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ROGER C. CRAMTON AND THE LEGAL SERVICES CORPORATION

Charles W. Wolfram†

The passing of my dear friend and former colleague Roger Cramton leaves a void in legal ethics scholarship that will take the skills, energies, and imaginations of many scholars to fill. Legal ethics was the field in which both of us wrote and taught (and, during one memorable semester, co-taught), but Roger was far more than a legal ethics scholar. During his years of active professorial work, his focus stretched beyond issues of lawyer's ethics and professional responsibilities to many important issues in legal education, including administrative law, civil procedure, conflicts of law, torts, and—through his decades of service as one of the most energetic and engaged members of the Council of the American Law Institute—a long list of other evolving legal areas.

Roger was also one of the most active professors-on-loan from the legal academy to government. Among other roles, he served as the first lawyer that Congress confirmed as chairman of the board of directors of the then-recently created national Legal Services Corporation (LSC). It is Roger in that role, to which he was appointed by Republican President Gerald Ford, that I meditate on briefly here.

How that presidential confirmation came about tells much about Roger. Mere months prior to Roger's nomination, then-President Richard Nixon fired Roger as Legal Counsel to the President because of Roger's principled insistence that Nixon's attempt to impound certain funds appropriated by Congress was an unconstitutional infringement of legislative powers.¹ Shortly after firing Roger, Nixon resigned rather than undergo impeachment proceedings in the face of his much more notorious firing of another law professor, Archibald Cox, as the Watergate Special Prosecutor. Within weeks after Nixon fired

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¹ Roger later turned the episode into a law review article. See generally Roger C. Cramton, *On the Steadfastness and Courage of Government Lawyers*, 23 J. MARSHALL L. REV. 165 (1990).

Roger, Nixon's successor Gerald Ford nominated Roger as chairman of the LSC.²

When appointed to head the LSC, and throughout his adult life as far as I know, Roger was unapologetically a Republican, if one of the moderate-Yankee side of that political party. Certainly if measured by our contemporary political assumptions, the prospect would seem unpromising that a Republican appointee would enthusiastically support the work of the LSC. And, as can be testified to by all who knew Roger well enough, he never undertook a task without exuberant enthusiasm. The entire mission of the LSC was (and continues today) that of channeling hundreds of millions in appropriated federal taxpayer dollars to lawyers representing private, individual clients of limited means—in short, the poor. Often those representations involved disputes with corporations, landlords, other private citizens, and obdurate government agencies.

One may wonder how Roger's establishment Republicanism could embrace his enthusiastic furthering of the work of the LSC. The Republican political party has defined itself, at least since the time of Franklin D. Roosevelt and the Great Depression, as opposed to the federal government's efforts to expand welfare and intrude into free markets. Both of those perceived sins plainly seem fit to be laid at the door of the LSC. Politically, Republicans have instead strongly favored corporate constituents and bourgeois political figures such as landlords, creditors, and others who would likely be adverse to LSC's intended, poor clientele. Republicans would accordingly not be expected to support funding for an agency set up to oppose those interests. Moreover, to the extent that LSC clients complained about their treatment by government agencies (one of their chief complaints), Republicans would be expected to object—and they did—that the government should not subsidize lawsuits directed at the government itself.

In part, the apparent anomaly of Republican Roger's championing the cause of the LSC says more about our contempo-

² Roger recounted his LSC rebound in a fascinating living-history video in which he was interviewed by his successor as Cornell's dean Peter W. Martin. See Roger C. Cramton & Peter W. Martin, *Roger C. Cramton - Clip 1*, CORNELL UNIV. L. SCH. HERITAGE PROJECT (June 1, 2004), https://scholarship.law.cornell.edu/lawschool_heritage/15 [<https://perma.cc/VFL9-8WB4>]; Roger C. Cramton & Peter W. Martin, *Roger C. Cramton - Clip 2*, CORNELL UNIV. L. SCH. HERITAGE PROJECT (June 1, 2004), https://scholarship.law.cornell.edu/lawschool_heritage/16 [<https://perma.cc/CA6N-U2WB>]. Roger, while serving as LSC chair, also wrote the lead article in a welfare law symposium. Roger C. Cramton, *Promise & Reality in Legal Services*, 61 CORNELL L. REV. 670 (1976).

rary vision of the philosophies of the two major political parties. President Nixon, until he was run out of office for his leading complicity in the Watergate scandal, embraced several political positions that by today's Republican standards would be anathema—such as successfully urging Congress to create the now-Republican-accursed Environmental Protection Agency. Creating the LSC was of a piece with that side of Nixon, suggesting either uncharacteristic softness in that deftly-political figure or, more likely, a bold political maneuver to mollify fellow³ and sister lawyers, whose national organization—the American Bar Association (ABA)—strongly supported the LSC and its predecessor federal agency.⁴ The ABA's support of the LSC has continued unstintingly during succeeding presidencies.

