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DEVELOPING THE ROLE OF LAW IN SOCIAL CHANGE: PAST ENDEAVORS AND FUTURE OPPORTUNITIES IN LATIN AMERICA AND THE CARIBBEAN*

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“ . . . Long ago, a man walked in the countryside and His disciples followed Him. The disciples were hungry, so when they saw stalks of wheat in the fields, they cut the wheat. Since it was the Sabbath, the law prohibited such work. It was said to Him: Why do your disciples cut wheat on the Sabbath? And He answered: Because man was not made for the Law, man was not made for the Sabbath, but the law for man, and the Sabbath for man. Before the law, there is man and the challenge for government is to put law at the service of man — and man above all.”***

I. INTRODUCTION

Why should any assistance be provided to develop the role of law in social change in Latin America and the Caribbean when only scarce resources are available to assist people who daily face life without food, shelter, dignity, or opportunity? After all, has not the law traditionally protected the privileged and the status quo? Would not resources be better used if directed towards institutions more directly involved with the problems of agricultural and industrial production and of education and social services?

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***José Antonio Viera-Gallo (former Undersecretary, Ministry of Justice of the Republic of Chile) in the “Legal System and Socialism”, 1972 Wisc. L. R. 754.

These questions have often been posed when U.S. Government development assistance agencies and private foundations have endeavored to provide assistance to law reform projects in developing countries. Because the answers offered and the results of past assistance to such projects in Latin America have not been entirely satisfactory,¹ it is incumbent upon the proponent of future aid for such projects to provide greater insight into the issues involved and a more rational justification than has been articulated in past years.

The purpose of this essay, therefore, is to attempt to formulate a rationale for providing future assistance to law projects in Latin America and the Caribbean and, by reflecting on past endeavors in these developing regions, to speculate about the kinds of law reform efforts which merit development assistance in the future.

II. A RATIONALE FOR ASSISTING THE DEVELOPMENT OF THE ROLE OF LAW IN SOCIAL CHANGE

The rationale advanced by this essay for assisting the development of the role of law in social change is two-pronged: (A) There is little knowledge about that role, and such knowledge is necessary in order to develop the role of law as a positive force in social change; and (B) there is unequal access for the poor, by far the majority of the population of Latin America and the Caribbean, to the legal system, and this unequal access is an obstacle to social change.

A. *The Lack of Knowledge about the Role of Law in Social Change*

Lawrence Friedman, a prominent legal scholar, recently observed: ". . . [L]egal systems are clearly a part of political, social and economic development, just as are educational systems and other areas of culture. No major social change occurs or is put into effect in a society which is not reflected in some kind of change in its laws. Legal institutions are responsive to social change; moreover, they have a definite role, rather poorly understood, as instruments that set off, monitor, or otherwise regulate the fact or pace of social change. Many basic questions of the relationship of law to social change are completely neglected."²

As noted above, law or legal institutions are intimately involved in the social change or development process. True, there is debate about whether law leads or follows social change and about the precise relation-

ship between law and social change. Nevertheless, whether law follows or leads change, there is a need to better understand this important relationship. Even if we were to assume that law follows change, would not law be vital to maintaining, directing and interpreting that change in a positive manner? The present state of knowledge cannot deny nor affirm the role of law in social change. Research is needed to determine the degree to which that role affects change and how it can be developed to achieve positive, just, and humane progress.³

Professor Friedman's statement fairly describes the state of present knowledge about the role law plays in the process of social change or development. It accurately reflects the situation in the United States, where there has been a recent upsurge of interest in this subject,⁴ and even more so in the developing countries of Latin America⁵ and the Caribbean. A primary reason for this lack of knowledge is that "[T]here has been relatively little attention by either legal scholars, sociologists, or political scientists to the relations between law and the socio-political situation, the role of law in the development process, and the impact that development and national modernization, in turn, have on law."⁶ And while development economists generally concede that development requires some legal framework, which usually means a minimal provision of law and order, they usually drop the issue at that and add little to the knowledge about the role law plays in development.⁷

Yet the need for research and study about the role of law in social change in Latin America and the Caribbean has been virtually ignored by scholars in the United States and the organizations providing development assistance in those parts of the developing world.

Questions such as these remain unanswered: Do the types of legal systems and institutions that exist in Latin America and Caribbean societies help or hinder those societies in their development? How does law affect their rate of economic growth? Why and how do the traditional social and political forms — and the legal and constitutional frameworks that help give them legitimacy — hang on so tenaciously in Latin America, even after 150 years of existence as independent nations?⁸ What results when they import laws from more developed countries? How does "social engineering" through regulatory laws affect social change? How can law, lawyers, and legal institutions in those societies be more responsive to the needs of that great majority of their population which have little or no access to or representation before the legal system, the legislative process, and the institutions which administer justice?

These questions are important, worthy of study by scholars, and need to be answered if development or social change is to concern itself with the quality of life, and not just its quantity; with equal justice, as well as economic growth.

For the most part, U.S. development assistance organizations, private and governmental, have not supported research and study of these important questions.⁹ Rather, they have concentrated almost exclusively on the reform of legal education. Their thesis for supporting such reform as the best means of developing the role of law in social change, however, has been found unsound; and it is now being realized that other avenues must be found in order to develop the role of law in social change in a positive manner.¹⁰

B. The Quest for Equal Justice: The Problem of Unequal Access to and Representation before the Legal System

A fundamental problem in the process of social change is dualism in the law, practiced purposefully by the ruling class in a society or resulting from unequal access to and representation before the legal system. Unequal access to and representation before the legislative forums which make the law, the tribunals which interpret the law and the bureaucracies which administer or implement the law is a serious obstacle to social change in Latin America and the Caribbean. Inherent in this problem are cultural, political, economic and sociological factors. Therefore, solutions for the problem must consider all of these factors and treat them concurrently. The strict legalistic approach cannot hope to resolve it.

