

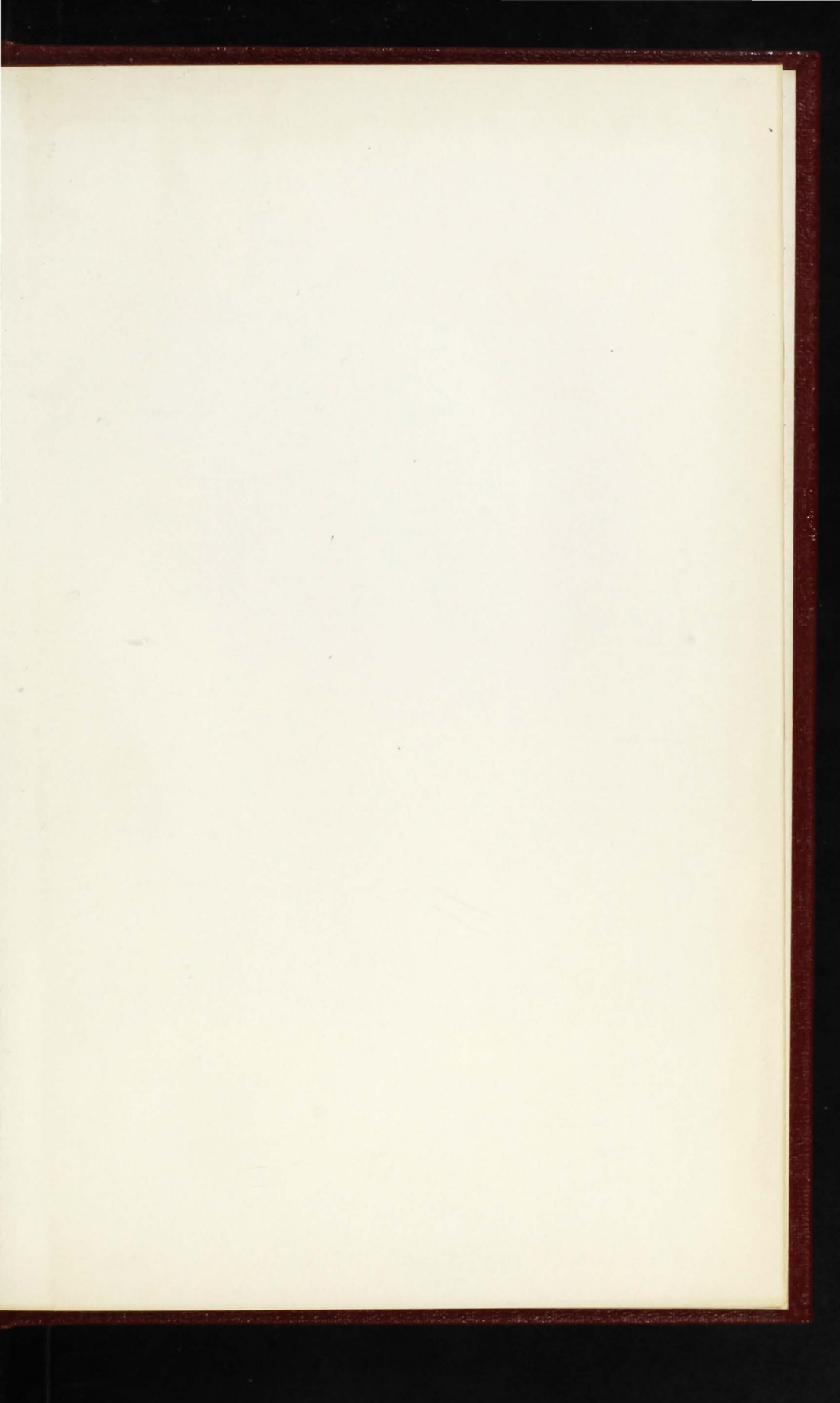
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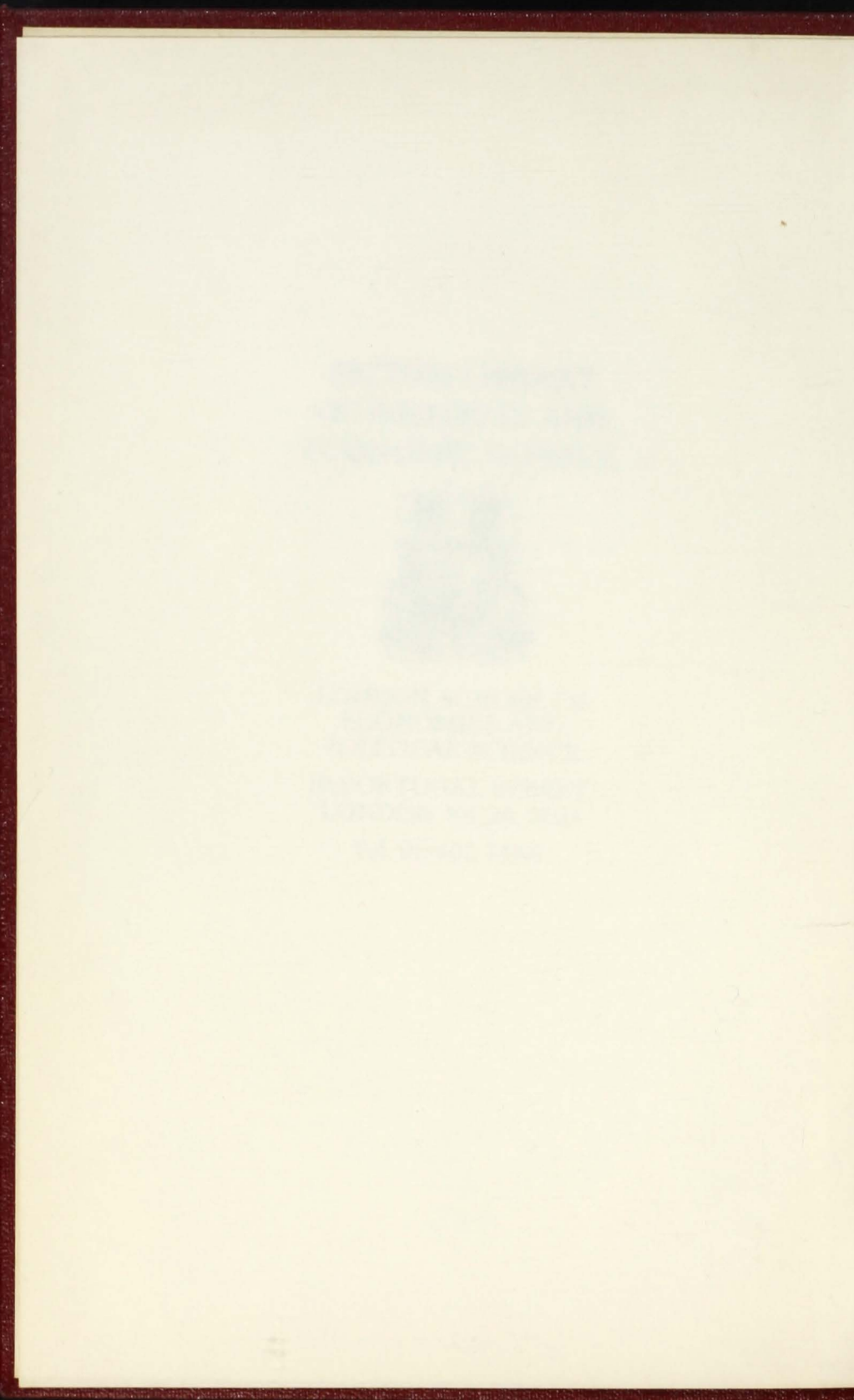


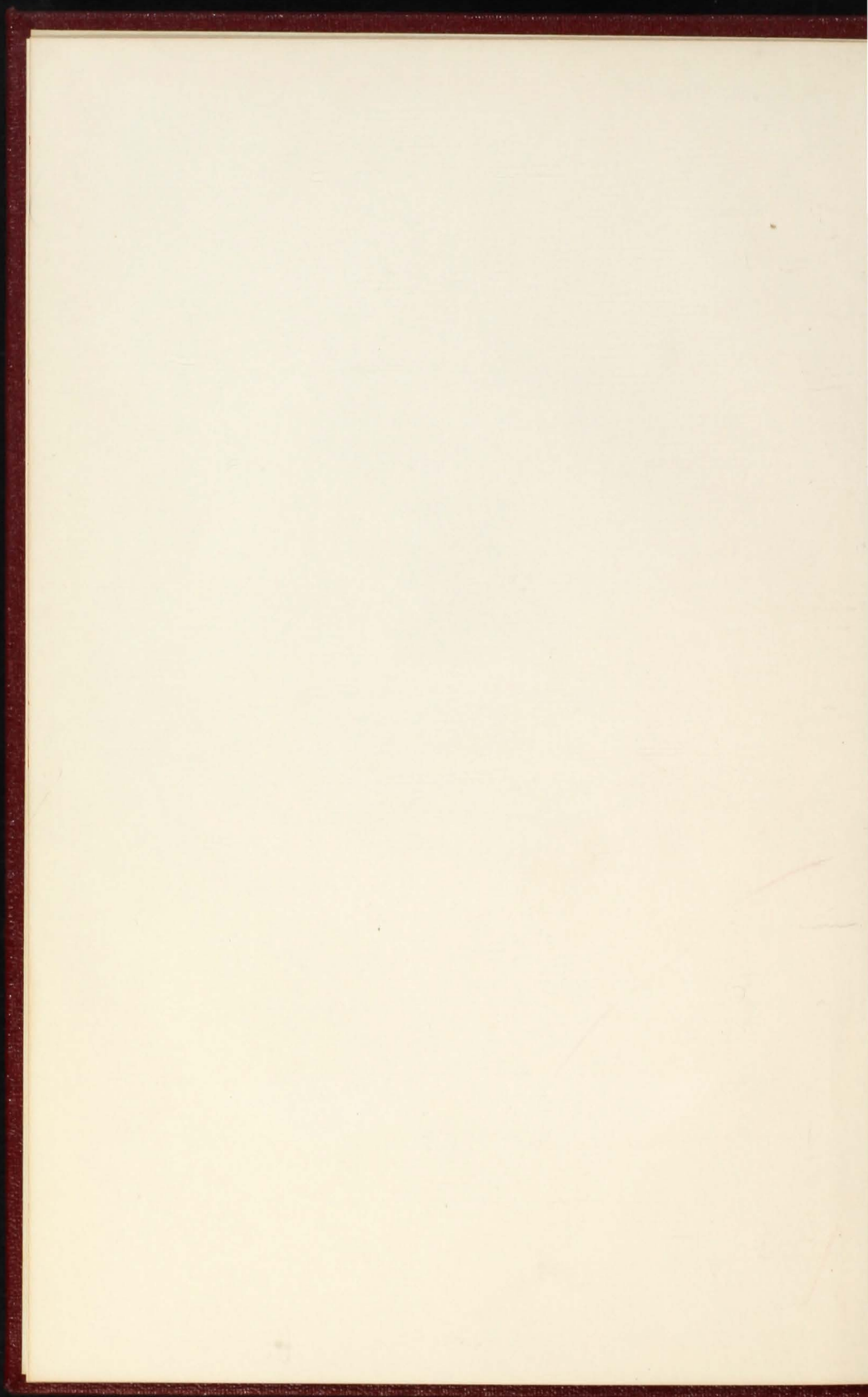
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legal services for all

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justice for all: part two

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legal services for all

		preface	1
chapter	1	the historical development of legal services	2
	2	legal aid and advice today	6
	3	other providers of legal services	9
	4	developments in legal services abroad	12
	5	short term proposals	18
	6	a new legal services scheme	20
appendix		costing a national legal service	27

the society of labour lawyers :

Membership is open to lawyers or law students who are members of the Labour Party. The Society, which is affiliated to the Labour Party, holds periodic meetings and conferences. Members have prepared numerous papers on aspects of the law and have written evidence for submission to many government enquiries. This pamphlet comprises evidence submitted to the Royal Commission on Legal Services. Other publications include : " Justice for All ", " The End of the Private Landlord " and " Accidents at Work : Compensation for All ". Details of membership are available from Conrad Ascher, Honorary Secretary, Society of Labour Lawyers, 9 Kings Bench Walk, Temple, London EC4, 01-353 0478.