LSC has not been disfavored, of course, only during Republican administrations. For example, during Democrat Bill Clinton's second term as president, the control of the Congress by "Contract with America" Republicans led to an effort in Congress to slash LSC funding.⁵ Among lawyer opponents of the

³ Nixon was himself a lawyer, as were dozens of his lieutenants and political operatives who were officially implicated in Watergate-related crimes. See *N.O.B.C. Reports on Results of Watergate-Related Charges Against Twenty-nine Lawyers*, 62 A.B.A. J. 1337 (1976) (reporting on the the National Organization of Bar Counsel's study indicating that twenty-seven lawyers were named as defendants or unindicted co-conspirators in criminal proceedings arising out of Watergate and two others were the subject of public bar discipline). Cramton briefly traced Nixon's pre-Watergate political conversion from opposition to the proposed LSC to support for its creation in his article *Crisis in Legal Services for the Poor*, 26 VILL. L. REV. 521, 525 (1981).

⁴ The ABA's support of publicly-funded legal service for the poor is politically convenient. Among other considerations, LSC's lawyers have always been prohibited from charging any fee to clients, which eliminates the prospect that they would compete with private practitioners for fee-paying clients. The availability of thousands of new lawyer jobs funded by LSC has proven beneficial during times of low demand for newly graduated lawyers. Significantly, the presence of LSC lawyers in any controversy ensures that those opposing LSC clients will themselves need lawyers in controversies that would otherwise be highly unlikely to exist.

⁵ See, e.g., ABA Comm. On Ethics & Prof'l Responsibility, Formal Op. 96-399 (1996) (providing advice to LSC-funded lawyers on how to deal with ethical issues raised by pending federal legislation that would cut LSC funding by at least twenty-five per cent and further limit LSC's services); David Barringer, *Downsized Justice: With a Scaled-Down Legal Services Corp., Low-Income Clients Are Facing the Cutbacks in Lawyers to Help Them On . . .*, A.B.A. J., July 1996, at 60, 61 ("Although legal services have successfully run the gauntlets of previous government threats, most notably under the Nixon and Reagan administrations, this time the future is bleak and the mood funereal."). Among other restrictions, in 1996, Congress passed a prohibition against the use of LSC funds to "amend or otherwise challenge existing law," including Congress's own welfare laws. A 5-4 Supreme Court subsequently struck that down as an unconstitutional limitation on the free-speech rights of lawyers and their clients and, because it threatened to impair advocacy before federal courts, as inconsistent with the constitutional

proposal were lawyers who were self-declared Republicans, such as former state judge Bruce W. Kauffman.⁶

Roger's own take on the politics and political theory justifying his work promoting the LSC was expressed in his heartfelt 1981 law review article entitled *Crisis in Legal Services for the Poor*.⁷ The "crisis" to which Roger referred involved the efforts of President Ronald Reagan to eliminate LSC entirely or at least severely restrict it. Reagan was no lawyer and thus did not personally share whatever sympathies Nixon might have harbored for fellow and sister lawyers. Quite the contrary, Reagan as governor of California had waged a long public battle against the California Rural Legal Assistance program (CRLA), which supported migrant farmworkers in their labor struggles with growers and with Reagan as California's governor.⁸ The CRLA program had been funded in part by the LSC's forerunner, the Legal Services Program (LSP). The LSP in turn was housed within the Office of Economic Opportunity⁹—a major component of President Lyndon Johnson's Great Society project.¹⁰ The mere change of names—from LSP to LSC—did nothing to deflect Reagan from attempting to exact political vengeance by vanquishing the LSC. Moreover, influential conservative groups that supported Reagan such as the Heritage Foundation¹¹ and the Conservative Caucus¹² also agitated to cut off LSC's federal funding.

principle of separation of powers. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533 (2000).

⁶ E.g., Bruce W. Kauffman, *A Conservative Plea to Save LSC*, NAT'L L. J., April 10, 1995, at A19. A few years later, another effort by conservative Republicans (and the Republican leadership of the House of Representatives) to slash LSC funding was rejected by a substantial majority in the House of Representatives, with the opposing vote including fifty-seven Republicans. See David Rogers, *House Votes Not to Slash Legal Services*, WALL ST. J., Aug. 5, 1998, at A4, available at <https://www.wsj.com/articles/SB902277499948462000> [<https://perma.cc/3W4F-KRT9>].

⁷ Cramton, *supra* note 3.

⁸ E.g., Jerome B. Falk, Jr. & Stuart R. Pollak, *Political Interference with Publicly Funded Lawyers: The CRLA Controversy and the Future of Legal Services*, 24 HASTINGS L.J. 599 (1973); Warren E. George, *Development of the Legal Services Corporation*, 61 CORNELL L. REV. 681, 683-87 (1976).