Representative of the obstacles which unequal access and representation pose for social change is the experience had with the implementation, or lack thereof, of agrarian reform laws in Latin America.¹¹ Because the people who were to be beneficiaries of such reform did not have representation before the legislatures which drafted the laws, a myriad of complex technicalities were added to those laws in the legislative process. Those technicalities make it virtually impossible to realize the intent of the legislation because their complexity requires expert counsel to satisfy them and, even then, the process can be drawn out for years. Many of these land reform laws provide that private initiative must be taken to initiate action to obtain land under their provisions. Needless to say, such action is often not taken because citizens do not know how to process a petition or application for land entitlement. Thus, the land reform laws

in many instances really take back with one hand what is given with the other. Given the importance of land reform and social change in Latin America and the Caribbean, it is fairly easy to comprehend the tremendous obstacle which is posed by poor people's unequal access or representation before the forums which formulate the laws, and the courts or bureaucracies which interpret and implement those laws.¹²

Land reform, of course, is only an example of social reform legislation which has been frustrated because of unequal access and representation. An impressive body of social welfare, anti-discrimination and regulatory legislation already exists in the statute books of Latin American and Caribbean countries. Unfortunately, much of it, as in the case of land reform legislation, has not been effective.¹³ Reasons for this include fatal defects in the legislation itself, ineffective enforcement, and unrealistic assumptions about the resources at the disposal of private parties to facilitate effective enforcement of the legislation. Some of the legislation was never meant to be implemented and only served as a political statement of government's intention, never intended and never expected to function. Other legislation is not amenable to private enforcement or to private action in court to compel administrative action from government functionaries entrusted with its enforcement. Yet other legislation embodies private remedies or requires legal action to compel public enforcement. Even where private enforcement or compulsion of public enforcement is not possible, more effective legal representation to the intended beneficiaries may prevent the legislation from being crippled by successful court challenges by adversely-affected commercial interests and upper income groups.¹⁴

The unavailability of class actions, limited standing to sue and the absence in some jurisdictions of the concept of precedent make enforcement of previously ineffective social welfare and regulatory legislation difficult to achieve through litigation. However, a significant impact can be achieved through the cumulative weight of individual cases, particularly in encouraging voluntary compliance by the parties adversely affected and by the government bureaucracy. Presentation of legal issues in appropriate public forums may also help to consolidate public opinion with regard to particular issues and bring pressure to bear on government or the bureaucracy for corrective action or reform.

In addition to lack of resources for legal action to correct injustice, lack of knowledge on the part of the community about law and the availability of legal remedies and services is a critical problem.¹⁵

Communication of the law already on the books and that under consideration for promulgation is also needed to overcome the problem of unequal access and communication. It is said that "knowledge is power." No statement is more true than when it relates to law and the legal system. Those who can afford it are willing to pay very well to obtain legal knowledge which affects their economic activities. The poor also need knowledge to overcome their legal and economic problems and to defend themselves from unfair actions by the government or the ruling class, but cannot afford to pay for it. This problem has to be addressed if development is to be just, humane and progressive.

The resources to overcome the problem of unequal access to and representation before the legal system are not easy to come by and they require assistance to develop in various ways. Students concerned about these problems and willing to participate in finding solutions to them need to be assisted and encouraged to obtain a legal education. Law schools need to provide training that treats the legal problems of the poor, in addition to those of the corporations which carry on major economic activities. The legal profession must respond to the problems of the poor in creative and dynamic ways and governments must be encouraged to allocate resources for programs that will alleviate the problem of unequal access and representation among its citizens.¹⁶ These resources are not obtained overnight. It may take years and even decades to make substantial gain in the quest for justice. But a beginning has to be made. Seeds need to be planted and their crops cultivated before their fruits can be harvested. Law, lawyers and the legal system cannot overcome, alone, the economic problems of the poor, but they can help to assure that the efforts to achieve economic progress will be characterized by distributive justice, equal access to and representation before the legal system, and ultimately to a more equitable distribution of the fruits of social change or development.

III. PAST ENDEAVORS IN LATIN AMERICA

Past U.S. development assistance to law and development projects in Latin America has been concentrated almost exclusively on legal education reform.¹⁷ Influenced by the core conception of modern law, which argues that development requires institutionalization of social control through law and that lawyers in developing countries must redefine their formalistic and traditional concepts of law and its function,¹⁸ the organizations providing this assistance determined that legal education

reform would lead to reform of the entire legal system. During the early years of the Alliance of Progress, these organizations concluded that the Latin American lawyer was not equipped for his role in social change and development activities because he suffered from an inferior education, which emphasized the traditional, formalistic concept of law.¹⁹

Accordingly, these organizations provided substantial assistance to legal education reform in Latin America during the past decade.²⁰ Their hope was that "lawyers trained as problemsolvers would be likely to ask searching questions about underlying social maladies and thus to formulate solutions which would be more 'developmental' and more responsive to popular desires."²¹ Knowing first-hand the vital role which the law and lawyers had played in social change in the United States,²² these organizations reasoned that the development of well-trained lawyers would lead to similar results in the developing countries of Latin America.

Among the leading proponents for such assistance were Agency for International Development (AID) lawyers in Latin American field offices and the Ford Foundation. A Ford Foundation official describes the rationale for advocating assistance to law and development projects during the last decade as follows:

It is safe to say that in the 60's the Foundation, the ILC and many international organizations — and lawyers — waffled from some general objective to advance human welfare to the idea that law somehow contributes importantly to development, and hence to the advance of human welfare. Thus, drawn to the legal sector, it seemed but a small and relatively secure step to a rationale focusing on the idea that lawyers were central figures in the functioning of law in a developmental context, and hence to an institutional extrapolation of that rationale, and the idea that the way to get at lawyers was through legal education. From here another apparently small step led to an operational program, focused on the reform of legal education and the modernization of law schools, and to a more specific concern with the Socratic or active teaching method and the use of case analyses teaching materials. Rather awkwardly garbed in this rationale, and in the not insubstantial amount of self-glorification it entails, the Foundation and others joined in a frontal assault on the doctrinal and black letter tradition of Latin legal education. In the technical assistance tradition of the 60's, our work in the legal sector relied heavily on visiting professors, or rather extensive training in the U.S. schools, and — through teach-

ing materials, professional counsel, and fellowship experience — a heavy infusion of American legal realism.²³

The U.S. assistance to legal education reform was based on conclusions that legal education in Latin America was “antiquated” and not relevant to the needs of the lawyer seeking to service the developing economic systems of Latin America. It was assumed that “market economies require an autonomous legal system creating and guaranteeing private rights, through the promulgation of general rules, and that market growth was impossible without the development of such a legal system.”²⁴ The lawyer was seen as “serving and developing a commercial legal structure which would encourage additional capital infusion, accommodate new enterprise, and introduce public concerns into the market process.”²⁵

While some lip service was given to individual rights and fairness in state action, very little emphasis seems to have been placed on the legal problems of the poor in the areas of credit, housing, land reform (both urban and rural), civil liberties, access to courts and the legislative process or employment rights. The law schools which received the U.S. assistance did not reform their curriculum even modestly to offer substantive courses relating to these problems.²⁶ Rather, the emphasis in reform was placed on introducing the Socratic or active method of teaching and case studies; improving library facilities; developing teaching materials; providing scholarships for law studies in the U.S. by law faculty and graduate students and technical assistance in the form of visiting U.S. law professors.²⁷