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this pamphlet, like all publications of the Fabian Society, represents not the collective view of the Society but only the views of the individuals who prepared it. The responsibility of the Society is limited to approving publications it issues as worthy of consideration within the Labour movement. Fabian Society, 11 Dartmouth Street, London SW1H 9BN. March 1978 ISSN 0307 7535 ISBN 7163 0454 6

preface



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A main tenet of the Labour Party is that there should be a progressive reduction of the inequalities in society. Social justice demands that the gap between the lowest paid and the highest paid should be narrowed ; that privilege should not be obtained by the inheritance of wealth ; that access to housing, education, medical and legal services should be freely open to all.

As lawyers who are members of the Labour Party, we have tried to examine the contribution we can make to the development of policies which are complementary to the aims of the Party and which would lead to a just and socialist society. Many policies adopted by a Labour Government to achieve the aims of the Party, such as the provision of comprehensive education or the nationalisation of the means of production, are not subjects in which lawyers can play a direct role. But much of the Labour Government's welfare provision in social security, health or housing is based on a legal and administrative structure which frequently involves the assertion of individual rights and claims.

A major function of the legal profession should be to assist people obtain the social rights provided by law and to ensure that laws designed to reduce inequality and provide welfare payments operate as effectively as possible. We recognise the argument that welfare provision, by itself, will not bring social justice. Nevertheless we think that it plays an important function in helping to ensure that the basic essentials of life, such as food and housing, are provided. We must help the many thousands of people who do not avail themselves of their rights, either through fear, ignorance or the inability to deal with administrators.

It is eight years since the Society of Labour Lawyers first began to explore these questions in its influential pamphlet, *Justice for All* (Fabian Society, 1968). Since then, dramatic changes have occurred in this country and abroad in relation to the general theme of the provision of legal services to the poor. Part of the aim of this paper is to record the developments which have been taking place. But we also seek practical results and the most important objective of the pamphlet is to help create a new climate of opinion in which the developments of the last eight years or so may be continued and access to legal services secured.

It is our fear that much of the voluntary initiative which has flourished in the recent past may die away unless positive and urgent steps are taken by politicians, the profession and government to ensure that those who are now able to derive benefit from legal services are not suddenly deprived of them. It is also our wish to extend services to other areas of need not so far covered by voluntary initiative. In short, our desire is to see the present embryonic Legal Services Scheme grow in strength and size and not wilt under the pressures of economic restraint.

1. the historical development of legal services

On the civil law side, as early as the reign of Henry VII, the poor had a right to use a procedure known as *in forma pauperis*. However, there were severe procedural limitations attached to its use, which made it valuable more in theory than practice. More important was the fact that since the higher courts were almost exclusively a forum in which the propertied classes fought their battles, these courts—indeed the legal system as a whole—were mostly inaccessible to the poor. Insofar as they had rights which could be the subject of dispute, the issues were usually settled before local courts, or in magistrates' courts (which at the time had a considerable civil jurisdiction) presided over by laymen, and before whom legal representation was almost unknown (Abel-Smith and Stevens, *Lawyers and the Court*, 1968 and D. Leat, "The Rise and Role of the Poor Man's Lawyer", *British Journal of Law and Society*, 2, 166).

On the criminal side, the principle of the "dock brief" had also arisen at an early stage whereby a poor prisoner could, on payment of one guinea (plus a clerk's fee), obtain the services of counsel (D. Leat, *op cit* and Egerton, *Legal Aid*, 1945). However, this procedure did not result in substantial protection for the poor and unpropertied people. For much of the 17th and 18th centuries, the primary interest of the powerful was to preserve their property interests, often with the use of draconian criminal legislation and accompanying harsh penalties (E. P. Thompson, *The Black Act*, Allen Lane, 1975 and D. Hay *et al*, *Albion's Fatal Tree*, Allen Lane, 1975).

The climate of opinion fostered by writers like Bentham led to a reduction in the severity of many criminal law penalties in the first half of the nineteenth century. Some criminal law procedures were also eased. For example, in 1836, those accused of felony were allowed to employ counsel to speak in their defence and to have copies of the case against them. But while these reforms appeared to work in favour of the poor, there was also a developing policy whereby the criminal jurisdiction

of lay magistrates was increased. The effect of this policy was to enhance the rights of the propertied classes who appeared to think that delays in the higher courts led to postponement of punishment and the reduction of the deterrent effect of the criminal law.

From a purely legal services point of view, all was far from well. Despite the 1836 measure on the functions of counsel, there was no secure way in which prisoners of limited means could actually obtain counsel, unless the "dock brief" system worked. In 1843, an attempt to provide a charitable service to prisoners tried at the Old Bailey was abandoned after one session because of complaints by lawyers.

The most important development in the civil legal system in the first half of the nineteenth century was the creation of the county court. Although subsequently claimed to be for the benefit of the poor man, as a forum for consumer redress, it was in fact used overwhelmingly as a debtors' court by businesses anxious to get results without the delays and expense of using the higher courts. This pattern of use of the county courts continued to exist in 1970 as shown in the Consumer Council's Report, *Justice Out of Reach*. Another development of potential importance to the poor was the creation in 1857 of the Divorce Court. But, initially, costs prevented its use by the poor and it was almost entirely used by the better-off. Other reforms at this time merely tampered with specific aspects of the procedure and jurisdiction of the courts.

High costs and long delays were still prevalent in the 1860s. This led to increasing pressure, again largely from businessmen who wanted more efficient places for settling their disputes, for the rationalisation of the higher courts. Despite the enactment of the Judicature Act 1873, however, severe problems still remained especially as the High Court was centralised in London. "High Court litigation was inefficient, slow and expensive yet certain cases could only be brought in that court. Thus the poor were effectively excluded from litigating in the

High Court while the more wealthy classes failed to obtain an efficient service. The reaction of the business community was to turn increasingly to arbitration while the government developed a wide range of administrative tribunals to perform tasks which might have been given to the courts" (Abel-Smith and Stevens, *op cit*).

The changes so far described were, in short, the product of pressures by powerful interests existing at that time. There was no attempt at the creation of a system of legal services accessible to the poor. Working class struggle and organisation had not yet reached a point where this could be a serious part of the political agenda.

However, increasingly from 1875, the working class and the poor did gain political power and some of their interests were recognised by statute. The most important was the Workmen's Compensation Act, 1897, giving workmen the right to sue their employers for damages for injuries suffered "in the course of employment". The first Rent Acts controlled levels of rents and the freedom of landlords to evict private residential tenants. This meant that, for the first time, a new class of citizen had acquired a range of civil legal rights.

This new political power of the poor also contributed to the progress of humanising the worst features of the criminal law. For example, it was recognised that the dock brief system was not working; "few of those accused of major crimes could raise the necessary guinea and many of those who could obtained an inferior service" (*ibid*). When, in 1898, the Criminal Evidence Act first allowed defendants to give evidence on their own behalf, it led the Bar Council to accept the idea that prisoners should be defended by counsel. However, any idea of a free state aided scheme of legal aid was rejected by the Bar. After further lobbying, in 1903 the Poor Prisoners' Defence Act provided some help, but it was only for prisoners who disclosed their defences. The Court

of Criminal Appeal was established in 1907. As a result, the judges made rules that no prisoner should come before this Court without legal aid. But no changes in legal aid for trials were forthcoming.

Over the next few years, pressures for more substantial changes slowly mounted. For example in 1919, there were suggestions for a Public Defender scheme. In 1924, the Magistrates' Association expressed concern that people were being sent to prison without their defences being argued adequately before the courts. In response, the Finlay Committee was established.

This decided, despite all the evidence to the contrary, that there were few cases of miscarriage of justice and that legal aid was unnecessary for most summary proceedings in magistrates' courts. Nonetheless, the Committee recommended that magistrates be given power to grant legal aid both for summary trials and committal proceedings. These recommendations were adopted in the Poor Prisoners' Defence Act, 1930. No longer was disclosure of defence a prerequisite to a grant of aid. Not until 1933, however, was legal aid available for appeals from magistrates. The use of these new provisions was strictly limited; in 1935 legal aid was granted for only 335 summary trials while 750,000 were found guilty and 19,500 were sent to prison. Magistrates also granted legal aid in 1,576 committal hearings. In short, the practice of many courts hardly reflected the changes in the statute law.

civil law

On the civil side, the *in forma pauperis* procedure was slightly extended in 1883 and 1893 (for appeals). But since it required an affidavit relating to an applicant's means and a counsel's opinion regarding the reasonableness of the case, it was seldom used; many applicants could afford neither the affidavit nor the opinion. These factors meant that many of the new rights of

the poor could not be enforced in the courts as effectively as possible. By the turn of the century, charitable organisations began to increase pressure for improved civil legal aid, culminating in an important meeting in 1906 at which strong views were expressed on the need for legal aid. In addition "legal aid societies" had begun to spring up, offering legal aid on a commission—that is, a contingent fee—basis. The Law Society was anxious to eliminate these since it feared that "speculative firms of solicitors" used them as a cover for tout-ing. As a result, it was argued, solicitors lost business arising from personal injury claims because of clients' fears of high costs. Such price cutting, of course, could only operate in cases involving litigation which produced a financial return. But the existence of these societies was evidence of a need for legal services on behalf of people injured in accidents.

Divorce proceedings were the type of action that the relatively poor were most concerned about. The creation of a new Divorce Court did not lead to its immediate use by the poor. A number of committees deliberated on this issue between 1909 and 1913. Finally new Poor Persons' Rules (replacing the *in forma pauperis* procedure) were adopted, coming into effect in 1914. The Law Society used their introduction to persuade poor man's lawyer organisations (such as Toynbee Hall) to help in closing down the legal aid societies. The 1914-18 war brought increased demand for divorce. The Poor Persons' Rules did not operate well in response to this and it was recommended by the Lawrence Committee (1919) that more stringent tests for their operation should be applied. However, the government did take modest steps towards cheaper divorce costs by providing that ten assize towns outside London should hear divorce cases. Certain proceedings did still have to be heard in the Divorce Registry in London where London solicitors were needed to handle them; but since they were uneconomical, not enough solicitors were available.

In 1923, another Lawrence Committee was set up to take a broader look at the

Poor Persons' Rules. The Law Society proposed that it should take over the administration of the Rules, a proposal eventually adopted by the Committee. It was feared by the Committee that if the Law Society was not given this task, a department of State would have to do the job. The government accepted the Committee's view and the Law Society began to dispense legal aid in 1926. As Abel-Smith and Stevens note: "A professional association had been entrusted with the task of running a statutory public service. There was no precedent for such a step" (*op cit*).

legal advice

Meanwhile there was a dearth of legal advice facilities, which were supplied by charitable activity. Many advice centres came and went too quickly to be helpful and the number of agencies was insufficient to satisfy demand. Furthermore, most centres imposed strict limits on the work they did, confining themselves almost exclusively to advice. In 1928, the Finlay Committee reported, unhelpfully, that it was essential for both legal aid and advice to be kept on a voluntary basis and it merely recommended that the Bar Council and Law Society should help to set up more poor man's lawyer centres. Increasing demands for legal aid and advice eventually brought the scheme to the point of collapse. The Law Society was not able to get enough volunteers to help, lawyers were not paid and the government refused to provide finance for a suitor's fund. Legal aid was still not available in the county court which dealt with landlord and tenant, hire purchase and workmen's compensation cases. The trade unions and voluntary bodies tried to fill the gap but the scheme was brought to crisis point by the Matrimonial Causes Act, 1937, which widened the grounds for divorce. In 1938, the Welsh Law Societies simply refused to do more poor persons' work until solicitors were paid. In 1939, a committee under Mr Justice Hodson was established to enquire into the adequacy of legal services but abandoned at the outbreak of war. Much work still had to be done

before legal aid, as we now know it, could be introduced.

In addition to the unmet need for legal aid, it should be remembered that many of the new civil rights of the working class and the poor were not enforceable in the ordinary courts. Instead, an increasing range of tribunals were being specially constituted in which, it was argued, decisions could be reached more speedily and cheaply and where those responsible for deciding cases would have special expertise in the subject matter under dispute (such as in Rent Tribunals and the Unemployment Assistance Appeal Tribunal).

lessons from the past

The most important lesson to note is that the provision and operation of legal services for the poor are not the result of an ideal of justice for all. The development of legal services has almost invariably resulted from the pressures of powerful groups in society. Secondly, the Bar and the Law Society during the period under review played a dominant part in deciding what legal services were to be offered to the public. Despite pressure from the charitable organisations, it was the professional bodies which largely determined whether legal aid would be allowed to develop or not. Thirdly, the development of legal aid is only one way in which the English legal system changed during the period under review. Other changes in court structure, the jurisdiction and procedures of the courts and in the award and amount of legal costs and the creation of special tribunals also occurred as the result of political pressure.

