUESTIONING THE WORTHINESS OF THE INDIGENT

One fundamental hurdle that must be overcome by the legal profession and society at large is the belief that poor people do not deserve legal services. There is no use in discussing how to combat the existing crisis of inadequate representation of indigent people if there is no conviction that this is a legitimate need that must be addressed. In short, there must be a realization that the poor are worthy of representation.

A clinical professor at the University of Florida Law School wrote an article that included her observations about her students' attitudes toward indigent clients.⁵⁵ What she writes goes to the very heart of the crisis in the legal profession — pride, apathy, and ignorance of anything beyond our socio-economic status.

Most of the students are "traditional" law students. They come to law school straight from college, with little work experience and very limited life experience, yet they feel free to cast judgment on people whose lives are more complicated than they can imagine. Worse, these students will become the legal community of the next generation. Through personal conversations, review of student journal entries and class discussions, I learned that many of the students believed their clients should be grateful for the students' willingness to take their cases. On many levels, the students believed that the clients were not even worthy of having the students represent them.⁵⁶

According to a survival-of-the-fittest worldview, there is little reason to consider the poor worthy. To a Christian, though, the worth and dignity of all mankind should not be questioned. In emulating Christ, Christians should deem others better than themselves. "[I]n humility consider others better than yourselves. Each of you should look not only to your own interests, but also to the interests of others."⁵⁷ Proverbs states, "Pride goes before destruction, a haughty spirit before a fall."⁵⁸

In light of the preceding verses, it is ironic that conservatives have often been regarded as having negative attitudes towards the poor.⁵⁹ It is this conservative stereotype of indifference to the poor that must be changed. The problem within the conservative ideology is the

⁵⁵ Jacobs, *supra* note 2.

⁵⁶ *Id.* at 258.

⁵⁷ *Philippians* 2:3b-4.

⁵⁸ *Proverbs* 16:18.

⁵⁹ Jacobs, *supra* note 2, at 265.

misconception that somehow all Americans are on the same playing field.⁶⁰ A similar misconception is that those who are poor choose to be poor because of bad decisions or sin in their lives such as drugs, fornication, or alcohol. As the poverty statistics above show, this perception is far from the truth.⁶¹ Studies on the Temporary Assistance for Needy Families (TANF) program show that individuals who found minimum-wage jobs were not financially better off than when they were on welfare.⁶² Couple that fact with the added expense of day care for single mothers and there seems to be little chance of achieving financial stability without government assistance.

There is a general perception that if people on welfare would just go out and get a job at McDonalds, they would stop sponging off of the rest of society. While this may be sheer ignorance on one hand, the lack of compassion on the other creates serious implications for the church. While God speaks out clearly against laziness⁶³ and demands hard work,⁶⁴ the scriptures are replete with commands to take care of the poor.⁶⁵ Thus, categorically stereotyping the poor as lazy or sinful does nothing to advance the kingdom of God. While very few conservatives actually believe these misconceptions, this view that the secular world has of conservative Christians must be changed. While theology and agendas regarding the poor are being volleyed across the political net of conservative think tanks, many organizations have realized that the only way to combat poverty is through the Gospel. From crisis pregnancy centers and inner-city missions, to church soup kitchens and half-way houses, the church has risen up and taken a role in caring for the oppressed. Evangelicals for Social Action has also taken a large role in the social justice movement.⁶⁶ Such organizations promote the true spirit of Christianity that the world needs to see.

⁶⁰ JAMES K. GALBRAITH, *CREATED UNEQUAL* 3-22 (2000).

⁶¹ U.S. CENSUS BUREAU, *supra* note 8, at 8.

⁶² PAMELA A. MORRIS & GREG J. DUNCAN, *WHICH WELFARE REFORMS ARE BEST FOR CHILDREN?* 2 (2001), at <http://www.brook.edu/dybdocroot/wrb/publications/pb/pb06.pdf> (Sept. 2001); see also *Making Ends Meet: Challenges Facing Working Families in America: Hearing Before the House Comm. on the Budget*, 107th Cong. 17-27 (2001) (statement of Ron Haskins, Senior Fellow, The Brookings Institution), available at <http://www.brook.edu/views/testimony/haskins/20010801.htm> (Aug. 1, 2001).