The empirical results of this investment in legal education reform have not been measured but, by the end of the decade of the reform effort, a strong note of disillusionment was being sounded by those assisting the reform movement. David Trubek, an active participant in U.S. efforts to improve legal education in Latin America, and, particularly Brazil, voices this disillusionment in a recent essay:

Recent developments in legal education similarly mock our predictions. It is possible to detect a growing emphasis on instrumental thought in Brazil. But there is some reason to believe that this has taken the form of authoritarian instrumentalism, and has functioned more to resolve previous tensions between the legal profession and the state than to generate new ones. Thus in the final analysis, liberally motivated efforts to assist educational reforms have actually aided in the consolidation of the authoritarian regime.²⁸

And a Ford Foundation official similarly concludes:

In retrospect, this endeavor in Brazil, Chile, Peru and Colombia had a varying and occasionally substantial impact on the civil law and doctrinal tradition of legal education in Latin America. As the various law programs matured into the decade, however, and the programmatic objectives were partially 'realized', concern with the merit of the objectives ripened. It became increasingly apparent that the Latin situation was very different from the U.S., not only culturally — and hence legally — but also in terms of the respective Common Law-Civil Law traditions, the doctrinal-'realist' approaches to the law, the full-time-part-time tradition of teaching the law, the role — or absence — of research in the law schools, etc. And it became increasingly obvious that the apparent 'neutrality' of the focus on methodology was illusory, and at least partially purblind to the ideological and value context of the law, and probably to the role of law and lawyers in Latin America. Like the broader 'development' approach of which law and development was one manifestation, the gaps in the 'modernization of legal education' rationale were exposed by the realities of the 60s.²⁹

Why did assistance to legal education reform in Latin America fail to achieve meaningful results? One might begin to find the reasons for failure by initially observing that the U.S. legal education model (the Socratic or active method), which was exported to accomplish reform in Latin America, was flawed.³⁰ That model has been attacked as ". . . A highly sophisticated form of mind control that trades off breadth of vision and factual inquiry for freedom to roam in an intellectual cage."³¹

Secondly, the theory that teaching methodology, alone, could bring about reform in legal education and in the legal systems of Latin America appears almost naive and without any rational basis. Teaching methodology alone cannot make legal education or law more relevant to social change or development. The law schools must treat the problems of development and social change in their curriculums and do research relating to those problems, if they are to make a contribution to that process. Only if there is reform in the content of legal education can methodology, if truly effective, contribute to the teaching and learning process.³² Teaching irrelevant law with the best techniques can only obtain absurd results.

Thirdly, it does not appear that those providing assistance to legal education reform took into account, as an important factor, the socio-economic background, the values and aspirations of the law students and teachers which were to receive the benefit of reformed legal education. Were these the type of students and teachers that in their future professional careers would be concerned with the legal problems of those living in "barrios" and "favelas"? Were they concerned about campesinos living in rural poverty? Were they the type of students that had even a marginal concern about the public interest?

It has been recently observed that ". . . A legal education responsive to the reform proposals will not determine what social values or attitudes the law graduates will bring to their careers and clients. The improved skills in and perception about law may serve the cause and increase the effectiveness of both the lawyer committed to socio-economic change and the lawyer determined to yield no phase of established privilege. In this sense the socio-political character of the profession may be as significant as the character of legal education in determining the lawyer's impact upon Brazil's development."³³ Thus, it would seem logical that those supporting the reform movement should have taken note of this before launching their campaign. The reform might have been more successful, if they had done so.

Finally, the supporters of the reform effort appear to have taken little notice of the wide differences between the common law system of the United States and civil law systems of Latin America,³⁴ the different approaches to the law by lawyers, judges and educators of the two systems, the comparatively little opportunity for law reform through "landmark litigation" in a civil law system, and the differences between their culture and values and those of the society they were assisting. All of these factors are reflected to one degree or another in a legal system and its legal education. Thus, even a "perfect" U.S. legal education model would probably have experienced difficulties, if not failure, in taking hold in most Latin American law schools.

The unhappy experiences of past U.S. assistance to legal education in Latin America should serve as an important lesson for future assistance efforts. The facts of the situation must be studied closely before prescribing models for reform, in legal education as well as other law reform activities. Our models should be examined critically before we export them to developing countries. They may not be as suitable as we think for reform or

development efforts in countries whose legal system and culture are different from our own. And, in the final analysis, they may do more harm than good.

IV. FUTURE OPPORTUNITIES IN LATIN AMERICA AND THE CARIBBEAN

Recent assistance efforts for law and legal education reform in Latin America and the Caribbean have been directed towards clinical legal education, legal assistance to the poor, and substantive curricula reform. The need for empirical research to better understand the role of law in social change is being recognized. The concept of the public interest law firm is also receiving some attention, particularly in Latin America. The International Legal Center,³⁵ Ford Foundation³⁶ and the Inter-American Foundation³⁷ have given financial support to projects in these areas in Latin America and the Caribbean. At the same time, technical and financial assistance involving the exportation of U.S. legal education methodology and philosophy have begun to fall out of favor because of their relative lack of success to achieve legal education and law reform and their failure to focus legal education objectives on social change issues in Latin America.³⁸ The present trends in the continuing effort to develop the role of law in social change suggest that there are opportunities to assist that development in the future in both Latin America and the Caribbean.

A. *Multi-disciplinary Research on the Role of Law in Social Change*

One key area of activity which merits assistance is multi-disciplinary research on the role of law in social change. This type of research can best evaluate in a holistic manner the interaction of law reform projects with the legal system, the legal profession, and the community which they aim to serve.³⁹ As I have stated earlier, the problem of unequal access to and representation before the legal system involves cultural, political, economic and sociological variables. It follows that the study of efforts to resolve this problem must consider these variables. Also, because there are few lawyers trained in multi-disciplinary research, it is necessary to combine researchers of various disciplines with research ability in law, economics, sociology and political science in order to perform this type of research.

Multi-disciplinary research to study the role of law in social change does not have to be research in the abstract. It can be focused to study the

results of a particular law reform project, be it a legal aid project or a public interest law firm, which interacts with all of the above-mentioned factors, the legal institutions, and the community it serves.