Although many of these changes had no direct effect on the poor, such developments do indicate that, if the political voice of the poor is sufficiently strong, major changes in the types of forum which exist for the resolution of conflicts in society may come about. Proposals for the extension of legal aid and legal services are usually based on an assumption that, in our liberal democratic form

of society, our present court structure and legal system (developed initially for the propertied and rich) is fundamentally sound. Although this pamphlet concentrates on improvements in such services, these must be considered in conjunction with more substantial changes in the court structure. Otherwise there could arise a demand that informal tribunals replace courts as the forum for the resolution of conflicts.

2. legal aid and advice today

The story of the gradually widening scope of legal aid legislation has been often told (see, for example, Matthews and Oulton, *Legal Aid and Advice*, Butterworth, 1971 and Abel-Smith and Stevens, *op cit*). Although the Legal Aid Advice Act 1949 embodied most of the recommendations of the Rushcliffe Committee, it was only gradually brought into operation (Committee on Legal Aid and Advice in England and Wales, HMSO, 1945). In October 1950, legal aid became available for litigation in the Supreme Court; it was extended to cases in the County Court in 1956. In 1959, the original legal advice provisions were brought into operation. In 1960 it covered appeals to the House of Lords from the Court of Appeal or the Divisional Court. In 1961, 1965 and 1969 legal aid was gradually extended to certain proceedings in the magistrates courts and quarter sessions. In 1967 new legislation on legal aid in criminal cases was introduced. In 1972 new legislation to provide for legal advice and assistance was passed becoming operative in April 1973. All legal aid legislation was consolidated into the Legal Aid Act, 1974.

achievements of the legal aid scheme

1. *Extent of Use.* Not surprisingly, the growing scope of the legal aid legislation has been mirrored by increasing use of the scheme. For example, in the first full year of operation, some 38,000 legal aid certificates were issued; in the year 1974-1975, 195,708 certificates were issued (Law Society's 2nd and 25th Reports on Legal Aid, HMSO, 1953 and 1975). The old system of legal advice was never heavily used. 12,800 applicants used it in the first year of the scheme and 110,996 in 1972-73; however, the new £25 scheme was used in 253,172 cases in 1975-76 (Law Society's 23rd and 26th Reports, HMSO, 1974 and 1977).

As regards criminal legal aid, there were 234,871 applications for legal aid for proceedings in the magistrates courts in 1974, of which 215,113 were granted. A further 3,896 applied to the magistrates for legal aid to appeal to the Crown

Court; 3,594 were granted. 61,560 people who were committed to the Crown Court for trial and sentence applied to magistrates for criminal legal aid of whom 51,204 were successful. At the Crown Court, there were 9,596 applications for criminal legal aid for proceedings other than appeal. Only 40 were rejected. There were another 2,696 applications for appeal proceedings; 48 were rejected (*Criminal Statistics, England and Wales*, HMSO, 1974).

2. *Coverage of the Scheme.* The legal aid scheme now covers all the courts except the Coroner's Court and the Privy Council. (With the exception of the Land Tribunal, legal aid is also still not available for representation before tribunals.) Furthermore most categories of proceedings can be legally aided. Pressure is mounting to bring actions for defamation within the scope of the scheme (Seton Pollock, *Legal Aid: the First 25 Years*, Oyez, 1975).

3. *Contributions.* The majority of successful applicants for legal aid are not required to make any contribution of their own to the costs of their case. In 1974-75, 76,271 successful applicants for legal aid in courts other than magistrates courts paid no contribution; this number represents 58 per cent of the total of such assisted persons. For legal aid in magistrates courts, 51,519 (76 per cent) were required to make no contribution (Law Society's 25th Report). The extent of nil contributions under the legal advice and assistance scheme is not known. Of the £16,440,000 which it is estimated was paid out under criminal legal aid in 1975-76, only £200,000 is likely to be recovered by way of contributions.

4. *Lawyers are paid.* Applicants are free to choose any lawyer they wish from those who have indicated that they are prepared to do legal aid work. Apart from taking a 10 per cent reduction in their fees for legally aided cases in the High Court, lawyers are paid for their legal aid work. This indicates that the charitable basis on which legal work for the poor used to be conducted is largely removed. Indeed, considerable money is

now spent on legal aid. The Legal Aid fund paid out in 1974-75 £29,163,909, of which £4,833,864 went on administration, the rest to lawyers (*ibid*). A further £14,000,000 was likely to be spent on criminal legal aid by the Home Office in the same period (*Supply Estimates, 1975-76, HMSO, 1975*).

anxieties about legal aid

Despite the achievements of the legislation and the operation of the scheme, there has long been a widespread feeling that legal aid is not doing the job it ought to do. The Society of Labour Lawyers in *Justice for All (op cit)* was among the first to argue that all was not well and that there were considerable areas of unmet legal need. As a result of this pressure and the development of proposals by the Law Society and the Lord Chancellor's Advisory Committee on Legal Aid, the £25 scheme was introduced. However, official evidence shows that even after its introduction, the vast proportion of legal aid money is spent on matrimonial or other family law matters and criminal cases. A more radical re-appraisal is therefore increasingly called for. This demand is indicated in the following: (a) the formation of the Legal Action Group, a pressure group for the provision of legal services for the underprivileged; (b) the creation of Child Poverty Action Group's Legal Department (*inter alia*) to take test cases to the High Court. Other charities such as Shelter and the Public Health Advisory Service have also engaged in test case litigation; (c) the opening of a number of neighbourhood law centres; (d) the appointment by a few local authorities of a Community Lawyer; (e) the initiation of the first Duty Solicitor schemes; (f) the development of a vast range of legal advice centres; (g) the appointment to the Lord Chancellor's office of expert advisers to assist in the future planning of legal aid; (h) there are also now available the results of the first attempts at defining and quantifying the extent of unmet legal need (Simon Hillyard, *Law Society Gazette*, 3 June 1975; *Legal Advice Centres—An Explosion?* LAG;

Brian Abel-Smith, Michael Zander and Rosalind Brooke, *Legal Problems and the Citizen*, Heinemann, 1973).

This list represents a formidable range of activity. It shows that among concerned lawyers and the public in general there has been increased interest in the inadequacies of the legal aid system and the provision of legal services.

what is wrong with legal aid

1. *Remediable defects: legal aid, advice and assistance.* The following defects could largely be remedied if more government money was available: (a) the means test limits are too low; (b) contribution levels are too high; (c) the statutory charge is crippling for those who wish to bring small claims; (d) the "reasonableness" test (whereby legal aid will only be given for cases which seem to the legal aid committees to be "reasonable") is too restricted and leads to inconsistencies in the granting of legal aid; (e) costs for the successful opponents of a legally aided litigant are not awarded frequently enough; (f) there is still no legal aid for tribunal representation; (g) there may be practical difficulties in applying for legal aid. A similar range of points is also made in relation to the operation of the new Legal Advice and Assistance scheme. Again, criminal legal aid is subject to criticism as being granted too haphazardly and with contribution orders being erratically enforced. On these and other points the Law Society have put forward proposals for reform (reviewed by C. Morrisk and M. King, *LAG Bulletin*, 215, LAG, 1973).

2. *Structural defects.* Despite all these suggestions, there is increasing evidence that mere amendment of the present legal aid scheme will not result in a major change in the provision of legal services. The problem arises because there are a whole range of barriers which prevent people from obtaining legal services. These barriers arise both from potential clients and from the lawyers themselves.

The client's Barriers. (a) *Ignorance of legal rights:* the lack of awareness by

ordinary people of their legal rights in many areas of life; (b) *psychological barriers*: many people simply refuse to go to solicitors, for a number of reasons: they fear the possible costs involved; they are daunted by imposing offices; they feel that solicitors talk a different language or come from a different class; (c) *bureaucratic barriers*: particularly with civil legal aid, where applications have to be considered both by the legal aid authorities and by the Supplementary Benefits Commission (who carry out the legal aid means test), bureaucratic barriers can be set up preventing applicants for legal aid from actually getting it (Abel-Smith *et al*, *Legal Problems and the Citizen*; M. Zander, "The Unused Rent Acts", *New Society*, 12 September 1968 and M. Partington, *Recent Developments in Legal Services for the Poor*, Coventry CDP, 1975).

The lawyer's barriers. (a) *Physical barriers*: the siting of solicitors' firms is usually totally inimical to the development of a comprehensive legal service. Solicitors' offices tend to be concentrated very much in the centres of towns and cities, often a long way from where people with problems actually live; (b) *economic barriers*: solicitors in private practice find it impossible to carry on a practice based entirely on legal aid. Furthermore, private firms are unlikely to undertake legal aid work, unless they are organised to do a substantial amount of it; (c) *educational barriers*: most lawyers have not been educated in those areas of law which most affect ordinary people, such as landlord and tenant, social security; (d) *cultural barriers*: many lawyers simply do not understand the problems of the poor, why there is poverty and what might be done by using the law to remedy this state of affairs (K. Foster, "The Location of Solicitors", *Modern Law Review*, 36, 153; Lee Bridges *et al*, *Legal Services in Birmingham*, and Partington, "Teaching Welfare Law", *The Law Teacher*, November 1974).

Identification of this whole range of barriers faced by people who might want or could use legal services is an essential

prerequisite to any clear analysis of a programme of radical change. It is with these points in mind, therefore, that we turn to examining a number of experimental models which currently exist in this country for providing legal services and which lie outside the scope of the practising solicitor working from his private office.

3. other providers of legal services

A whole range of alternative legal services have sprung up in the last few years, often in a haphazard way, always as the result of local initiatives, as a substitute for or in addition to legal services provided by private practitioners. In a world of ever increasing complexity, such initiatives are a welcome, indeed inevitable, response to the difficulties in which ordinary people find themselves. The problem is that the range of such schemes is far from comprehensive.

We note here the main features of these services to emphasise the kind of activity that traditional legal aid is not able to sponsor. This will be an important basis for the case for the creation of a new Legal Services Scheme (see chapter six).

law centres

Taking its inspiration from experiments with neighbourhood law firms in the USA, the first law centre opened in North Kensington in 1971. Since then some 30 centres have been established, most of them around London. The essential feature of law centres is that they employ salaried lawyers who are able to give a service without the restraints imposed by the need of the private practitioner to make a profit. Centres are obliged to obtain waivers from certain of the Law Society's rules of practice, particularly those relating to the advertisement of their services. One feature of these waivers is that law centres undertake not to do much of the work traditionally done by private practitioners, in particular conveyancing, divorce and criminal work.

This leaves the centres to concentrate on those areas of law (such as landlord and tenant, housing, social security and rights relating to children) which have been neglected by private practitioners. In addition, a number of law centres have engaged in programmes of education; have taken up community issues (for instance in relation to a proposed compulsory purchase order, or campaigning for improvements in housing standards); have lobbied for measures of law reform,

and engaged in other activities which are not normally undertaken by lawyers in private practice. Their funds have come from a variety of sources: private charity, local and central government grants or the legal aid fund. One immediate problem is ensuring continuity of funds while retaining full independence of action, even against the bodies that have provided funds.

There have been a few complaints that the service provided by law centres is not always as good or as professional as it should be. But it should be remembered, firstly, that similar allegations are far more frequently made about private practitioners; secondly, many law centres are staffed by relatively young and inexperienced lawyers. The law centre movement has indicated that people will use them rather than private practitioners. Lawyers in the centres have a greater awareness of the problems of the poor and they have a commitment to solving their problems. Nevertheless, many private practitioners have given their services to citizen's advice bureaux, Labour Party advice centres and the like. The fact that solicitors do give their time voluntarily in this way shows their recognition of the inadequacy of the services they can offer the poor in their private practices.

duty solicitor schemes

Since May 1972, when the Bristol Duty Solicitor Scheme was started, about 80 local law societies have introduced schemes in various parts of the country. Duty Solicitor Schemes aim to ensure that private practitioners are available to give advice and representation to defendants in Magistrates' Courts. There have been attempts to organise similar schemes in the County Court but these have so far been less successful. A few experiments are also taking place with Juvenile Courts.

Defendants appearing in Magistrates' Courts can always arrange for representation through the ordinary means of access to solicitors. But this often does

not happen in cases where it is clearly needed. A defendant who has been arrested may not have time to arrange representation nor have contacts who can help. A solicitor who is able to take instructions from a client even on the day of the hearing will at least be able to ask the court for an adjournment where needed.