⁶³ *Proverbs* 10:4, 12:27; *Hebrews* 6:12; *Titus* 1:12; *Ecclesiastes* 10:18.

⁶⁴ *Ecclesiastes* 5:19; *I Corinthians* 4:12; *I Thessalonians* 5:12.

⁶⁵ *Leviticus* 19:10; *Deuteronomy* 15:4; *Psalms* 82:3; *Proverbs* 22:22; *Proverbs* 29:7.

⁶⁶ OXFORD CENTRE FOR MISSION STUDIES, *TRANSFORMATION OF THE CHURCH*, at <http://watch.pair.com/toc-oxford.html> (last visited Aug. 29, 2002). "Over the past two decades-plus, Evangelicals for Social Action has become the primary organizational leader for progressive evangelical voices and a primary inspiration of renewed evangelical concern for the poor, equality for women and minorities, and care for the environment." *Id.*

VII. BIBLICAL BASIS FOR LEGAL SERVICES

Because Christians are not unified regarding a solution for the under-representation of the poor, it is not surprising that the legal profession as a whole is not unified in the means of remedying the problem. Some are in favor of mandatory pro bono work, others feel that the government should expand resources to LSC, and still others are generally apathetic about the situation as a whole.⁶⁷ No matter which approach is chosen, Christian attorneys should be leading the movement to find a solution. Whether this means setting the standard for pro bono work or encouraging churches and non-profit organizations to take a larger role in representing the poor, Christian attorneys should be using their positions as administrators of justice on earth as a ministry. We are commanded to “[s]peak up for those who can not speak for themselves, for the rights of all who are destitute. Speak up and judge fairly; defend the rights of the poor and needy.”⁶⁸

While pro bono work should be incumbent upon every lawyer, currently LSC is necessary to ensure social justice. Legal Aid Societies, offices that are funded through LSC, are community-centered support organizations for the poor. Such community-based support of the poor finds its roots in the Bible:⁶⁹

1. The third year tithe was to go to poor widows, orphans, and sojourners, as well as the Levites (Deut. 14:28-29; 26:12).
2. Laws on gleaning stipulated that the corners of the grain fields and the sheaves and grapes that dropped were to be left for the poor, especially widows, orphans, and sojourners (Lev. 19:9-10; Deut. 24:19-21).
3. Every seventh year, fields were to remain fallow and the poor were allowed to reap the natural growth (Ex. 23:10-11; Lev. 25:1-7).
4. A zero-interest loan was to be available to the poor, and if the balance was not repaid by the sabbatical year, it was forgiven (Ex. 22:25; Lev. 25:35-38; Deut. 15: 1-11).
5. Israelites who became slaves to repay debts went free in the seventh year (Ex. 21:1-11; Lev. 25:47-53; Deut. 15:12-18). And when the freed slaves left, God commanded that their “temporary master” was to provide liberally, giving the former slaves cattle, grain, and wine (Deut. 15:14) so they could again earn their own way.⁷⁰

⁶⁷ Rob Atkinson, *A Social-Democratic Critique of Pro Bono Publico Representation of the Poor: The Good as the Enemy of the Best*, 9 AM. U. J. GENDER SOC. POL’Y & L. 129, 135 (1999).

⁶⁸ *Proverbs* 31:8-9.

⁶⁹ RONALD S. SIDER, *JUST GENEROSITY: A NEW VISION FOR OVERCOMING POVERTY IN AMERICA* 49 (1999).

⁷⁰ *Id.* at 69.

One can argue that these provisions were not merely voluntary charity, but rather were part of the law.⁷¹

The clear fact is that the provisions for the impoverished were part of the Mosaic legislation, as much as other laws such as those dealing with murder and theft. Since nothing in the text allows us to consider them as different, they must be presumed to have been legally enforceable.⁷²

Just as God considered it necessary to have provisions in place in the Mosaic Law for the poor, there must also be provisions in place for the poor in our modern government. The typical argument in response to this proposition is that the old law is not binding, and nothing within the Mosaic law should be directly or literally applied today.⁷³ While it is true that Christians are no longer bound by the civil and judicial law,⁷⁴ Christians need to take from the law principles of wisdom and righteousness. God himself ruled Israel. In His infinite sovereignty and wisdom, He made provisions for the poor. This principle must be applied today. LSC is currently the only governmental organization that provides the poor with access to justice.