One of the few endeavors to research the role of law in social change with this methodology is the evaluation study of the first legal aid clinic established in Jamaica.⁴⁰ The study was designed and is being conducted by Barry Chevannes, a social anthropologist, and Edward Laing, a legal scholar, and is being supported by the Inter-American Foundation.⁴¹ The study will evaluate the effectiveness of the Clinic's interaction with legal institutions, the legal profession, legal education, the judiciary and the Jamaican community over a two-year period of time. This study will assess the operational effectiveness of the Clinic in this context, and will examine the attitudes of those providing legal services to the poor in Jamaica and of the recipients who receive such legal services. Among other things, the study will examine state and private legal services provided to the poor in Jamaica, the geography and demography of Kingston, legal education, judges, the make-up of juries, the bar associations, tribunals and judicial administration. Additionally, the study will involve research into the relationship of the Clinic's operation to law reform in such areas as child rearing and maintenance, land tenure disputes, landlord/tenant problems, administration of criminal justice, and industrial relations.

The end objective of the evaluation study is to assess the impact of KLAC on the law, legal system, provision of legal services and Jamaican society; and to determine how the Clinic stimulates other agencies in the process of achieving social justice. In this process, the study will also identify areas for reform of the law and legal services in Jamaica, and assess the impact of the Clinic on Caribbean societies.

The study will stress a multi-disciplinary methodology and close collaboration between the lawyer and the anthropologist in all aspects of the study. The methodology will include library and empirical research, field interviews and observation, collection of statistics and other data, and questionnaires.

It is hoped that multi-disciplinary study of other law reform projects in Latin America and the Caribbean will make a substantial contribution to determining the role of law in social change in those societies. There are many other areas where multi-disciplinary research on the role of law in social change is needed. To name a few, I would suggest study

of recent legislation creating new types of industrial and agricultural enterprises, such as the industrial community in Peru⁴² and the *empresas comunitarias*^{42a} in several Latin American countries, and the effectiveness of these juridical entities in promoting social change in industry and agriculture. The concept of social property, which is being developed in Peru,^{42b} and the institutions which will be created by such legislation, is another important area for multi-disciplinary research in law. Also deserving consideration for multi-disciplinary research are the public development corporation and the private multi-national corporation, both of which affect the planning and administration of development. Little systematic knowledge is known concerning their current and potential impact upon the societies and legal systems of developing countries. Research about these organizations could be applied in educating lawyers and public administrators to better deal with them, and would increase the knowledge about the role law plays in the process of social change.⁴³

The rapid developments which are occurring as a result of efforts by some Latin Americans and Caribbeans and their governments to overcome the problems of underdevelopment through social engineering, requires that greater emphasis be placed on supporting multi-disciplinary research on the role of law in social change, and that such support should be given in a timely manner before events overtake its utility.

B. *Developing the Research Capacity of Latin American and Caribbean Scholars*

In assisting research efforts on the role of law in social change, priority should be given to developing the capability of Latin American and Caribbean scholars to do such research. Past assistance efforts in Latin America have stressed the participation of U.S. scholars, almost to the exclusion of Latin American scholars.^{43a} The rationale for such assistance is that local scholars would be more sensitive to culture, sociological, economic and political contexts within which the role of law in social change is to be studied and thus would contribute to more objective research.⁴⁴ Additionally, research by Latin American and Caribbean scholars may be considered more objective than that of foreign scholars by those who are to act on the basis of lessons learned from that research, and dissemination locally of those lessons might be more effectively accomplished. Finally, research done by local scholars may have a greater influence than that of foreign scholars on stimulating further research by other Latin American and Caribbean scholars of various disciplines.

Giving priority to assistance for Latin American and Caribbean scholars to study the role of law in social change in their societies, does not mean that scholars from the United States, or other developed countries, cannot contribute to this learning process. Participation by these scholars can enrich the knowledge gained from such research and can help to advance the state of knowledge about the role of law in social change in the developed world. What is needed is a better balance in the assistance program to assure increased participation by scholars in Latin America and the Caribbean.

C. *Curriculum Reform in the Law Schools*

Some law schools in Latin America appear to be moving slowly away from value-neutral teaching methodology to substantive reform in the content of their curricula. Attempts are being made to reintegrate the social sciences into the law school curriculum and to focus on relevant development problems. One example of these efforts is the Master's Program of the Catholic University of Rio de Janeiro.⁴⁵ Begun in 1972, the Program is annually producing fifteen law professors trained in a multi-disciplinary approach to the law and legal education. The students, selected from several law schools in Brazil, will be returning to teach at their respective schools. It is hoped that their preparation in the Master's Program will help them to initiate substantive curriculum reform in their schools. If they succeed, they will be bringing the law one step closer to coping with the real problems of development and social change. In order for legal education and lawyers in Latin America to reverse the trend whereby they have become increasingly isolated from the process of development, they must be willing to confront the challenge of those real problems.

The program has also begun a movement towards reintegrating the social sciences into the law school curriculum.⁴⁶ The faculty of the program is drawn from the social science faculties of the Catholic University, in addition to the law faculty. This salutary advance may stimulate multi-disciplinary research by social science and law faculties and could contribute to a better understanding of the role of law in social change and development. This type of curriculum reform may be worthy of support in the future.

The development of courses in law schools on "law and poverty," which would be offered in a meaningful way, should also be encouraged.

The objective of such courses should be to investigate the relationship between law and poverty, to develop ways in which law can contribute to the solution of the poverty problem, and to sensitize law students to the legal problems of the poor. In order to achieve positive results, such courses must have the commitment of the law faculty and not be offered as a "frill."

D. *Legal Aid and Clinical Education*

1. *Rationale and Limitations:* Effective legal services to the poor are considered essential to the proper functioning and integrity of the legal system. "One of the assumptions upon which western legal systems are structured is that all systems have equal access to information about the legal system's functioning and to expert professional advice and service. To the extent that access is not equal, the system's integrity is compromised and the system fails to perform effectively the dispute settling, social ordering and central functions assigned to it. Legal service programs are intended to ameliorate the problem of unequal access among the poor."⁴⁷

Legal services programs to the poor can contribute to social change or development in several ways. A legal services program, with adequate resources to become national in scope, may help to develop an effective national system and a national political culture. Such a program can contribute significantly to the effective penetration⁴⁸ of national legal norms, and such penetration may foster economic development by eliminating such traditional restraints as restrictions on the alienation of land and on credit availability. Secondly, a legal services program may help implementation of social welfare and regulatory legislation of which the poor are primary beneficiaries, and thereby contribute to more effective enforcement of agrarian reform laws, protective labor legislation, rent and price control legislation, and pension laws. Thus, a legal services program has the potential to make a considerable impact on the enforcement of existing law, as well as on the making of new law.^{48a}