Duty Solicitor Schemes commonly provide a rota of local solicitors who undertake to attend court on a particular day. On arrival, the solicitor may be allowed to visit all defendants in custody and who do not already have solicitors. He may help defendants to apply for legal aid or appear for them to ask for bail. In other cases, the Duty Solicitor may conduct the defence there and then. There are many differences between the various schemes and some are limited in their scope. Access by the Duty Solicitor to defendants is a vital factor in the success of any scheme but in only a minority of schemes does he have direct access to them in the cells. In the others, reliance has to be placed on the police, jailors, the magistrates or court officials. In some cases, notices about the Scheme are placed in the cells and in others an explanatory leaflet is handed to each defendant.

Providing representation by such a scheme for defendants not in custody needs more elaborate arrangements and many of the schemes do not seek to provide such help. No doubt it is true that defendants have been able to make their own arrangements but many will not have done so. In most cases, court officials, ushers, probation officers or the Clerk will help to direct defendants in need of help to the Duty Solicitor. In Teesside, the court usher has the job of asking defendants arriving at court if they require a solicitor. In others, an usher or the Duty Solicitor himself wears a special identifying badge. An example of a well developed Scheme is at Hendon, where a back-up service for the Duty Solicitor is provided by the local Citizen's Advice Bureau. Two voluntary workers are on duty in the court lobby at a table above which hangs a notice advertising

the Scheme. The CAB workers help defendants to complete a green legal aid form or application for a criminal legal aid order. The CAB workers help the Duty Solicitor by arranging with court officials for the cases in different courts in which he is to appear to come on at different times and by giving advice to defendants on social and financial problems. Southampton also provides a very efficient scheme with a 24 hour emergency service.

Duty Solicitors generally rely on legal aid to pay for their services. The green form covers advice in most cases and also pays for appearances in court under section 2(4) of the Legal Aid Act 1974. Criminal legal aid orders will usually pay for representation but any work not covered by legal aid will necessarily be done by the Duty Solicitor free of charge.

The restriction on the scope of many of the schemes limit their usefulness. There is also a danger that a scheme which relies heavily on the support of court officials will lose credibility as a source of independent help by appearing to be part of the court machine. Another weakness of the scheme is the absence of quality control: any solicitor may join a Duty Solicitor Scheme whether or not he can claim expertise in magistrates' courts advocacy. Nonetheless, this is an important development which has revealed a gap in the provision of legal services.

information and advice services

Advice Services in Welfare Rights reviewed the existing range of advice services, containing papers on the work of CAB legal services in rural areas, housing aid centre work and specialist advice on welfare rights (Rosalind Brooke, ed, Fabian Society, 1976). In her chapter of this pamphlet, Audrey Harvey emphasised that there are still severe gaps in the provision of advice and assistance. Citizens Advice Bureaux are very unevenly funded; only a few local authorities have Welfare Rights Officers or housing aid centres; in particular, the housebound

and hospital in-patients have been neglected and training of advisers is inadequate.

Nonetheless, the value of this information to the debate on a new Legal Services Scheme is at least fourfold: (a) the number of advice services and the use made of them is an indication of an important need in our society to get free advice on matters affecting individuals and families; (b) services provided are intermittent and patchy; a national service should improve coverage and the quality of advice given; (c) many voluntary organisations are at present liable to financial collapse. A national service would have a more assured financial structure, and thus be better able to serve the disadvantaged in the community; (d) the variety of services available indicates that the public responds to a choice of places where they can go to seek help and advice. It will be an important factor for a new Legal Services Scheme to retain as much flexibility and variety as possible.

trade union legal services

Trade unions provide a most effective service in issues arising out of the employment situation. For example, their role as representatives before tribunals on industrial injury claims suggests that they have a dramatic effect in terms of getting decisions in favour of claimants. They also have great success in dealing with claims against employers, for example for negligence or for breaches of statutory duties. Representation is arranged by unions before Industrial Tribunals in claims for statutory redundancy pay and damages for unfair dismissal. This work is likely to expand under the Sex Discrimination, Equal Pay and Employment Protection Acts. In short, trade union legal services, though patchy, do contribute substantially to the well being of their members.

However, their very success gives rise to a political problem. On the one hand, trade unions are likely to wish to retain a monopoly over as much of this field as possible, in order that membership of

their union remains attractive. On the other hand, we feel that the interests of non-unionists, particularly the unemployed and the non-employed (such as housewives and pensioners) cannot be neglected. It is important that agreement be reached on this issue so that the interests of the community at large may be promoted, while membership of trade unions does not suffer. It may be that special treatment of employment issues will have to be devised, for example by the provision of block grants for trade union legal services.

pressure group legal departments

A number of pressure groups including Shelter, Child Poverty Action Group and the National Council for Civil Liberties have developed, as one aspect of their campaign work, legal departments geared to taking test-case litigation to the courts.

To some extent, such activity is merely a continuation of a tradition followed for years by other pressure groups. What is new is that cases of specific interest to the poor and disadvantaged are being taken up by these bodies. They represent part of a campaign to ensure that the rights of the poor are made clear and are enforced by those responsible for administering them. While the overall effects of such a strategy may not yet be evident, it is apparent that another gap in legal services provision has been exposed.

4. developments in legal services abroad

It is always hazardous to place too much reliance on developments abroad when putting forward proposals for developments in Britain. However there seems to be such complacency about our social organisation that lessons which might be learned from abroad are all too frequently rejected as irrelevant. There is worldwide interest in the subject of legal services which makes it hard for policy framers to be isolationist. Much of this interest is in developing legal aid on the lines that we have had in Britain for the last 25 years. For all its deficiencies, the British scheme is seen as a remarkable achievement, particularly in European countries and in the developing world. In the following, the situation in four countries where legal service developments have gone beyond the present position in Britain and which have helped in the framing of the pamphlet's proposals are described.

Australia

Prior to 1973, legal aid was almost entirely a matter for state control. The Federal Government was not involved either by way of direct participation or by the provision of financial grants to the states, apart from a limited legal aid scheme available to ex-servicemen. The deficiencies in the then existing state legal aid scheme were manifold, many being documented in the Victorian Fabian Society pamphlet *Legal Aid—A Proposed Plan*, 1973. A more comprehensive review of their legal aid is now available as a result of the Australian Government's Commission of Inquiry into Poverty (R. Sackville, *Legal Aid in Australia*, Australian Government Printing Service, 1975).

These studies showed, first, that schemes were distributed very unevenly throughout the country, being confined largely to the capital cities of each state. Second, the means tests were often of great severity, limiting the availability of legal aid. Third, there were severe limitations on the availability of legal aid for civil matters in the lower courts and for criminal appeals. Finally, there was no

adequate advice service, though excellent work was being done by bodies such as the Fitzroy Free Legal Aid Service.

Since 1970, there has been a ferment of activity to increase the range of the various legal aid schemes and to bring them at least up to the standard and extent of the British scheme and from 1973 the Federal Government began making grants to state legal aid schemes. But the most dramatic development, and of the greatest significance for us in Britain, was the establishment by the Federal Government in 1973 of the Australian Legal Aid Office (ALAO). This is staffed by salaried lawyers and gives free advice to anyone, without a means test. Only if further action is required is a "means and needs" test applied. In other words, if, according to the criteria laid down for the operation of the ALAO, a client cannot afford a private lawyer, he will receive assistance from ALAO. For the poor who come within the scope of this part of the scheme, legal services are also provided on a non-contributory basis. The major limitation on the scheme is that the client must come within the Federal Government's area of "special responsibility". In other words he must be a migrant, a returned serviceman, a student or be in receipt of a Commonwealth social security benefit (that is, an aged person's, invalid's, widow's, or deserted wife's pension or unemployment benefit). Matrimonial work is also covered. ALAO does not deal with conveyancing, probate or commercial work. Clients who are deemed too well-off have to use the state contributory Legal Aid schemes for civil matters or the Public Solicitor service (where available) in criminal matters. Apart from these limits, ALAO provides a comprehensive scheme of legal services.

As regards its administration, ALAO works through a large number of offices throughout Australia. 42 were set up in the first 18 months of the operation of ALAO employing some 250 lawyers with a similar number of non-legal staff. Litigation is usually referred to private solicitors who, in turn, brief barristers. The practitioners receive 90 per cent of

their normal fee, paid direct by ALAO. The clients pay nothing. Occasionally, for simple litigation, barristers are briefed directly by ALAO. Of the \$9 million budget provided by the Government for 1974-75, \$3 million of this was to be paid to private practitioners by ALAO. \$1.3 million was to be paid by the Federal Government to state legal aid schemes by way of grants and \$3 million was allocated for the Aboriginal Legal Aid offices. One disappointment is that ALAO has not yet pursued community legal issues. The essential feature of the ALAO schemes are: salaried lawyers; free legal advice for all; non-contributory legal services for those within the scheme.

From this experience, it can be seen that it is possible to establish legal services on a nationwide basis at a practical level of expenditure. There are also tactical lessons to be learned. There are criticisms that too many offices were opened too fast and that the quality of the lawyers working for ALAO was not as good as it might have been had more thought been given to the special training requirements of providing legal services for the poor. In addition, the presentation and implementation of the scheme aroused considerable professional opposition which, when the Australian Labour Party lost power in late 1975, caused severe doubts about the continuation of the scheme.

Although developments in legal services in the past have been too dependent on professional support, we recognise that they must be promoted with the co-operation of the legal profession. What is essential is that the aims of the general public are more clearly represented and noted than has hitherto been the case.

Canada

Developments in legal services have not taken place at the Federal level although the Federal Department of National Health and Welfare helped to encourage many of the initiatives which have taken place in the Provinces and which have varied considerably between Provinces.

Ontario. A legal aid scheme, very similar to the British one, was first introduced in 1966. This is administered on behalf of the Law Society of Upper Canada through 46 regional offices. Most initial decisions are taken by regional directors (largely part time private practitioners). Area legal aid committees, which have appellate and advisory functions, contain lay members, unlike British Legal Aid Committees.

On the criminal side, under Ontario Legal Aid, panels of duty counsel were established so that lawyers would always be on call in courts. It was intended that they should simply handle guilty pleas and similar preliminary matters but in areas with few lawyers, duty counsel have taken on more extensive matters. They have also been used in civil matters, particularly in the Provincial family courts. There have been serious problems with this: duty counsel are too often inexperienced; clients feel they do not take their task seriously; in smaller towns with few lawyers, severe conflicts of interest have arisen; the rules against taking cases beyond the preliminary stages may fit in with professional standards against "touting" but result in clients feeling they are being shunted around. In short, this good idea is accompanied by real problems not yet fully worked through.

Despite these developments, pressure grew for alternative delivery systems for legal services. For example, a number of university law schools established neighbourhood law centres. A report by the Law Society also accepted the need for store-front offices and an experiment on these lines was established in Hamilton, with a number of other experimental services elsewhere. These led to the appointment of a Task Force on Legal Aid. Their report (the Osler Report, 1975) agreed that the Law Society was not the best agency for developing legal services. They recommended the creation of a new Statutory Corporation on which the Law Society would have strong representation. In addition to responsibilities for legal aid, this would be responsible for delivery of legal serv-

VICES, including training and supervising para-professionals for certain types of court work, law clinics in areas of need, duty counsel (also in small claims courts and County Court cases involving landlord-tenant disputes), criminal legal aid (via private practitioners), using student legal aid societies and articulated students and paying them for work done, dealing with the financial eligibility of clients, funding class actions, advertising legal aid and establishing educational programmes for the public. Unfortunately, public expenditure cuts have so far delayed the adoption of these proposals.

Quebec. As early as 1951, the Quebec Bar established a legal assistance scheme. A non-profit corporation, the Legal Aid Bureau of the Bar of Montreal was set up in 1956. By 1965, their resources were badly over stretched. In 1969, the first Canadian legal clinic was established in Montreal. This was community controlled from the outset and not formally linked to a university although law students and professors assisted the full-time lawyers. Another development was the rise of *avocats populaires*—people's lawyers—who, as recipients of social security, advised on the grant or refusal of welfare benefits. By January 1972, there were about 300 in Montreal and throughout the province.

In 1973, new legal aid legislation was implemented. This recommended the establishment of law clinics to deliver legal services by means of a Legal Services Commission. After some 3½ years' work it had opened 119 offices, of which 86 were full time, 29 part time and 3 were local (subsidised) corporations; these were spread through 94 towns and cities. The offices employed 281 salaried lawyers, 389 other professionals and support staff and 11 students. In 1975-76, of 162,129 requests for legal aid, 139,732 were granted. Of these 22.4 per cent were entrusted to advocates in private practice. 1,948 of the 5,921 private practitioners in Quebec received fees from legal aid (a feature of the scheme is that clients have, at least theoretically, a free choice of private or salaried lawyer). The Legal Services Commission also actively

engaged in community education. It has its own research unit and has been involved in promoting law reform.