There are, however, those who oppose legal services on the theory that providing legal help to the poor on a case by case basis is, in reality, exacerbating the existing problems for poor people by creating a dependency on lawyers who may not be there tomorrow.⁷⁵ According to this line of thought, representation of poor people should be focused on collective groups of poor people rather than individuals who are poor.⁷⁶ It is a very cynical view of the legal system, though, which gives birth to the theory that the legal system cannot serve individual poor people.

Among the not-poor, the adversary system might lead to justice; the most usual criticism of lawyers from not-poor people concerns their dishonesty and failure to be fully committed and fully competent advocates. But if justice can be obtained for the not-poor through an adversary system of law, it is because they are involved with the law on a case-by-case basis. But a case-by-case injustice is not what poor people face; they confront a host of unjust institutions, acting for and within an unjust society. The whole notion of an adversary proceeding is unsuited to dealing with social problems. Insofar as it is used to resolve social injustices, the lawyer's game is like monopoly. The lawyers play as hard as they can; they charge whoever lands on their property as much as the rules will allow; they build houses and hotels;

⁷¹ John Mason, *Biblical Teaching and Assisting the Poor*, in 2 THE BEST IN THEOLOGY 279, 309-11 (Paul Fromer & J.I. Packer eds., 1998).

⁷² *Id.* at 311.

⁷³ Art Gish, *Decentralist Economics*, in WEALTH & POVERTY, *supra* note 1, at 133-36.

⁷⁴ *Id.* at 133.

⁷⁵ Stephen Wexlert, *Practicing Law for Poor People*, 79 Yale L.J. 1049, 1053 (1980).

⁷⁶ *Id.*

their actions have no consequences in the real world; in the end, they sweep the pieces and the play money into a box, and play again tomorrow.⁷⁷

On theory alone, this line of thought fails. Access to the legal system itself should not be contingent upon the ability to win. It is incumbent upon the legal profession and the country at large to ensure that individual needs are being met by the legal system. For the woman who was given help obtaining a protection order or the family that was allowed to continue living in their apartment, access to Legal Aid made all the difference.⁷⁸ Although organizing poor people to work together to seek justice may produce substantial results for the largest number of people, it should not be a rationalization to end LSC.

VIII. THE MANDATORY-PRO-BONO DEBATE

The Model Rules of Professional Conduct encourage lawyers to contribute fifty pro bono hours per year.⁷⁹ This contribution is only recommended, not mandatory.⁸⁰ It is, however, interesting that the pro bono work encouraged by the Model Rules is for the poor, rather than public interest non-profit organizations.⁸¹ Therefore, the need for providing direct legal services to the poor is emphasized by the Model Rules. Reading between the lines of the Model Rules, some believe that the "same principles that require lawyers to serve their client's interest, keep their confidences, treat them with candor and work diligently on their behalf, create a role for lawyers that obligates them to serve the poor, unpopular and underserved causes."⁸² In many cases, however, the voluntary pro bono work emphasized in the Model Rules is not being followed. Inherent in the system is the "free-rider" problem.⁸³ Many lawyers are not doing any pro bono work, and instead are allowing those with more conviction to bear the burden.

While making pro bono hours mandatory solves this problem, such a system is replete with problems. In reality, a mandatory pro bono system is so inefficient and complex that access to justice would be promoted on a very small scale. "[P]ro bono representation is decidedly a second-best

⁷⁷ *Id.* at 1059.

⁷⁸ LEGAL SERVS. CORP. OF VA, *supra* note 22, at 4.

⁷⁹ MODEL RULES OF PROF'L CONDUCT R. 6.1 (1999) ("A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year.").

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² David Fagelson, *Rights and Duties: The Ethical Obligations to Serve the Poor*, 17 LAW & INEQ. 171, 172 (1999).

⁸³ Atkinson, *supra* note 67, at 144.

means of delivering legal services to the poor. It is, to be sure, a good thing – much better than nothing – but not the best.”⁸⁴

There are practical as well constitutional problems with mandatory pro bono work.⁸⁵ First, the administrative difficulties are significant.⁸⁶ Problems include the monitoring of pro bono hours, the facilitation of putting an indigent client in contact with an attorney who will take the case, and the education of the indigent to use the system. It is also difficult to set a blanket standard for pro bono hours for all lawyers. For example, a small family firm should not be accountable for the same number of hours as a large corporate firm.