⁹ President Nixon had abolished the OEO by executive order in 1973, leaving the Office of Legal Services (renamed the Legal Services Program) as its only vestige. See George, *supra* note 8, at 695-96.

¹⁰ See generally A. Kenneth Pye, *The Role of Legal Services in the Antipoverty Program*, 31 LAW & CONTEMP. PROBS. 211 (1966).

¹¹ Cramton, *supra* note 3, at 522 n.3 (citing HERITAGE FOUNDATION, MANDATE FOR LEADERSHIP - PROJECT TEAM REPORT ON THE POVERTY AGENCIES (Oct. 22, 1980)).

¹² Cramton, *supra* note 3, at 532.

Roger's *Crisis* article was characteristic of most of his work—robust, committed, enthusiastic, and yet fair-minded. In light of continued presidential efforts to defund LSC,¹³ the piece warrants rereading. For the most part, Roger is at pains in the *Crisis* article to refute or at least deflect political arguments launched from many conservative Republican sources and a few from the left. Among the latter, Cramton convincingly argues that the LSC cannot effectively redistribute wealth to the poor through litigation and court rulings; rather, he argues one should pursue wealth redistribution through the political process.¹⁴

Near the conclusion of his *Crisis* article, Roger turns to what he considered to be the three major theoretical underpinnings supporting the concept of an LSC for poor clients in light of enduring American values of justice.¹⁵ First, LSC provides fair access to justice as it is practiced in the United States, and in doing so, vindicates the system's aspiration to provide equal justice to all.¹⁶ In that light, access to the courts may be as fundamental a right for the poor as the right of access to the ballot box.¹⁷ Second, LSC serves to correct an inevitable bias in the law against the unrepresented poor.¹⁸ That bias exists because in general most law is made in the direct presence and subject to the immense political pressure of those sufficiently well-funded to achieve their political goals. Harkening back to the law-reform aspirations of LSC, Roger believes that LSC provides the important capability to change or limit laws that would otherwise systematically disfavor the poor.¹⁹ Third, and providing what Roger believed to be its "basic justification," LSC upholds the dignity of the individual by helping the poor to help themselves.²⁰ Or, as Roger puts it in the article, "[w]hat further justification is required other than: 'Because [the poor] need [legal representation] and they are important?'"²¹

Roger did not live long enough to witness—with rekindled outrage, we can be sure—the current threats of the newly installed Trump Administration to reprise earlier Republican at-

¹³ See *infra* p. 6.

¹⁴ See Cramton, *supra* note 3, at 551–53.

¹⁵ *Id.* at 553.

¹⁶ *Id.* at 553–54.

¹⁷ *Id.* at 554.

¹⁸ *Id.* at 554–55.

¹⁹ *Id.* at 555.

²⁰ *Id.*

²¹ *Id.*

tempts to limit or extinguish the work of LSC.²² As it did during prior political attacks on the LSC, the organized bar has joined the fray in its defense.²³ Whether the 2017 attacks on the LSC prove to be successful or not over the remainder of the current term of Congress,²⁴ they indicate that the survival and work of LSC will remain problematical, as has been its fraught state almost since its founding over forty years ago. Whatever the strength of arguments, such as Roger's, for LSC's existence and the worth of its work, the LSC seems inevitably to be fated to remain mired in partisan politics. Candidly, one has to say that Roger's enthusiasm for the LSC was a political aberration, representing the public-spiritedness and compassion of one remarkable man, and not anything that could become a committed principle of the political party to which on many other issues he at least nominally aligned himself.

²² E.g., Jeanne Sahadi, *Lawyers Fear Trump May Kill Legal Aid Funding for the Poor*, CNN MONEY (Mar. 9, 2017, 6:44 PM), <http://money.cnn.com/2017/03/09/news/economy/trump-budget-cuts/index.html> [<https://perma.cc/94K7-RRN9>] (reporting on a letter signed by over 150 law firms to White House Budget Director Mick Mulvaney opposing proposed elimination of federal funding for LSC).

²³ E.g., Lee Rawles, *The Fight for Legal Services*, A.B.A. J., June 2017, at 64 (recounting multiple ways in which the ABA has opposed the Trump Administration's intent to defund the LSC, including joint letters of support by heads of more than 150 U.S. law firms, the deans of 166 law schools, and general counsels of 185 companies).

²⁴ The outcome, at least for one fiscal year, was a success for the LSC. Despite the Trump Administration's attempt to defund the LSC, Congress ultimately voted (and Trump was politically constrained to sign) legislation that provided an additional \$25 million in funding, bringing the total for fiscal year 2018 to \$410 million. See Rhonda McMillion, *A Capitol Effort*, A.B.A. J., June 2018, at 67.