Saskatchewan. The Quebec model heavily influenced developments in Saskatchewan. Following the establishment of a Legal Aid Plan for criminal matters in 1967 and the creation of Saskatoon Legal Assistance Clinic, an official committee was set up in 1972 to undertake a wide ranging review of legal services. These were considered to be less expensive and more efficient than legal aid on the British model, particularly in a province whose population was extremely thinly spread. The Saskatchewan Legal Services Commission was established in 1974. The principle of "freedom of choice" has been retained in criminal cases to ensure continued Federal Government funding. All other legal services are provided by officials of the Commission, unless the case involves a conflict of interest.

Others. Other provinces, including British Columbia, Nova Scotia and Manitoba, are in the process of restructuring their provision of legal services. In particular, the British Columbia proposals discussed in an interim report of the Justice Development Commission have drawn heavily on ideas developed in Quebec and Saskatchewan. Manitoba, which had a Provincial legal aid scheme as early as 1937, has, since 1972, established a mixed system of British style legal aid and salaried lawyers. In Nova Scotia, a law clinic was set up by Dalhousie Law School and there is also a salaried lawyer service.

As with the Australian experience, certain lessons are relevant to Britain. Firstly, it is now widely accepted in Canada that a more effective way of developing legal services is by a Commission which is not subservient to the local Law Society. This is far from saying that Law Societies are not involved—it is essential for any practical developments to be dependent on the cooperation of the legal profession. But the Commission has a wider range of interests such as the educational and research functions of

the Quebec Commission. Secondly, all the Provinces described have tried to develop a range of legal service agencies, suitable for local needs. This flexibility should be a guide to any developments in Britain. Thirdly, many of the initiatives have involved broadening the scope of legal services. It is thought that a wider range of skills can be provided by a Commission than can be found in the practising solicitor's office. Fourthly, the role of university law schools has been very important and highly innovative; much more so than in Britain.

USA

Initiatives in the provision of legal services have been extremely influential to developments in Australia and Canada. The voluntary Neighbourhood Law Centre movement in Britain has also been inspired by American experience. Indeed, one of the main features of *Justice for All* was the appendix which described the activities of American Neighbourhood Law Firms (NLFs). Since that was written, developments in the USA have continued. In some respects, the general law and poverty programme has been a disappointment. For example, there is now a widespread feeling that one of the major strategies of NLFs in the early days (test case litigation which would lead to law reforms on behalf of the poor) has not been as effective as was expected (Scheingold, *Politics of Rights*, Yale UP, 1974). On the other hand, the establishment by Congress of a Federally funded Legal Services Corporation represents a significant recognition of the political importance of continuing to develop and experiment with different models of legal services for the poor. What follows does not purport to be a total review of current activity; only those initiatives of most interest here are mentioned.

Establishment of the Legal Services Corporation. This establishment is further recognition that developments in the legal services field are too important to be left exclusively to organs of the legal profession. Although the majority of

directors of the Corporation are lawyers, both practising and academic, neither they nor their executive staff would regard themselves as servants of the American Bar Association. Their work in stimulating initiatives in legal services ensures that their prime object is to devise the most suitable means for helping the public.

Models for Delivery of Legal Services.

The Corporation is charged with investigating alternative models for delivering legal services. Broadly, this study is intended to come to some conclusions about which systems give clients greatest satisfaction, after studying costs, comparing quality of service and examining different levels of client access to different models. Five models have been identified as worth investigating. The first two already exist; the last three are suggestions for future development and comparison with existing models: (a) *Staff Attorney Models.* This includes any system which relies on salaried staff to provide legal services to clients; (b) *Judicare Models.* This includes all methods (similar to British Legal Aid) whereby private practitioners are paid by the state for providing legal aid; (c) *Pre-Paid Models.* It is proposed to examine systems whereby poor clients are provided with legal services having become members of a legal insurance plan. Those eligible under the scheme will have had their monthly premiums paid for them by the Legal Services Corporation in advance; (d) *Voucher Models.* Another suggestion to be investigated is for vouchers to be provided for designated categories of the poor to purchase legal services in the open market; (e) *Contract Models.* Experiments will be examined whereby the Legal Services Corporation hires private law firms on special contracts to perform a particular set of services in a given area or for a particular group of people.

These broad headings do not give any detailed information about the massive range of other factors which are also being examined such as the use of paralegals, community education, special rural initiatives, modifications of staff pro-

grammes by introducing elements of *judicare*, telephone advice and referral services and the use of social workers in law offices. Many of the models may not ultimately be adopted or work particularly effectively. Indeed some of them are designed to try to protect private practitioners from what they see as encroachment by salaried law attorneys. What is clear is that there is a receptiveness to new suggestions and ideas which is worthy of emulation.

Public Interest Law Firms. In addition to the range of methods for the provision of legal assistance to individuals, a number of public interest law firms have been created to devote more general attention to the legal problems of the poor. The essential feature of public interest law firms is that they do not do individual case work but their efforts are aimed at investigating legal issues that relate solely to aspects of public interest. Many of the existing firms have been particularly active in environmental issues. The consumer campaigns of Ralph Nader are probably best known in Britain.

An interesting new model has been established in Madison, Wisconsin, called the Center for Public Representation. Here a full time lawyer has been in charge of a team consisting of a mix of social scientists, law students from the University of Wisconsin and full time lawyers on a range of public interest issues. For example, in the first year of its work, the Center petitioned state agencies for the creation of rules limiting the effects of criminal records of ex-offenders, initiated proceedings resulting in the Board of Health and Social Services setting up a citizen-dominated committee to consider the adoption of a Patients' Bill of Rights and conducted Wisconsin's first para-legal Training Programme.

Sweden

Legal aid in Sweden underwent considerable changes in 1973. Defence counsel, paid for out of public funds, can be appointed for all defendants in

criminal cases; public funds for other criminal defence costs are limited to low income defendants. Money advanced is repayable if the defendant is convicted, subject to a statutory discretion given to the court to mitigate the extent of reimbursement. Legal aid for civil cases is available for all individuals (including a deceased person's estate) but not normally for applicants needing help on business matters. Some classes of case (such as the preparation of tax returns) are excluded. The applicant must have a "definite interest" in having the case handled. The legal adviser (private lawyer or public law office) who is approached by a potential applicant decides this question; there is an appeal against refusal to the Public Legal Aid Board and thence to a Central Authority. Financial criteria are clearly laid down. There is a contribution scheme similar to that in England and Wales with a maximum point above which legal aid is not granted. This is based on the income of the applicant, as related to a cost-of-living indexed "base sum". No one gets absolutely free legal aid—all have to make at least a minimum contribution—but the limits are generous. In 1971 (had the programme then been operative), 45 per cent of the earning population would have been entitled to legal aid at the minimum contribution level; 85 per cent fell within the scope of the maximum contribution level and could therefore have got help if their legal expenses were great.

The legislation reflects the intention that access to legal services shall become a social right in Sweden. This is reinforced by the fact that legal aid is available not only through the private profession but also through public law offices. Benefits provided under the scheme include litigation costs and attorneys' fees. One exception is that legal aid cannot be used to pay the costs of the successful opponent (not legally aided). This is provided by private legal costs insurance schemes which cover 80-90 per cent of the population.

The scheme also provides for legal advice. This is an important new feature. Any

5. Short term proposals

person can get 20 to 25 minutes' advice for a fixed sum (which can be reduced or waived). There are only a few matters on which advice cannot be given (again, the preparation of tax returns). There is no means test, since all clients pay the "going rate" for advice, and there is no government subsidy. Clients may either go to private lawyers or public law offices. Legal aid is provided by private practising lawyers, most of whom take legal aid cases. They are responsible for filling in forms and generally running the scheme. They also screen applicants by determining whether they have a "definite interest" in the case. There are also a number of public law offices. At least one, with a minimum of three lawyers, exists in each of the 24 counties. They compete with private law offices and are self-financing (though of course much of their income will come from legal aid funds). They are intended to be an alternative access point to overcome some of the psychological barriers clients may have to private solicitors. An important feature of the new programme is the relationship between legal aid administration and general cost control of legal services. This is intended partially to socialise the legal profession. In this way it is hoped that legal aid recipients will not get a second class service, nor feel that that is what they are getting.

The above objectives have been the primary aim of the legal aid scheme in the current scheme. It is intended that the current scheme should be a model for a new scheme in the future. The current scheme is intended to be a model for a new scheme in the future. The current scheme is intended to be a model for a new scheme in the future.

Short term policy

In the short term this will be to provide a means of access to legal aid for a number of categories of cases. The current scheme is intended to be a model for a new scheme in the future. The current scheme is intended to be a model for a new scheme in the future. The current scheme is intended to be a model for a new scheme in the future.

1. To strengthen existing law centres and to provide new law centres. The current scheme is intended to be a model for a new scheme in the future. The current scheme is intended to be a model for a new scheme in the future. The current scheme is intended to be a model for a new scheme in the future.

5. short term proposals

The above chapters have traced the history of legal aid, explored difficulties in the current scheme, described experimental innovations and looked at a variety of developments abroad. All of these are essential to our case that the time has come for a re-appraisal of legal services in Britain and the need for a recognition that essential legal services should be provided for all, on a nationwide basis. Details of the proposals are set out in chapter six.

short term policy

In the short term (the next five to ten years), no major re-structuring of legal services is likely for a number of important reasons. Firstly, the appointment of the Royal Commission on Legal Services is likely to mean that no major reform will be carried out for the time being. Secondly, the already published limits on public expenditure for legal aid (only a 25 per cent increase over the next five years) is a restraint that cannot be ignored. What is important is that nothing be done that will act as a long term deterrent to the implementation of the type of scheme outlined in the next chapter and that the time be used to continue experimenting with the provision of legal services so that when proposals for a new Legal Services Scheme come to fruition, they can be adapted to the most efficient use of resources which give the most effective service to the public. The major features of this short term policy are ten fold.

1. *To strengthen existing law centres and to increase their number.* Law centres have established themselves as an essential part of the legal services system. There should be many more centres both in urban and rural areas. As far as possible, there should be a national planned expansion of them with improved coordination and collaboration between centres. On balance, central funding for law centres is considered desirable with local authorities funding their own centres where central funds are not forthcoming. Central funding seems to offer better protection against threats to the indepen-

dence of the lawyers at the centres. The strengthening of law centres does not pose a threat to private practitioners. Experience shows that the two complement each other. The Law Society's evidence to the Royal Commission on Legal Services recognises that many of those who visit centres "are unlikely to have been to a solicitor before". It also states that "law centres are making a large number of referrals to solicitors" and that "most law centre reports provide substantial evidence of this". There was also "considerable evidence to suggest that solicitors have opened offices in the vicinity of centres since those centres were established". At least one solicitor's office has been established in each case in the vicinity of the North Kensington, Manchester and West Hampstead centres while no less than four offices each have been established near the Camden and Islington centres (Law Society's Evidence to the Royal Commission Memorandum number 3). These quotations indicate that the Law Society's fears of "poaching" of remunerative work by law centres are unwarranted.

2. *To raise the means test limits for legal aid.* It has been calculated that the proportion of the population eligible for legal aid has been dramatically reduced through the failure of the means test limits to keep abreast of inflation. The 26th Annual Report of the Lord Chancellor's Legal Aid Advisory Committee states that the legal aid scheme "has become more and more limited and now only covers the legal problems of those with little or no income". This is one of the major problems of the legal aid scheme and demands urgent attention. In spite of the economic constraints, further funds should be made available to remedy this serious defect in the scheme and the other defects described as remediable in chapter two.

3. *To make available some legal services without a means test.* Some legal services are so vital that they should be made available without regard to means. Such services should be available from private practitioners or law centres without charge. This scheme, described more fully in chapter six, should be introduced

gradually and experimentally and be made subject to careful controls so that its potential cost may be limited. For instance, the existing criminal legal aid scheme in the Crown Courts would be only slightly affected if the means test and contribution element were entirely eliminated; the administrative cost probably exceeds the amounts recovered. It would also be a valuable addition to legal services if a client could obtain diagnostic advice without charge or at a subsidised flat rate cost. Further, all members of the community should be able to get the help of a lawyer to save themselves from the loss of a job or of their home.