Moreover, competence becomes an issue. For example, a corporate lawyer may be mandated to represent a victim of domestic violence in a custody conciliation. The indigent client deserves to have zealous advocacy from a competent attorney.⁸⁷ Justice is not being promoted when representation is sub-standard because an attorney with no knowledge of that area of the law is being forced to do pro bono work.

Just as there are those who do not believe in taxing the country to provide access to justice for the poor, there are those who believe it is unjust to tax lawyers to remedy a national problem.⁸⁸ Some opponents of mandatory pro bono work would go so far as to say that this tax is unconstitutional “because [it] involves a violation of individual liberty and taking of lawyers’ property without just compensation.”⁸⁹ Mandatory pro bono work cannot be an effective way to remedy injustice toward the poor when there are significant problems within the system and resistance from members of the bar.

Given the above analysis, LSC is currently the best alternative. The next section of this comment will demonstrate why holistic advocacy in the context of privately-funded, faith-based, non-profit legal

⁸⁴ *Id.* at 136.

⁸⁵ NATHAN M. CRYSTAL, PROFESSIONAL RESPONSIBILITY 484 (2d ed. 2000).

⁸⁶ *Id.*

⁸⁷ See MODEL RULES OF PROF'L CONDUCT R. 1.1 (1999).

In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors, include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner.

MODEL RULES OF PROF'L CONDUCT R. 1.1 cmt. (1999).

⁸⁸ See Crystal, *supra* note 85.

⁸⁹ *Id.*

organizations would be the most effective alternative means of providing legal services to the poor.⁹⁰

IX. HOLISTIC ADVOCACY

Many lawyers are myopic in their approach to their work. While it may be good to have tunnel vision for the verdict or outcome, this kind of thinking will only result in short term help when dealing with an indigent client. On the other hand, “[h]olistic advocacy is both a vision of what can be, and a strategy for getting there: A vision of helping people to change their lives”⁹¹ The concept of holistic advocacy has its roots in the Bible, and a study of the ministry of Christ reveals the best way to change lives.

An analogous field, holistic medicine, is becoming increasingly popular due to an understanding that the body is one complete unit.⁹² According to the American Holistic Medicine Association, “holistic medicine is defined as the art and science of healing that addresses the whole person – the body, mind, and spirit – by integrating conventional and alternative therapies to prevent and treat disease, and to promote optimal health.”⁹³ With holistic care, not only is the medical condition treated, but the person as a whole is treated.⁹⁴ “Illness is viewed as a manifestation of a dysfunction of the whole person, not an isolated event.”⁹⁵ Inquiries into diet, state of mind, and stress in the workplace all contribute to the person as a whole.⁹⁶ While holistic doctors are not yet covered by most insurance plans, more people are seeing the value of holistic medicine. Likewise, the concept of holistic advocacy, while not yet a term of art in the legal profession, is equally important.

⁹⁰ The next section is devoted to Christian attorneys. Therefore, I use a less formal writing style to make the message more personal. The following point is also very important to keep in mind while reading this section:

The most oft-quoted and misunderstood biblical text in the debate over the church’s relationship to the poor: Mark 14:7. The text has notoriously been used by politicians and preachers alike to justify the existence of poverty, as if Jesus is stipulating its inevitability as a condition of nature or, worse, as a divine plan. In fact, the text is emphatic: ‘For the poor will always be with you, and whenever you will you can do the right thing by them.’ In other words, this is a statement about the social location of the church.

Ched Myers, *Behold, The Treasure of the Church*, SOJOURNERS, Sept. 1999, at 12.

⁹¹ Tanya Neiman, *Reflections on Holistic Advocacy*, MGMT. INFO. EXCHANGE 34, 35 (Fall 1999).

⁹² LARRY TRIVIERI, JR. & THE AM. HOLISTIC MED. ASS’N, *THE AMERICAN HOLISTIC MEDICAL ASSOCIATION GUIDE TO HOLISTIC HEALTH 4* (John Wiley & Sons, Inc. 2001).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* at 7.