A third linkage between legal services programs and development objectives is making the government more accountable. If there is judicial review of executive action, it can be an important limiting factor on arbitrary power, especially in those developing nations in which legislative institutions have atrophied. Fourthly, a legal services program can increase popular participation by educating the community to the functioning of the legal system and to substantive legal rules. This education process may

lead to a continuing use of the legal system and other institutions of the national political authority, including non-legal facilities. Finally, a legal services program may help strengthen the legal profession by contributing to a potential improvement in the quality of professional service and in maintaining high standards of ethical conduct.⁴⁹

Legal services programs, which incorporate a clinical legal education component, may contribute to the general improvement of legal education and to incremental improvement in the quality of professional service by producing graduates more familiar with the practical aspects of law practice, and less inclined to adopt the casual ethical attitudes of certain segments of the legal profession. These type programs can also help to sensitize law students to the legal problems of the poor and may influence the law schools to treat those problems in their curriculums and in research done by their students and faculty.

While having the potential for making an important contribution to social change or development, legal aid programs can also have negative effects. Legal aid programs can become just a "band-aid" approach to the legal problems of the poor, if programs are not truly responsive, research and reform conscious, and they do not successfully present and promote reform proposals to the legal profession, legal educators, and most importantly, governments, which are the only institutions capable of providing adequate resources for the extensive programs of legal aid that need to be developed and having authority to act on law reform proposals. Legal aid programs can result in increasing the burden of overloaded court systems and adding to antagonisms between the poor and the rich. Thus, careful study of legal aid project objectives is a must before support is provided for their development.⁵⁰

In addition to these factors, it must be kept in mind that legal aid is a sensitive activity with political overtones. Foreign assistance organizations must be cognizant of this in assisting legal aid projects in Latin America and the Caribbean. Technical assistance which includes foreign advisers and imposition of foreign legal aid models may lead to a charge of cultural and political imperialism. In order to maintain their independence and gain credibility, legal aid projects in Latin America and the Caribbean should definitely not obtain their funding exclusively from foreign sources. Potential short and long-term local funding and capable local personnel should be prime considerations in providing foreign assistance to such projects. Whenever possible the support of the legal profession should be enlisted in such projects. Finally, efforts should be

made to insure that the community has a voice in the type of services that are to be provided and in the direction of resources.

2. *Recent Developments in Latin America and the Caribbean:* Projects providing legal services to the poor have attracted recent attention in Latin America and the Caribbean. While legal aid facilities in the two regions have existed for some time, they have had inadequate resources to meet the needs of that segment of the population which has almost no access to lawyers and the legal system.⁵¹ Recent legal aid projects have demonstrated the need to revitalize existing facilities and to create dynamic new legal aid programs.

a. *Latin America*

While a handful of legal aid programs of one type or another have existed in Latin America for a number of years, their services have been limited to representation of indigent defendants in certain classes of serious criminal offenses and very minor civil matters. In several Latin American countries the organized bar has usually been one of the sponsors of legal aid programs, providing support primarily through requirements that new members of or candidates for the bar must serve a brief period of time in such programs. However, adequate financial assistance to increase the effectiveness and creativity of legal services programs has generally been lacking. These observations of the Chilean Bar Legal Services Program are characteristic of most current legal aid programs in Latin America: "Insufficient economic resources; internal disorganization and lack of creativity and dynamism; non-existence of a real teaching program . . . ; absence of studies and pieces of research that can serve as the basis for internal restructuring; substantive changes in the laws that most affect the poor and modifications in jurisprudential criteria; lack of direct controls over the work of lawyers and students."⁵²

One of the most successful legal aid projects in Latin America is the recently established Legal Services Center of the Catholic University of Chile. The project is operated by law students and members of the law school faculty.⁵³ One of its objectives is to educate the community on its legal rights and obligations by producing a publication providing information to the layman on his legal rights and a television program which discusses selected legal problems of the poor. This type of effort addresses a common problem in developing countries, the ignorance of the poor about their legal rights and obligations and the means available to them for resolving disputes and redressing grievances.⁵⁴ This ignorance must be removed if the community is to make appropriate demands on the legal

system. Lawyers, courts and bureaucracies do not, as a rule, seek cases or grievances to redress. Rather, those cases and grievances must be presented to them for consideration and resolution. A necessary ingredient for submitting those cases to the appropriate forum is a basic knowledge of the legal system on the part of the community.

Another necessary ingredient in this process is finding lawyers willing to give effective representation before that forum. The Catholic University is making lawyers available to the poor of Santiago through a clinical education-legal aid project. The clinic is operated by the law faculty of the Catholic University and enjoys the participation of some 50 law students. The clinic handles cases ranging from divorces to labor negotiations for a union of domestic helpers. The students, supervised by faculty, make frequent visits to the *campamentos* of Santiago where they interview and advise clients, in addition to seeing clients at the clinic offices on the University's campus.

The Catholic University's legal assistance center has recognized that legal problems of the poor are so broad that it can address them more adequately by representing citizens with similar legal problems on a class basis. Thus, the center has signed agreements with "*poblaciones*," camps, labor unions and the public jail for providing free legal counseling and representation for all members of the respective organization and their families. It has found that "it is not sufficient to simply offer greatly needed assistance . . . but that without a program designed to motivate the poor to demand, as a right, the needed services . . . they simply will not take advantage of the most desperately needed assistance."⁵⁵ Past disappointments with the legal system or lawyers and outright distrust of both may be part of the reason for this situation.

The Director of Catholic University's Legal Services Center, Luis Bates,⁵⁶ has taken a leadership role in promoting the establishment of this type clinic in Latin America. In March, 1973, he hosted, with the support of the International Legal Center, a conference on legal aid, which was attended by law school deans and professors of law from most of the Latin American countries. The favorable response to the conference indicates a widespread interest in clinical education and legal aid in Latin America.⁵⁷

b. *The Caribbean*

The Caribbean,⁵⁸ often bypassed by development assistance organizations during the past decade,⁵⁹ has recently experienced a growing concern

for the legal problems of the poor. This concern has led to the recent establishment of the Kingston Legal Aid Clinic in Jamaica. The Clinic was established in 1972 with modest financial support from the Government of Jamaica and the Jamaican Bar Association. This Clinic presently has three full-time lawyers and several law students from the recently established law school of the University of the West Indies.⁶⁰ The participation of the law students is an important aspect of the project, for the potential impact it can have on legal education at this fledgling law school and for sensitizing these future lawyers to the legal problems of the poor. The Clinic has begun a three-year expansion program which will double its initial capacity for serving the poor of Kingston.⁶¹ The initial success of the Kingston Clinic has led to the establishment of another clinic in Montego Bay. Recently, the Kingston Clinic staff has assisted the establishment of another clinic in Georgetown, Guyana.⁶² This is another indication of the impact which the pioneering work of the Kingston Clinic is already making in the Commonwealth Caribbean.