4. *To extend legal aid to tribunals.* It is now widely agreed that there is need for more representation for people appearing before tribunals. The Lord Chancellor's Advisory Committee's recommendation that the £25 scheme be extended to cover such representation subject to prior certification that the case requires the assistance of a lawyer should be implemented. Lay agencies (such as CAB) and specialist group offering help to people before tribunals should be assisted by additional funds.

5. *To fund salaried lawyers in Citizen Advice Bureaux and other agencies.* In recent years there has been an increasing number of salaried lawyers employed in the sort of information and advice agencies referred to in chapter three. This is a valuable development which should be strengthened by financial support.

6. *To increase the number of Duty Solicitor Schemes in Magistrates' Courts.* These schemes are described in chapter three. They should be extended to as many courts as possible.

7. *To extend legal aid to defamation actions,* subject to the usual controls, as recommended by the Lord Chancellor's Advisory Committee.

8. *To encourage the establishment of public interest law firms,* perhaps attached to universities or polytechnic law depart-

ments (as in the case of the United States model described in chapter four).

9. *To continue experiments with new types of forum and procedures for the settlement of disputes* (such as small claims).

10. *To improve the provision of legal services to prisoners* in accordance with the recommendations of the Howard League for Penal Reform.

6. a new legal services scheme

The earlier chapters have looked at the legal aid scheme in Britain and its defects and examined current developments in legal services, both at home and abroad. In the long term, the satisfactory development of legal services, particularly for the poor and under-privileged, can only take place in the light of a radical review of the aims and principles of the provision of legal services.

This chapter sets out what these aims and principles ought to be if we were not limited by short term economic problems, for the proposals would not be economically practicable in the immediate future. The proposals are embodied in a plan entitled "A New Legal Services Scheme". The scheme will evolve over a period of years during which the profession can be reorganised. But for it to evolve, it is essential to know what target we are aiming at.

The proposals do not include the reform of the substantive law or legal procedure, both of which are in urgent need of reform, particularly in the areas of "basic legal rights". The law's operation is uneven and unfair. Reforms of the courts, tribunals and of the substantive law are essential before we can claim that there is any kind of equal justice. Nevertheless, it is assumed for the purposes of these proposals that the law and the courts will remain broadly as they are now. Only by imagining how any scheme could deal with current problems can its feasibility be judged; it is anyway Utopian to assume that current problems will have disappeared by the time that these "long term" proposals come into effect.

principles behind a new legal services scheme

There has been no official review of the objectives of legal aid since the Rushcliffe Report in 1945. There is now an urgent need for such review. What follows is a statement of the principles which should be the foundation for any scheme for public support of legal services. They would then become a goal, a standard by which current changes and

developments could be measured. At the moment a pragmatic "step by step" approach seems to be favoured in the administration of legal services but it is hard to discern any underlying aims. Perhaps in no other area of social policy has there been so little attempt to examine basic principles, aims and assumptions.

The principles on which we shall base our case can be summarised as follows: (a) there are certain "basic legal rights" which should be protected at public expense; (b) these rights should be enforced either through public enforcement agencies or, if these are insufficient, through private law remedies; (c) an individual (or groups of individuals) should have access to the courts for such remedies and, where the assistance of lawyers is needed, they should be provided at public expense; (d) there should be no means test and no cost related contribution.

The issues which underlie this summary are now considered in more detail. Firstly, it is argued that "basic legal rights" relate to the right to security in the home and in employment, the right to a minimum income and the right to liberty and freedom from physical attack or injury. The scope of these rights is further spelled out below (page 22). Not all potential litigation is included within the scope of "basic legal rights".

Secondly, in the case of these basic rights, if they are guaranteed by law then effective means for enforcing them should also be provided. This does not necessarily mean that the services of lawyers will always be necessary as other machinery for enforcement may be more effective. But where they are needed, they should be paid for by the community as a whole.

Thirdly, a new Legal Services Scheme should be able to satisfy basic legal needs for the whole population without a means test. Beveridge in his war time Report on social insurance argued that the state should guarantee a basic right to income in a universal scheme of social security. He believed that there should be no

means test in the major areas of risk. We share that approach and consider that the state should provide for the enforcement of "basic legal rights". The individual may then wish to supplement that support by private insurance against particular risks or liabilities which fall outside the scope of the basic service. The basis for public subsidy should not lie in any distinction between the poor and the rest of the population, but in the relative social importance of the rights in question. The poor do face particular urgent social problems which may justify extra help. But it is more logical to provide help for particular types of problem rather than provide blanket help for the poor. Accordingly, the proposals do not involve differentiation between the poor and others and do not provide for a means test. The "basic legal rights" identified above justify public subsidy for everyone; other rights do not justify subsidy at all.

Fourthly, as there is no place for the means test, there is no place for contributions. At present, legally aided litigants are required to pay contributions related to their means and to the cost of the service. Fixed contributions are difficult to justify in legal cases where the prediction of the final cost is almost impossible. Costs lie outside the direct control of the litigant as many matters (apart from his wishes) may affect them. The impossibility of predicting or controlling the costs of the service is generally cited as one of the justifications for subsidised medical services. In addition, free provision without means test for the major areas of liability is a principle accepted in other areas of social provision: education, social services and law enforcement through the police and other agencies. The same principle should apply in the enforcement of "basic legal rights".

The state does already assume wide responsibilities for the administration of justice and law enforcement. For example, the provision of the courts of civil and criminal justice has always been the responsibility of the state. In this country, the criminal courts are paid for by the state (although fees are charged for the

use of the civil courts). Apart from the free provision of the criminal courts, the state also provides out of public funds the services of the police to enforce the criminal law. Society also spends money to ensure the enforcement of other rights: Wages Inspectors, Factory Inspectors, District Surveyors, Trading Standards Officers, Industrial Conciliation Officers and Welfare Rights Officers are all employed in services which give effect to individual rights. These officers provide the machinery of enforcement of particular codes of conduct; Parliament has realised that, without these officials, the laws in which these codes of conduct are enacted would be ineffective. Society apparently takes the view that public funds should be spent to ensure effective enforcement. But in other areas of equal social concern, the initiative is left to the individual and he receives inadequate help from society in attempting to secure his rights.

The principle of public subsidy to lawyers for the poor has been accepted in the legal aid scheme, acknowledging that a poor man should not be prevented from exercising his rights for lack of money. Unless public provision were made, the rights of the poor would be meaningless. However, this principle is based on the assumption that in ordinary cases it is the individual who should pay for his legal expenses. Thus the subsidy only goes to the poor since the rest of the population can, and should, pay for their own legal services. Hitherto all legal services have been considered luxuries. All litigation has been thought inherently undesirable, perhaps to be discouraged, and certainly not to be subsidised. It is this conception that this pamphlet seeks to challenge.

Where "basic legal rights" are concerned, effective enforcement must include the provision of a free non-means tested legal service. The present patchwork of legal aid and other legal services is not adequate to fulfil the demands of members of a complex modern society.

The following section describes the main features of a New Legal Services Scheme. Such a scheme should consist of four

main elements: (a) a non-means tested service for "basic legal rights"; (b) a residual means tested legal aid scheme in cases not within the scope of "basic legal rights"; (c) the creation of a special fund to finance litigation in certain appeals and cases of general public concern; (d) legal advice.

non-means tested service for basic legal rights

There are two general situations in which a non-means tested service should be provided.

1. *Emergency Services.* The services of a lawyer or (if appropriate) a trained para-legal adviser should be available to anyone as of right to assist in the emergency aspects of the following categories of cases: (a) in criminal cases, assistance to suspects during police investigation up until first appearance at court or prior to release from custody; (b) in children's cases, advice and representation in any proceedings relating to their removal from lawful custody or their protection from ill treatment; (c) in domestic cases, advice and representation in proceedings to obtain protection from assault, molestation or interference; (d) in housing cases, representation in proceedings for harassment in or illegal eviction from residential accommodation; (e) in immigration matters, assistance in cases of refusal of entry or threatened deportation; (f) in any other case falling within the scope of the general scheme (described below) where the circumstances warrant proceedings for immediate relief (such as *ex parte* proceedings, interim injunctions, *habeas corpus*).

2. *Basic Legal Rights to be enforced by the New Legal Services Scheme.* In the following categories of case, legal services would normally be offered straight away without formalities and without limitations, subject only to the legal adviser's own view that it was reasonable to provide such services: (a) criminal cases where liberty, livelihood or personal reputation is in jeopardy; all proceedings on indictment; (b) in housing cases, disputes concerning the rent or mortgage

repayments of residential property, liability for repair and security of tenure for tenants; help to resident landlords on rent limits, repair liability and recovery of possession; claims against third parties involving the habitability of the home; (c) in social security cases, all disputed claims and appeals; (d) in domestic and family cases, help for any party in custody or care proceedings, and maintenance proceedings; (e) in employment cases, help relating to employment protection rights; (f) in cases of bodily injury or assault, claims for compensation; (g) in immigration matters relating to the right of entry, residence and work.

In these categories of case, the New Legal Services Scheme could be open to all individuals as of right for *essential* help in the enforcement of basic legal rights. Even in these areas it might be possible to pursue cases to unreasonable extremes. Thus a check will have to be maintained to prevent abuse. For example, a lawyer could decline to take on a case if he thought that there was no reasonable prospect of success or advantage. In such a case, the client would have a right of appeal to a "review panel" (see below). The lawyer could also refer a case to the review panel at any time as could an opposing party.

The free enforcement of "basic legal rights" would only be open to individuals, not commercial concerns. (The suggestion that, in certain circumstances, interest groups might receive financial assistance to pursue cases of public importance is considered below.)

a residual means tested legal aid scheme

The present legal aid schemes currently provide services in a number of areas where the new scheme would not offer anything. So as not to remove acquired rights and so as to preserve preferential treatment for poorer people, means tested legal aid should continue to be available in cases in which the non-means tested service does not operate. An analysis of the scope of "basic legal rights" shows that it excludes most matters where

the remedies sought relate to financial gain. Most cases in the area of debt or contract, or claims in tort for damage to property or nuisance would therefore still fall under the existing legal aid schemes and not under the proposed system of free legal services.

a special fund for certain appeals and special cases

Special arrangements would have to be made for the following types of cases: (a) all proceedings before the Court of Appeal or the House of Lords; (b) all proceedings before any public inquiry or tribunal or committee of inquiry; (c) any proceedings which raise an issue of general legal or public importance. In such cases legal aid should not be granted unless sanctioned by the "review panel".

There could initially be a limited sum which the review panel would have to allocate between the various types of case. One particular type of legal service that would receive assistance under this head (which is totally ignored under existing legal aid arrangements) is advice and representation for various community and other voluntary organisations which may wish to take up some community issues, for example in relation to a planning issue or a proposal for slum clearance.

legal advice

Advice on all matters falling within the scope of the free scheme would be given without limitation. On other matters, initial "diagnostic" advice would be given for a limited period. It might be thought that this would open the flood gates to claims for advice on all sorts of business matters for which people are currently quite prepared to pay. On the whole the danger does not appear great; the diagnostic interview will only be available to individuals and only once in relation to any particular matter. In theory, there existed a similar scheme in the Law Society's Voluntary £1 scheme, operative before the introduction of the statutory legal advice scheme. This was

not abused and indeed it is now argued, particularly by CAB, that it was a very valuable scheme.

administration: a legal services commission

Since the proposed New Legal Services Scheme involves the introduction of fundamentally new principles in the the administration of legal services, it will need a new agency to administer it.

The new agency should be able to control, subject to the Treasury, all the public money to be spent on legal services, and it will have close ties with other organisations involved in the solution of the social problems within the scope of the scheme. For example, in the housing field, there should be close contacts with local authorities, housing groups, the rent officer service and public health inspectors.

We are strongly of the opinion that a Legal Services Commission is needed on the lines already suggested by the Legal Action Group (*Legal Services for the Future* and their evidence to the Royal Commission on Legal Services). This should be an independent corporation funded by the government and accountable, through a minister, to parliament.

It should have a broadly based, mainly lay membership. The Commission would take over all the functions of the Law Society and of the courts in relation to legal aid. It would need wide and flexible powers to lay down and revise guidelines to the review panels and to lawyers. The particular model of administrative authority is less important than the aims which lie behind it. What is needed is accountability, flexibility and single-mindedness in pursuit of the ends outlined above.

legal service review panels

1. *Preventing Abuse of the Scheme.* It is fundamental to these proposals that lawyers themselves should be given greater freedom than is at present possible

with the legal aid scheme to decide for themselves whether a particular case falls within the scope of the free service provided by the New Legal Services Scheme.