⁹⁶ *Id.*

The term "holistic advocacy" is used with more frequency in the field of public interest. However, there are aspects of holistic advocacy that can be used in every practice. A protection order will not keep a battered woman safe; an acquittal will not keep a criminal defendant out of jail the next time around; and a large settlement will not bring happiness. The only way to truly help your client is to counsel the person as a whole and seek to create lasting remedies for his or her life. For a Christian, this is not new news. A study of the life of Christ brings this concept to life in a real way.

Before delving into the ministry of Christ, the first question that must be answered is what is required of us, not as attorneys, but as Christians. God answers this question clearly in Micah: "He has showed you, O man, what is good. And what does the Lord require of you? To act justly and to love mercy and to walk humbly with your God."⁹⁷ Therefore, before we even consider our interactions with clients, we need a humble heart. The legal profession and humility are not often considered compatible. Somehow, when an individual acquires a Juris Doctor degree and puts on a suit, any ounce of humility is often drained. But ideally, attorneys should come before their clients with humility and a servant's heart.

If you are a Christian and an attorney, then your job should be your ministry. Paul provides an example that we should try to emulate in our lives.

Though I am free and belong to no man, I make myself a slave to everyone to win as many as possible. To the Jews I became like a Jew, to win the Jews. To those under the law I became like one under the law (though I myself am not under the law), so as to win those under the law. To those not having the law I became like one not having the law (though I am not free from God's law but am under Christ's law), so as to win those not having the law. To the weak I became weak, to win the weak. I have become all things to all men so that by all possible means I might save some.⁹⁸

Paul recognizes that in his ministry he is stretched to become all things to all people in order to be most effective in saving souls. In the same way, attorneys must be willing to step out of their comfort zones, roll up their sleeves, and serve those who are in desperate need of both salvation and legal help. It is easy to stay behind the ubiquitous bars of professionalism, but God does not ask His followers to be comfortable. He commands them to get involved in the lives of others and get verdicts that last a lifetime.

Jesus did not shove salvation down the throats of people whom he met. Instead, He related to people on their level and ministered to them

⁹⁷ *Micah* 6:8.

⁹⁸ *I Corinthians* 9:19-22.

according to their needs. He filled nets with fish; He healed and raised people from the dead; He blessed; He prayed; He fed; He anointed.⁹⁹ He ministered to people and showed them truth through His actions.

A law degree can be used to raise up the weak in today's society. It can be used to change peoples' lives for Christ so that they can also be used as vessels for God.

But God chose the foolish things of the world to shame the wise; God chose the weak things of the world to shame the strong. He chose the lowly things of this world and the despised things — and the things that are not — to nullify the things that are, so that no one may boast before him. It is because of him that you are in Christ Jesus, who has become for us wisdom from God — that is, our righteousness, holiness, and redemption.¹⁰⁰

The potential is limitless. Christian attorneys are in a position to minister to people in a way that others cannot. We have the keys to a system that is locked to countless people in desperate need of the protection and justice that the system has to offer. If we ignore that and do not use those keys for the expansion of the kingdom, then we are falling short of what God calls us to do. In reaching out to the poor and becoming a pillar of hope for them in their situation a part of them is being healed — whether that is keeping a family from being evicted, getting fair workers' compensation, or getting custody of a child away from an abuser.

The holistic vision must be expanded, not only in the legal profession, but also in society at large. In an article responding to the U.S. Census Bureau Poverty Report, Ron Sider, president of Evangelicals for Social Action states,

Fortunately, there is good news. A new holistic vision is emerging on how to overcome widespread American poverty. From Presidential candidates Gore and Bush to Harvard's Kennedy School of Government, there is growing agreement that civil society, especially faith-based organizations, must play a much larger role. At the same time, businesses must create jobs and government must guarantee that those who work responsibly full-time receive a livable family income, can afford health insurance and enjoy quality education for their children.

A historic convergence of liberal and conservative approaches may be possible in the next decade. But a lasting solution will require greater generosity: vastly expanded private giving to effective faith-based social programs; vastly more volunteer mentors; and, yes, some expansion of effective government programs.¹⁰¹

⁹⁹ *Luke 7:3; Luke 8:43; Luke 13:32; Matthew 6:26.*

¹⁰⁰ *I Corinthians 1:27-31.*

¹⁰¹ Sider, *supra* note 17.