In Jamaica, and in Trinidad and Tobago, the governments have established an office for law reform to study the legal systems and make recommendations for amending existing legislation and enacting new legislation where needed.⁶³ One of the objectives of the Kingston Clinic is to do research in the area of law reform, based upon its day-to-day experiences with legal problems of the poor, and to present law reform proposals to this office.⁶⁴ Since the office for law reform has very modest means to perform its function, the Clinic will provide a great benefit and valuable input to reforms by the government that will make the law more responsive to poor people's needs in Jamaica. Similar cooperation between legal aid clinics and government law reform efforts may be possible in other Caribbean countries.

A growing interest in legal aid is similarly perceived in other Caribbean countries. This has prompted the Organization of Commonwealth Caribbean Bar Associations to propose a project to the Inter-American Foundation to study the feasibility of and to promote the establishment of legal aid facilities throughout the Commonwealth Caribbean.⁶⁵ In April, 1974, the Foundation approved a grant to the organization, which has been in existence for five years and is the only regional bar group in the Caribbean, for this regional project.⁶⁶

The beginning of an era of independence for the Commonwealth Caribbean countries is a propitious time to assist their legal systems to consider and respond to the needs of their people. Long dominated by a

foreign sovereign which imposed its own laws and judiciary, the Commonwealth Caribbean countries are entering an era of potentially profound change. Helping that process of change to consider the values, customs, and needs of their society would make an important contribution to the process of development.

E. *Public Interest Law*

Positive social change through law involves more than the delivery of legal services to the poor so that they may resolve domestic relations problems, personal injury claims, or even landlord-tenant problems. These are important enough to the individuals concerned, but law reform efforts to promote social change will require tackling issues of broad socio-economic impact, and which may affect the interests of more than one social class or interest groups. These may involve, for example, such critical issues as environmental protection, the working conditions of laborers in the industrial sector, the delivery of social services relating to health, education and housing, and consumer protection. The methodology for addressing these issues, which can be of a legal-political nature, may include research into the issues involved and dissemination of the findings to public through television, radio, or the written word to enlighten the public's understanding and response to the issues; presentation of these findings and proposing remedial action to legislative bodies and government agencies on behalf of the public; and litigation in the courts to enforce existing legislation which protects the public from government inaction or special interest abuse. These efforts and methods may be characterized as representing the "public interest."

The concept of public interest law, which has begun to take hold in the United States under the leadership of Ralph Nader, has recently created some interest in Latin America.⁶⁷ A Public Interest Law Center has been proposed to be established in Bogota, Colombia, in the near future. If this experimental project becomes established, it may provide a valuable learning experience. The public interest law firm may provide a vehicle for making a broader impact in law reform efforts that might be possible through legal aid projects, and might complement the activities of such projects. While such an organization would undoubtedly find it difficult to operate successfully in many Latin American countries, it may fare better in Colombia, one of only three countries in South America not under military rule. As with legal education models, however, care must be had not to impose the U.S. concept literally in Colombia or any other country. In the U.S. public interest law centers have begun to take hold

primarily because of the ability and charisma of one man, with uncanny ability at using the public media for his forum. U.S. constitutional protections of free speech and a fairly sophisticated public have also been factors in Nader's success. Those factors may not be present or may not have the same importance in a Latin American or Caribbean context.

It is not certain what access to the public media such a center could have in Colombia, and how much public response can be generated in countries whose citizens are not as well educated as in the United States. Would such response have any effect on government policy and administration? Is it possible to build a fairly solid constituency to support a public law center? Can the center litigate issues in court, as well as in other forums, and what opportunities are there for making a broad impact with such litigation? Is the legislative process in Latin America or the Caribbean as amenable as in the United States to consider presentations of the public interest view in its deliberations, and will it respond to public pressure for reform? Answers to these and many other questions have not been forthcoming. A feasibility study presently underway in Colombia may shed some light on these questions.

In addition to the ability and charisma of its leadership, access to the media and other inherent needs, a public interest law center must enjoy such legal protection that a government will not frustrate it by threat of force or some other sanction. It is not certain how many Latin American or Caribbean countries would permit a public interest law firm to function today or in the near future, particularly if it got involved with sensitive issues which spill over into the political arena. Certainly, it would be difficult, if not impossible, for the public interest law firm to function effectively in a country with military government.

The concept of the public interest law firm in a Latin American or Caribbean context is certainly worthy of study. If found to be feasible in a particular context, it might be capable of doing "law in action" research in numerous areas and to assure that such research would be action-oriented, and not gather dust as is the case with many research studies. To have some chance of success, the concept of a public interest law firm must be an indigenous initiative, with sufficient moral commitment and resources for a sustained effort, and designed for the socio-political context in which it will strive to function. But feasibility studies can go on for just so long. In the final analysis, it may be necessary to take the plunge with an experimental pilot project in order to determine whether the concept is feasible in Latin America and the Caribbean and

the degree of its effectiveness. In all probability, even Mr. Nader himself was not very certain when he started his movement that he would make the impact he has made, in fact, on public opinion and government policy.

V. CONCLUSIONS

In recent years there has been increasing interest in studying the role of law in society, in law reform and in social reform through law. The developing countries of Latin America and the Caribbean are increasingly resorting to "social engineering" through law to achieve social change in their societies. This process and its effectiveness in causing change is becoming a focus of research interest in law. It is becoming recognized that the legal system is a part of political, social, and economic development and that a better understanding of its role in society is important to that development.

The problem of the poor's unequal access to the legal system presents a serious obstacle to social change and development. Resources are needed to overcome this inequality and to assure that every citizen will not only have his "day in court," but also in the legislative forum and in the public arena. Past foreign assistance to development has contributed to the increasing gap between the rich and the poor in developing countries. To close this gap requires that the poor be assisted in obtaining the legal-political resources needed to assert themselves and obtain greater benefits from development efforts than they have in the past.