This structure may create possible scope for abuse of the scheme. A detailed review of legal services at a local level should thus be entrusted to independent "review panels". Such an objective independent body is needed for three reasons: first, to guard against abuse, either by clients or lawyers; second, to provide a guarantee in cases of doubt for lawyers who would otherwise be left with uncomfortable decisions to take; and third, to provide an appeal for a client to whom service is refused. The role of the Review Panel would be similar to that of the legal aid committees of the Law Society except that, since there would be less need for prior certification, there should be proportionately less call on their services.

In the case of services for the enforcement of "basic legal rights", the Review Panel should have overall responsibility for preventing abuse and should be able to hear appeals from dissatisfied clients. Lawyers who felt their clients were demanding unreasonable legal services would also be able to refer cases to the Panel for guidance. The Review Panel would perform a similar controlling role in relation to legal advice.

In the case of "residual legal aid", special sub-committees of the Review Panel should take over the functions currently performed by local and area legal aid committees.

2. Promotional Activity. In cases financed by the Special Fund, the Review Panel would have a very active role to play in deciding how the (probably) limited funds available were to be utilised. Here, a special responsibility would rest on the shoulders of the Panel to identify and support special "public interest" cases in which issues of legal principle, particularly of relevance to the poor, could be tested in the courts. In this regard the Review Panel should encourage the development of the kind

of work undertaken by Public Interest Law Firms in the United States, issues at present excluded from legal aid.

the actual provision of legal services

It will be clear from the foregoing discussion that we regard the new legal services as part of a social provision designed to tackle social problems. Particularly for the enforcement of "basic legal rights", it is undesirable that the main provision of legal services should be based on a commercial, fee paying relationship between lawyer and client. In these circumstances it will be far more practical to provide lawyers on a salaried basis, rather than by paying individual fees on a case-by-case basis to lawyers in private practice. In principle, it should make no difference to the client whether the service is provided by a salaried lawyer or by a private lawyer if the client is no longer responsible for the payment of fees. The embryonic legal service currently provided by law centres should thus be developed and encouraged. For the enforcement of "basic legal rights", this public salaried sector of the legal profession will probably become the dominant sector. This likely trend provokes three questions: (a) what will be the role of the private profession in these cases? (b) how will such a trend affect the independence of the profession? (c) will the client have freedom of choice?

The Role of the Private Profession. It is clearly envisaged that private practice will continue to play a vital role, even in the areas of law for which free service will operate. For example, while the New Legal Services Scheme is developing and the salaried sector is being built up, private practitioners will clearly continue to act as providers of essential legal services. Even when the New Legal Services Scheme is fully developed, there is no reason why a salaried service and private practice should not co-exist. We have argued that flexibility must be a keynote for the Legal Services Commission's administration of the New Legal Services Scheme. Thus, in some geographical areas, the setting up of law centres

will be needed; in some rural areas a lawyer could travel on a circuit; in others a private practitioner could be paid a retainer to deal with the service on a part time basis; in other areas, private law firms may wish to accept work on a fee basis. Such cooperation will be needed if the client is to have freedom of choice in selection of a lawyer.

Independence. It is sometimes argued that the massive development of a salaried legal service will lead to a reduction in the independence of the profession. We think these fears are unfounded and that our proposals will give increased independence to the profession for the following reasons: firstly, there will be a wide range of rights which lawyers will have a duty to enforce on behalf of clients, whether against other private individuals, corporations or government departments. The present "independence" of the profession has merely resulted in many of these basic rights of the public going by default; secondly, the proposed Legal Services Commission is intended to act as a buffer between the government and the profession. At present no such buffer exists; thirdly, the creation of a New Legal Services Scheme and the adoption of a range of "basic legal rights" will mean much greater recognition by the public of how the law and lawyers are intended to help them. Thus any governmental interference with those rights will be made more difficult since such action would be clearly seen as meddling with a publicly defined set of rights.

Choice of Lawyer. Since it is not envisaged the salaried sector of the legal profession would be the sole provider of legal services, the right of clients to choose whether to use the salaried sector or go to a private lawyer would remain. Furthermore, the client should be able to change his lawyer if dissatisfied, just as he can change his doctor in the NHS.

some specific problems

Settlement of Disputes. At the moment, much encouragement is rightly given to

the settlement of disputes out of court. Some of this stems from proper efforts to avoid acrimonious litigation and the waste of public funds; some of it stems from the rules about costs. Costs are used as an inducement to settle and as a disciplinary measure during the conduct of proceedings. It may be said that the provision of free services will remove the incentive for people to settle their cases, thus leading to waste of public funds. Under the New Legal Services Scheme there should continue to be incentives for the settlement of disputes short of full legal entitlement. This is not in itself undesirable; indeed the negotiation of the compromise of disputes is one of the major skills of lawyers. However, such incentives should spring from the administrative controls of the Review Panel and their guidelines for the conduct of legal services cases rather than through the mechanisms of penalising clients in costs.

Costs. The present legal aid scheme lays down the principle that in civil cases no order for costs can normally be made against a legally aided litigant unless a determination is made of his means and of his conduct in relation to the case. This principle should be applied in the new service. Further, the rules which entitle successful unaided litigants to recover their costs from the Legal Aid Fund should be extended to the new scheme. Where a point of public importance is raised, costs should normally be borne by the public. In criminal cases, the courts should retain their present discretion to order convicted criminals to make a contribution towards the costs of the prosecution. In cases where property or money is involved, the court should have the discretion whether a charge should be imposed on the property or damages recovered and in what proportion—taking into account the conduct of the parties.

The experience of the legal aid scheme and of law centres is that the provision of free services does not lead to abuse, either by lawyers or by clients. The sanctions as to costs, together with the threat of withdrawal of aid if cases are

continued unreasonably, are sufficient to provide an incentive for litigants to arrive at a reasonable settlement.

the new scheme from the client's viewpoint

Much of this pamphlet may be regarded as controversial. Many cherished and strongly held attitudes towards legal services and legal aid have been questioned. A final note, therefore, should be added.

What we have tried to devise is a service which will be of value to ordinary people confronted with the difficulties of everyday life. The consumer of legal services has been the primary focus of our attention, not the interests of lawyers.

Looking at the proposal from the client's viewpoint, one sees a person with, for example, a housing problem, making his way to his nearest law centre or other advertised outlet of the scheme. In his area, it may be a private practitioner or he may have a choice between a number of law centres and private practitioners. He may first go to a housing advice centre, where some of the scheme's lawyers are permanently based. In any event, provided the problem concerns the home in which he lives, he will receive what advice he needs. If he wishes to institute proceedings he may do so subject to the lawyer's right to decline to act for him if he considers the matter has no merit, in which case the client has a right of appeal to the Review Panel. If the lawyer is doubtful about the case, he may refer it to the Review Panel before taking proceedings. If, however, the circumstances are urgent and there is the possibility of harassment or illegal eviction, then the lawyer may act at once if he considers the case still reasonable. At trial, if the client loses his case, although he has initiated and conducted the proceedings reasonably, he will not normally have an order for costs made against him. If he had turned down a reasonable offer of settlement, then he may well have to suffer some financial penalty. If he wins his case, he will not need an order for costs in his favour, since his costs are already being met. An

order would only be made in favour of the Commission, and this again on semi-punitive grounds, if the defendant had unreasonably defended the proceedings and had failed to make any offer of settlement.

Provision of the kinds of service outlined in the above example are what we regard as the basic needs for a complex society. Only by the adoption of such root and branch reforms do we think that the next steps can be taken towards providing Justice for All.

appendix : costing a national legal service

Chapter six set out the main elements in the proposed National Legal Service. Clearly it is the proposal for a non-means tested service which would have the greatest effect financially, and therefore needs the most detailed examination. There are a number of factors the effect of which is difficult to predict: (a) the general increase in litigation that would result from the availability of a free service; (b) what would be the take-up rate of the new service; (c) the effect on other government expenditure of the availability of a free legal service.

As to (a) we have assumed that there will be no great increase in litigation (except in the field of tribunals). But we have budgeted for a high take-up rate. In the field of tribunals, we have specifically provided for increased government expenditure as a result of increased appeals. There is a dearth of statistics on many of the subjects involved. Any attempt therefore to be accurate in these costings will be only a rough and ready one. However it should give some guide to the rough level of expenditure that would be involved.

COST OF BASIC LEGAL RIGHTS AND OF LEGAL ADVICE

	£ million
family matters	42.4
tribunal cases	24.8
injuries cases	35.0
criminal cases	41.0
housing cases	16.0
other civil cases	10.0
advice (non family)	10.0
total	approx 180.0

Cost of Residual Legal Aid (means tested). We estimate that this will be fairly small. Of the £26.9 million expenditure on civil legal cases, £19 million was spent on matrimonial cases. The bulk of the rest is thought to be spent on injury cases. We assume that the residual legal aid scheme in civil cases will not cost more than £3 million per year.

Cost of the Special Fund for certain appeals and cases of general concern. We suggest that this ought to commence with

a block fund of a limited size. £15 million would be a reasonable allowance.

TOTAL COST OF PROPOSALS

	£ million
basic legal rights and legal advice	180.0
residual legal aid	3.0
special fund	15.0
total	198.0
current legal aid bill	84.3

Matrimonial and family area. We have provided for free advice to those with matrimonial problems involved in family breakdown. It is extremely difficult to estimate the numbers of people who have problems of this kind. There were 140,000 divorce petitions filed in 1975. This is only a limited indication of the extent of family break-up since there are many who do not divorce, but have legal problems. Nevertheless it shows that there may be at least 280,000 people who may be in this situation. In 1975/6 63,600 certificates were granted for proceedings in magistrates courts. It is thought that the great majority of those who wish to proceed in the magistrates courts are eligible for legal aid. We may assume that there were at least 100,000 people involved in such proceedings, evidencing the existence of matrimonial/family breakdown situations for such people. On the assumption that there are half as many cases again which are not legally aided because of ineligibility or low take-up, we may put the figure at a total of 150,000 persons in this area who need advice. We further estimate that another 200,000 people will be in need of advice only.

TOTALS NEEDING ADVICE ON MATRIMONIAL/FAMILY BREAKDOWN

divorcing	280,000
proceedings in magistrates courts	150,000
advice only	200,000
total	630,000
estimated cost	£16,200,000

note: this assumes £40 on advice per person divorcing and £20 for those not divorcing.

TOTAL COSTS OF ALL FAMILY MATTERS

	£
total advice	16,200,000
child custody advice	3,000,000
child custody disputes	
in county courts	2,800,000
in magistrates courts	5,460,000
maintenance cases	
in county courts	5,200,000
in magistrates courts	6,000,000
emergency injunctive relief	3,825,000
total	42,485,000

Tribunal cases. In 1975, approximately 140,000 cases came before various tribunals. The effect of providing free advice and assistance would be to increase the use of some of these tribunals considerably. On the assumption of a 50 per cent increase, there would be 210,000 cases. Allowing £60 per case and a 100 per cent take-up, representation in these cases would cost £12,600,000.

TOTAL COST OF PROVIDING LEGAL ASSISTANCE IN TRIBUNALS

	£
cost of representing appellants	12,600,000
increased cost of running tribunals	5,900,000
increased cost of presenting cases	6,300,000
total	24,800,000

Injuries. The total number of those killed or significantly injured at work or on the road each year is about 330,000. It is extremely difficult to estimate the cost of fighting these cases since there is a high, but unknown, rate of cost recovery from insured defendants. On the assumption that a net cost of £100 might be incurred in each case the cost would be £33 million. There are also 20,000 applications per year to the Criminal Injuries Compensation Board. There is no recovery in these cases, but they are procedurally simpler and often not disputed. At a similar costing (£100), the cost of these would be about £2 million.

CRIMINAL CASES

	£
magistrates courts	18,500,000
crown and higher courts	22,000,000
total	40,500,000

note: the proposals call for little change in the current scheme and these estimates are therefore the same as at present.

Care proceedings. Assuming a further 5,000 cases will require representation at a cost of £100 each, we estimate an additional cost of £500,000.

Housing cases. Security of tenure: £8 million; repairs: £8 million.

Other civil claims and actions. As we have defined the scheme there would not be many of these cases. Allowing a global sum of £10 million might be reasonable.

the complete figures

The full figures and workings behind the above figures are available on request from the Secretary, Fabian Society, 11 Dartmouth Street, London SW1.