In another article, Ron Sider does qualify his statement by saying, "Government programs, however, can't heal broken spirits and restore wholesome families. . . . We need a new holistic vision and a new partnership between religious institutions and government if we want to end the scandal of widespread poverty in the richest nation in history."¹⁰²

Christians are rising up and seeing the need for a holistic ministry. An organization called Network 9:35 specifically exhorts churches to practice this type of outreach.¹⁰³ The name comes from Matthew 9:35: "Jesus went through all the towns and villages, teaching in their synagogues, preaching the good news of the kingdom and healing every disease and sickness."¹⁰⁴

X. THE FUTURE OF PUBLIC INTEREST LAW

In a letter from the Chair of the National Association for Public Interest Law, Gregory Landis writes,

Although Americans depend on the legal system to protect and enforce their rights, millions in our country face serious legal problems and cannot find or afford a lawyer to help them. The problem is not a lack of lawyers, but a lack of lawyers working in the community for the public interest.¹⁰⁵

There are students who go to law school with a passion and a specific call to bring justice to those whom justice is often denied. The need in the public interest arena is far reaching. It includes the following: working for the American Center for Law and Justice defending religious freedom and the unborn child, pursuing justice with tenacity as a prosecutor, working in a battered women's shelter using the law to help protect women and children from future abuse, shedding mercy on refugees seeking asylum, being a voice for migrant farm workers who often cannot speak English, preventing eviction of countless tenants in low income housing developments, and providing counsel to mission organizations.

Unfortunately, the ability to work in public interest is becoming increasingly difficult, due to high student loan debt and low salaries.¹⁰⁶ Law school debt, coupled with undergraduate school debt, often makes a career in public interest a passing idealistic notion. According to Access Group, the chief lender to law school students, the estimated median

¹⁰² Ronald S. Sider, *Faith-Based Anti-Poverty Programs Work*, DALLAS MORNING NEWS, Feb. 14, 2000, at 15A.

¹⁰³ NETWORK 9:35, VISION & MISSION, at <http://www.network935.org/about/mission.html> (last visited Oct. 22, 2002).

¹⁰⁴ *Matthew* 9:35.

¹⁰⁵ NAT'L ASS'N FOR PUB. INTEREST LAW, ANNUAL REPORT 1 (2000).

¹⁰⁶ Jane Easter Bahls, *It's Payback Time for Public Interest Lawyers*, STUDENT LAW., Sept. 2002, at 17.

total debt of a graduating law school student in 2000 was \$84,400.¹⁰⁷ The monthly payment for a loan of that magnitude is \$950, which represents approximately one-half of the monthly salary of a starting public interest attorney.¹⁰⁸ The *National Jurist*, a magazine distributed to law students, concluded that “the average debt was so high at twenty-three law schools that graduates entering public practice would actually have a below-zero disposable income after making their loan payments.”¹⁰⁹

Already, some new graduates who chose the nonprofit sector are finding the struggle to repay student loans exceedingly difficult. For example, Stacey Klein, a 1998 Stetson University College of Law graduate earning \$25,000 as a legal services lawyer in Tampa had to take a part-time job as a waitress to make ends meet. Marie Tatro, earning \$34,000 at Brooklyn Legal Services, owned no skirts and one pair of black pants for court appearances, and counted on birthday gifts for clothing. Leonard Adler, \$100,000 in debt and living on \$30,000 that had to cover both his personal expenses and those of his new National Anti-Poverty Organization, lived in the attic with no heating and spent only \$100 a month on food.¹¹⁰

The legal profession should be disgraced by stories such as these. In one of the most lucrative professions, there should not be members of the bar who can barely make a living because they have chosen to use their degrees to pursue justice for the poor. This must be changed with the support of law schools and local bar associations because public interest attorneys are carrying out a responsibility that belongs to the entire legal profession.

Many law schools have recognized the importance of public interest lawyers and have implemented Loan Repayment Assistance Programs (LRAP) to encourage and financially support those students who take

¹⁰⁷ ACCESS GROUP INC., MEDIAN DEBT AT REPAYMENT, LAW SCHOOL CLASSES OF 1993-2000 (2002) (The median debt figure given here is an estimate based only on data for those students who borrowed at least one Law Access® Loan (LAL) from Access Group, Inc. while in law school. It was assumed that each student in this group borrowed his/her full eligibility in Federal Stafford/Direct loans before borrowing a private loan. Thus, the estimate represents only a subset of all those who borrowed while in law school—those needing both federal and private loan funding. Furthermore, student loans borrowed prior to law school were not included in this estimate. The median figure was calculated as the sum of the following: (1) the median loan principal that was borrowed, (2) an estimate of the accrued interest that was capitalized just prior to repayment, and (3) any supplemental fee that was added to the median principal prior to repayment. The interest rate used in all calculations on Federal Stafford/Direct loans was 8.25% (cap); interest rate on private loans was 8.5%.) (on file with Regent University Law Review).