Past assistance efforts to law reform projects in Latin America have emphasized legal education reform and were concerned primarily with developing the role of the lawyer and the legal systems in national economic development. The experience of that assistance has taught that law reform efforts should consider the sociological, cultural, political and economic context within which they are to function. The experience has also revealed the risks involved in exporting foreign models as vehicles for law reform in countries with a different legal system and culture.

Present trends in law reform activities suggest that there will be opportunities in the future to assist in developing the role of law in social change in Latin America and the Caribbean. Foreign assistance endeavors to assist that development in the future should be more modest in prescribing remedies and setting goals, more willing to listen to indigenous law reform proposals, and more dedicated to learning about the role of

law in those societies. Above all, it should be recognized that law should be made not only to serve man's economic needs, but to serve him in his quest for justice.

NOTES

¹See, generally, Skidmore, "Technical Assistance in Building Legal Infrastructure: Descriptions of an Experimental AID Project in Central America", 3 J. of Developing Areas 549 (1969); Trubek, "Toward a Social Theory of Law: An Essay on the Study of Law and Development," 82 Yale L. J. 1 (1972) [hereinafter cited as Trubek]; Franck, "The New Development: Can American Lawyers and Legal Institutions Help Developing Countries?", 1972 Wisc. L. R. 767; Karst, "Law in Developing Countries", 60 L. Library J. 13 (1967); Kozolchyk, "Toward a Theory of Law in Economic Development: The Costa Rican USAID-ROCAP Project", 1971 L. & Social Order 681; Seidman, "Law and Development: A General Model", 6 L. & Soc. Rev. 311 (1972); Friedman, "On Legal Development in Developing Countries," 24 Rutgers L. Rev. 11 (1969); Konz, "Legal Development in Developing Countries," 1969 Proceedings of the Am. Soc'y Int'l. L. 91; Trubek, "Law, Planning, and the Development of the Brazilian Capital Market" (Yale Law School Studies in Law and Modernization No. 3); Steiner, "Legal Education and Socio-Economic Change: Brazilian Perspectives", 19 Am. J. Comp. L. 39 (1971), [hereinafter cited as Steiner].

²Friedman, "Legal Culture and Social Development", 1 Law and Soc. Rev. 29 (1969); See, also, Mendelson, "Law and the Development of Nations", 32 J. Pol. 223 (1970); Galanter, "The Modernization of Law" in Weiner, ed., *Modernization* (1966); and Pye, "Las as the Source of Both Instability and Rigidity", in *Aspects of Political Development* (1966), at pp. 113-125.

³See, preface, Friedman & Macaulay, eds., *Law and the Behavioral Sciences* (Bobbs Merrill Co., 1969). Also, see, generally, Trubek, "A Critique of the Law and Development Literature" (1971); Working Paper No. 10 from Yale Program of Law and Modernization.

⁴See, W. M. Evan, ed., 1962, *Law and Sociology: Exploratory Essays* at p. 1; Laura Nader, ed., *Law in Culture and Society*, (Aldine Publishing Co.: Chicago, 1969); also see, generally, Friedman and Macaulay, eds., *Law and the Behavioral Sciences* (Bobbs, Merrill Co., 1969).

⁵Kenneth Karst, long a student of Latin American law and legal institutions, reflected on the lack of scholarly research in this area when he stated that "While it may be proper to suggest that certain subjects for research are basic or perhaps deserving of a degree of priority, the fact is that virtually no research in Latin American law or legal institutions will run the risk of duplicating existing work", in Karst, *The Study of Latin American Legal Institutions: Problems for Comparative Study*, Los Angeles (UCLA Latin American Center, Los Angeles, 1966) at p. 297. Ten years later one can note little progress in this area of research. Mendelson, Law and the Development of Nations, 32 J. of Pol. 223 (1970).

⁶Wiarda, "Law and Political Development in Latin America: Toward a Framework for Analysis," 19 Am. J. of Comp. L. 434 (1971) [hereinafter cited as Wiarda] at p. 434. Wiarda also adds: "If the study of law is too fundamental to be left solely to the lawyers, to add a new twist to an old adage, it is equally certain that it cannot be left to the sociologists and political scientists, either, for they have conspicuously denegated the significance of law for the development process by all but ignoring it." Also see, generally, Mendelson, "Law and the Development of Nations", 32 J. of Pol. 223 (1970). For an appraisal of the resistance of law schools and the legal profession to the introduction of social science techniques and theories, see Reisman, "Law and Sociology: Exploratory Essays." 12, 24-40 (W. M. Evans, ed.,

1962); and Stevens, "Two cheers for 1870: The American Law School"; D. Fleming and B. Bailyn, eds., 5 *Perspectives in American History* 405, 470-548 (1971); "The Future of Law and Development Research" (Report of the Research Advisory Committee on Law and Development, dated April 5, 1974, and on file at the International Legal Center, New York).

⁷See H. Burton, *Principles of Development Economics*, 359-62 (1965); S. Kuznets, *Modern Economic Growth* 451-53 (1966); W. A. Levin, *Theory of Economic Growth* 408-15 (1955); and E. Hagen, *The Economics of Development* 480-84 (1968).

⁸One argument emphasizes that the maintenance, even in the present and increasingly modern era in Latin America, of corporate social and political structures, reinforced by a political structure that stresses hierarchy, authority, status and patronage helps maintain this traditional structure; but, at the same time, provides for change through the process of co-optation of new social and political units into the administrative units of the corporate system. The role of law in this system is considered exceedingly important, for it is legal recognition that gives legitimacy to a group and makes its existence formally recognized. Legal recognition by the government is the sine qua non for the activities of any organized interest, be it in the form of the acknowledgement of the juridical status of a labor organization or professional association, or the granting of a charter to a university or municipality. The government regulates the whole process of group activities, elite integration, and national development through its powers of recognition, as well as through its power over the purse and the careful management of official subsidies. This same argument also maintains that the "failure" of the Latin American countries to achieve democracy "North American style" to date is "not really a failure, but in fact a triumph for the major ideals and aspirations that have been theirs since the sixteenth century, however undemocratic these might be." See Wiarda, *supra* note 6 at p. 444-48.

⁹Exceptions to this statement are the Stanford Program on Law and Development and the Yale Program on Law and Modernization.

¹⁰See, generally, Gardner, "The Legal Profession and the Third World" (1974), unpublished essay. (Cited with permission of the author) [hereinafter cited as Gardner]. See, also, "Derecho y Cambio Social en América Latina," paper presented by Luciano Tossini (Chilean lawyer on IBD staff) at the Conference on Legal Education and Development, Valparaiso, Chile, 1971 (edited and translated by Joseph R. Thome); also see Trubek, *supra* note 1, at pp. 1-20.