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legal services for all

The Society of Labour Lawyers' Evidence to the Royal Commission on Legal Services argues that we currently fail to ensure everyone can exercise their basic legal rights. Our legal aid and advice systems leave yawning gaps so that many entitlements exist more in theory than in practice. The pamphlet traces the historical development of legal services in Britain and points to other countries' experience where provision is more accessible and flexible than here. The lessons both from our history and from foreign experience are brought out to indicate how our services can be improved. The pamphlet stresses that a radical change in the structure of our legal services is needed, with the implementation of "a new legal services scheme". This is based on the assumptions that there are certain basic legal rights which should be protected at public expense; that these rights should be enforced through public enforcement agencies, and that individuals should have access to the courts for such remedies, with lawyers, if needed, provided at public expense. The authors spell out how such a scheme could work, indicating possible problems and ways of resolving these and they define the basic legal rights which must be guaranteed for all. Many of the changes could not be implemented immediately, but shorter term changes are recommended to correct the worst defects in the present system and to help move towards a new legal services scheme—a scheme which would help ensure Justice for All.

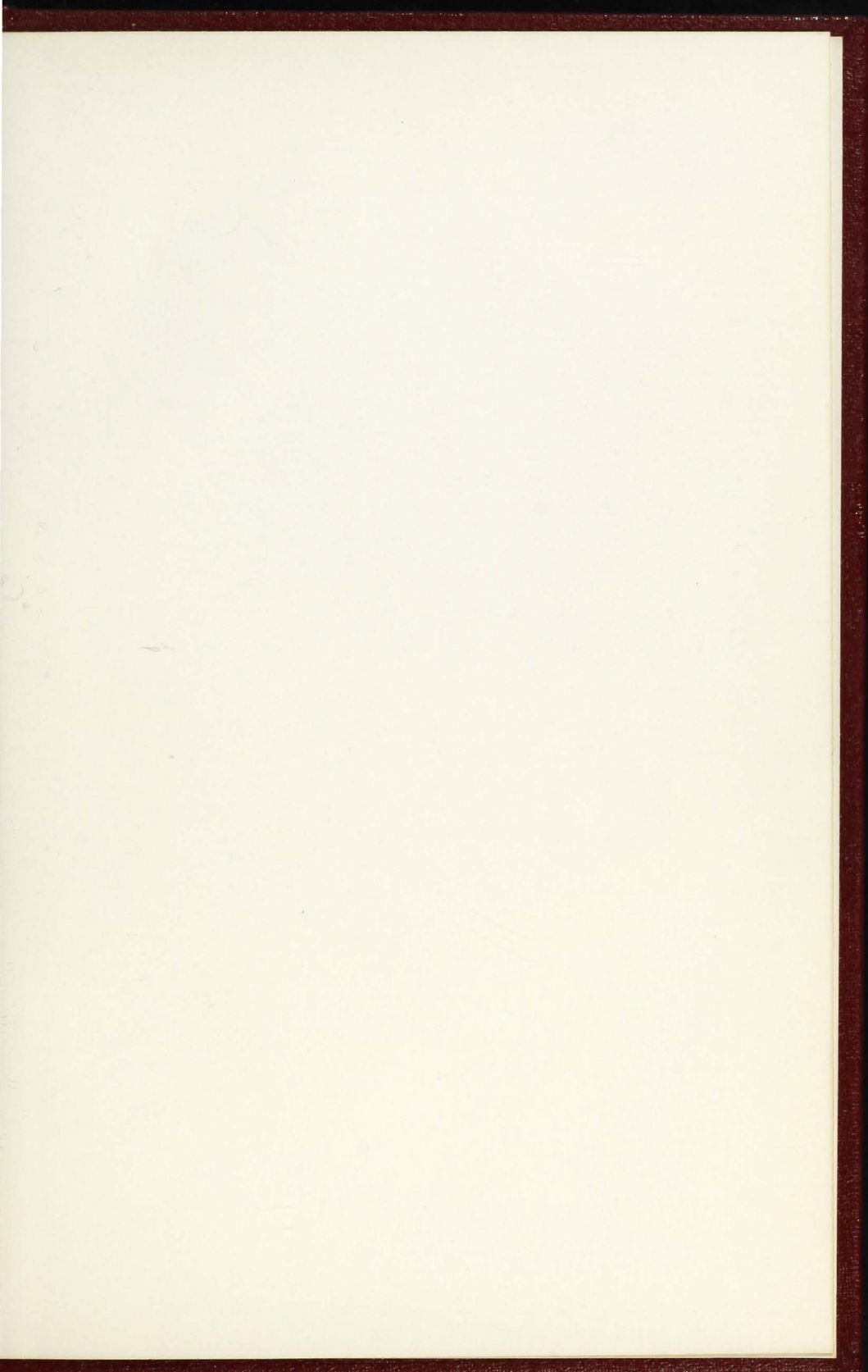
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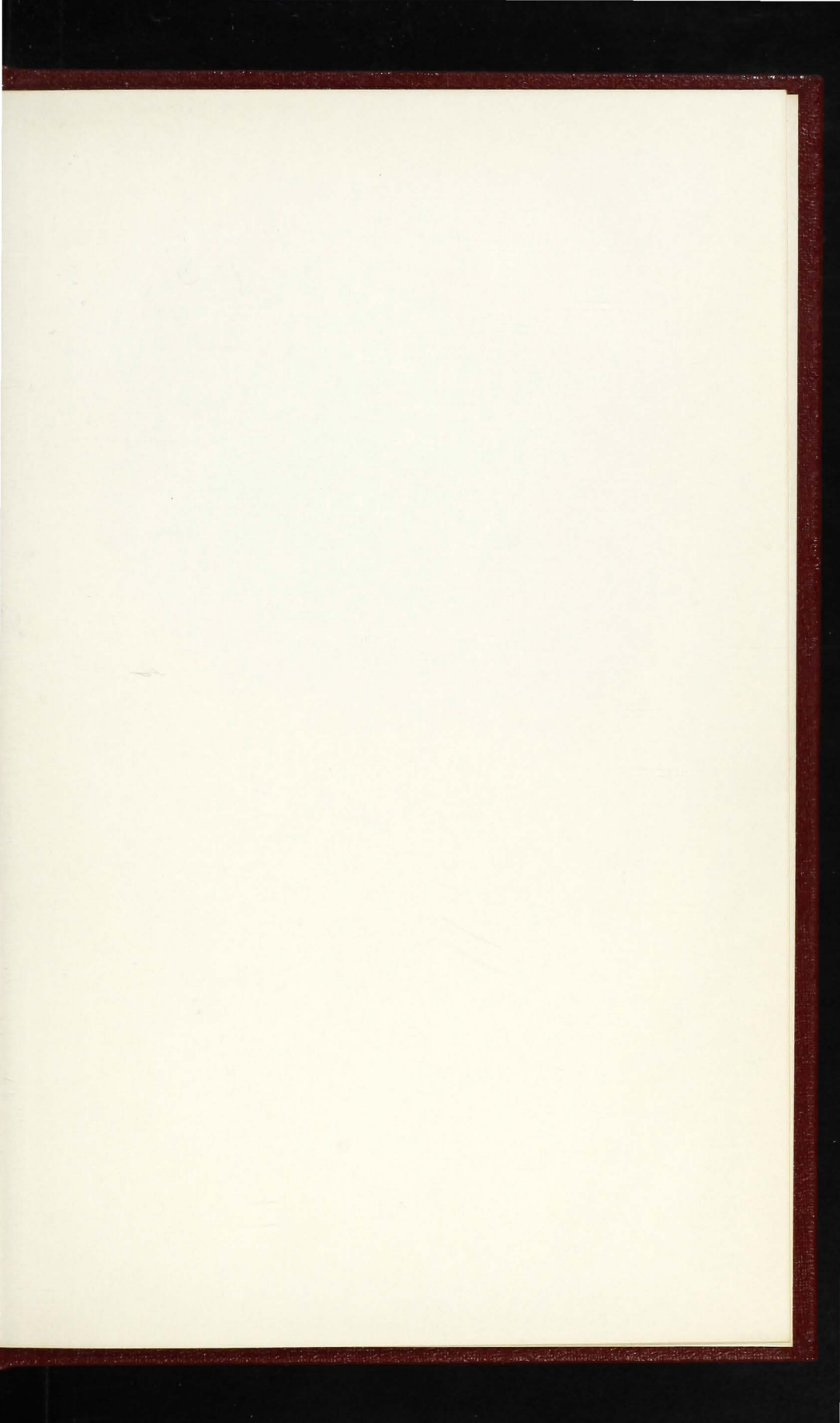
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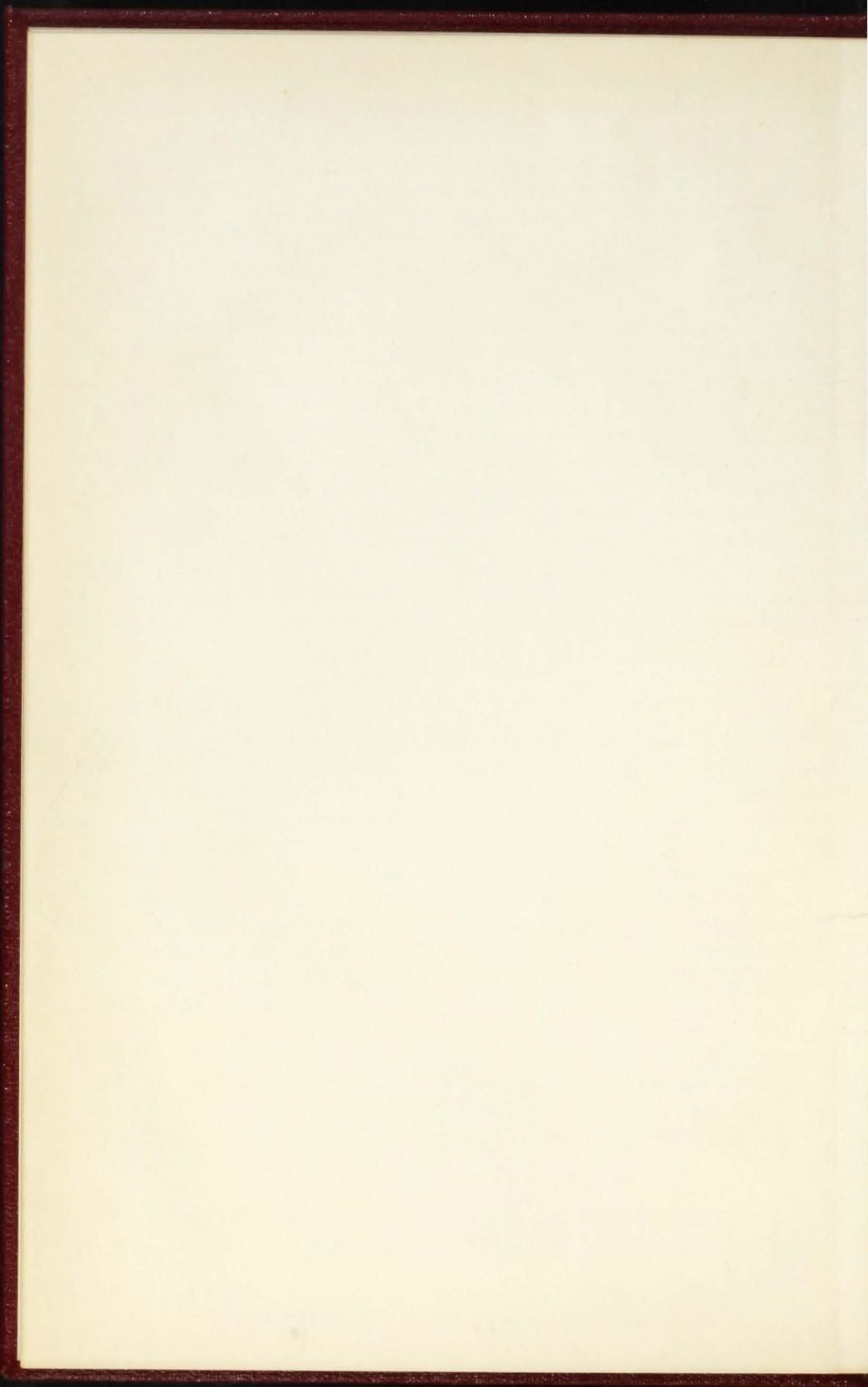
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Enquiries about membership should be sent to the General Secretary, Fabian Society, 11 Dartmouth Street, London SW1H 9BN : telephone 01 930 3077.

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8