¹⁰⁸ *Id.*

¹⁰⁹ Jack Crittenden et al., *Lawopoly: Pass Go, Borrow Money, Pay Tuition. Repeat Cycle. Welcome to the Game of Law School Debt – Where the Money Is Real and the Stakes Are High*, NAT'L JURIST, Feb. 1999, at 14, 17-18.

¹¹⁰ Philip G. Schrag, *The Federal Income-Contingent Repayment Option for Law School Loans*, 29 HOFSTRA L. REV. 733, 760 (2001).

the road less traveled with their J.D. degrees.¹¹¹ Beneficiaries of LRAPs receive financial help in paying off student loans after graduation. With increasing concern over the future of public interest, as well as heavy support from students and faculty, more law schools are working toward implementing LRAP programs. Absent large scholarships for students going into public interest, LRAP is the most effective method for making a career in public interest feasible.

The other alternative available to law students is the Federal Income-Contingent Repayment Option.¹¹² Congress created this repayment option in 1993 as a way to help graduates with high-debt take jobs in public service positions. In short, the program “caps loan repayments at a reasonable percentage of the graduates’ incomes, and it forgives any remaining balance at the end of twenty-five years.”¹¹³ The flagrant drawback to this option is the extremely long time frame until the loan is forgiven. While it is beneficial to the public interest lawyer to have smaller loan payments per month, the amount of money that will eventually be paid is much larger under this program because the repayment period is longer.¹¹⁴

XI. CONCLUSION

A new paradigm is needed to win the war on poverty and the crisis in providing legal services to the poor. Holistic advocacy in the context of Christian legal services will be the center of this paradigm shift. Lawyers, in adopting a holistic approach to advocacy, will be used as a

¹¹¹ Daniel B. Kennedy, *LRAPs to the Rescue*, STUDENT LAW., Sept. 2001, at 22. These schools include: American University Washington College of Law, Benjamin N. Cardozo School of Law, Yeshiva University, Boston College Law School, Brooklyn Law School, Case Western Reserve University School of Law, Columbia University School of Law, Cornell University School of Law, Fordham University School of Law, Franklin Pierce Law Center, George Washington University Law School, Harvard Law School, Hofstra University School of Law, Loyola Law School, Loyola University — Chicago School of Law, Loyola University — New Orleans School of Law, New York University School of Law, Northeastern University School of Law at Lewis and Clark College, Rutgers University School of Law, Santa Clara University School of Law, Stanford University Law School, Suffolk University Law School, Temple University James E. Beasley School of Law, Tulane University School of Law, University of California — Berkeley School of Law, University of California — Davis School of Law, University of California — Hastings College of Law, University of Chicago Law School, University of Georgia School of Law, University of Iowa College of Law, University of Michigan Law School, University of the Pacific — McGeorge School of Law, University of Pennsylvania Law School, University of San Diego School of Law, University of Southern California Law School, University of Toronto — Faculty of Law, University of Utah College of Law, University of Virginia School of Law, Valparaiso University School of Law, Vanderbilt University Law School, Vermont Law School, Yale Law School. *Id.*

¹¹² Schrag, *supra* note 110, at 733.

¹¹³ *Id.* at 735.

¹¹⁴ *Id.* at 773.

conduit to end poverty. This may seem idealistic, but there must be a vision. Until enough faith-based nonprofits are established to meet the need, the Christian community must stand behind LSC because it is the most effective means of serving poor people today. Moreover, Christian attorneys should use their influence to promote the worth of both the indigent, as deserving representation, and the public interest attorney, as deserving financial support. If there is to be permanent, positive societal change, Christians must get involved with the social justice movement by helping to alleviate poverty and opening the locked doors of the legal system to those who cannot afford a key.

Morgan Leyh