¹¹For studies of problems in implementing land reform in Latin America, see, generally, Thome, "The Colombian Agrarian Reform: Legal Limitations on the Process of Expropriation," 8 *Inter-American L. R.* 269 (1966); Thome, "Expropriation in Chile under the Frei Agrarian Reform," 19 *Am. J. Comp. L.* 489 (1971); Rosenn, "The Jeito: Brazil's Institutional Bypass of the Formal Legal System and its Developmental Implications," 19 *Am. J. Comp. L.* 514 (1971); Karst & Clement, "Lessons from the Mexican Ejido," 16 *UCLA L. R.* 281 (1968).

¹²With reference to land reform programs, particularly in Mexico, Kenneth Karst says: "In the context of Mexican agriculture, effective national planning cannot rest exclusively on such macro-economic considerations as crop subsidies or import restrictions. The planners also must concern themselves with the way decisions are made by the local officer of the Ejido Bank, the president of the ejido, and even the individual ejidatario—and that concern implies a concern with the legal, institutional environment of the ejido." See Karst, *supra* note 11 at pp. 302-303.

¹³See Knight, "Legal Services Projects for Latin America", at pp. 110-111, in *Legal Aid and World Poverty* (Praeger Publishers, New York, 1974).

¹⁴See, generally, Metzger, "Legal Services to the Poor and National Development Objectives" in *Legal Aid and World Poverty* (Committee on Legal Services to the Poor in the Developing Countries, Praeger Publishers, New York, 1974), pp. 1-18.

¹⁵See, generally, Seidman, "The Communication of Law and the Process of Development", 1972 Wis. L. R. 686.

¹⁶See, generally, Hager, "The Role of Lawyers in Developing Countries", 58 ABAJ 33 (1972).

¹⁷Some assistance was directed towards codification of economic laws, and studies on capital markets, particularly in Brazil and Costa Rica. See, generally, Trubek, "Law, Planning, and the Development of the Brazilian Capital Market" (Yale Law School Studies in Law and Modernization No. 3); and Skidmore, "Technical Assistance in Building Legal Infrastructure: Descriptions of an Experimental AID Project in Central America", 3 J. of Developing Areas 549 (1969).

¹⁸For development of the core conception, see Trubek, *supra* note 1, at pp. 10-22.

¹⁹See Trubek, *supra* note 1, at pp. 48-50; for Latin American perspectives in the 1960's on the need to reform legal education, see Mayda, "Problems of Legal Education in Latin America," 125 J. of Legal Ed. 407 (1974) and Mayda, "First Conference of Latin American Faculties of Law, Mexico City", 8 Inter-Am. J. of Comp. Law 441 (1959); see also Brown, "Recent Significant Trends in Legal Education in the Americas," 3 Inter-Am. L. R. 55 (1961).

²⁰Approximately U.S. \$5,000,000 was provided by Ford Foundation, AID and the International Legal Center. See Gardner, "The Legal Profession and the Third World", at p. 54, unpublished essay, dated 1974 (Cited with permission of the author).

²¹Trubek, *supra* note 1 at p. 38.

²²For an excellent study of the American Bar's participation in the process of adjusting law to the new economic and social problem brought by the Industrial Revolution, see, generally, Hurst, *The Growth of American Law: The Law Makers* (1956).

²³Interview on April 19, 1974, with James A. Gardner, Program Officer, Ford Foundation. Gardner has been involved in monitoring law and development projects in Latin America for the Ford Foundation since 1969. Gardner was also Visiting Scholar at Harvard Law School during the 1973-74 academic year, during which time he prepared a critical history of the Law and Development Movement, with particular reference to Latin America. The essay, which has not yet been published is entitled —"The Legal Profession and the Third World".

John Howard, President, International Legal Center (ILC), suggests a different perspective on this description, and reports that since 1969 the ILC has supported projects which extended beyond the scope of earlier assistance efforts described above. These have dealt with clinical legal education and socio-legal research in Chile and Costa Rica.

²⁴See Trubek, *supra* note 2, at p. 43.

²⁵See Skidmore, *supra* note 1, at p. 552.

²⁶In view of the overall performance of U.S. law schools in this area, perhaps this would be too much to expect given the social context under which law schools operate in Latin American countries, many of which, like Brazil, exist under the shadow of authoritarian governments. Ralph Nader recently described that performance as follows: "For decades, the law school curriculum reflected with remarkable fidelity the commercial demands of law firm practice. Law firm determinants of the content of courses nurtured a colossal distortion in priorities both as to the type of subject matter and the dimensions of its treatment. What determined the curriculum was the legal interest that came with retainers. Thus, the curriculum pecking order was predictable . . . tax, corporate, securities and property law at the top and torts (personal injury) and criminal law among others at the bottom . . . Courses tracking the lucre and the prevailing ethos did not embrace any concept of professional

sacrifice and service to the unrepresented poor or to the public interests crushed by private powers. Such service was considered a proper concern of legal charity to be dispensed by starved legal aid societies."

²⁷See, generally, Gardner, *supra* note 10.

²⁸Trubek, "Toward a Social Theory of Law: An Essay on the Study of Law and Development", 82 Yale L. J. 1 (1972); See, also Steiner, "Legal Education and Socio-Economic Change: Brazilian Perspectives," 18 Am. J. of Comp. Law 39 (1971).

²⁹See Gardner, *supra* note 23 and note 10 at pp. 260-265.

³⁰See, generally, Gardner, *supra* note 10.

³¹Nader, "Law Schools and Law Firms", 54 Minn. L. R. 6 (1969) at p. 494. Also see, generally Savoy, "Toward a New Politics of Legal Education", 79 Yale L. J. 444 (1970); Kennedy, "How the Law School Fails: A Polemic," 1 Yale Review of Law and Social Action 71 (1970); Borosage, "Can the Law Schools Succeed? A Proposal", 1 Yale Review of Law and Social Action 92 (1970). Also, see Steiner at p. 82.

³²See comments by Nader in *supra* note 26.

³³See Steiner, *supra* note 1, at p. 88.

³⁴See, generally, Craig, "Structural Differences between Common Law and Civil Law", 9 Seminar 50 (1951); Cooper, "The Common Law and the Civil Law", 63 Harvard L. Rev. 468 (1950); Dainow, "The Civil Code and the Common Law", 51 N.W.U.L. Rev. 719 (1957); Rheinstein, "Common Law and Civil Law," 12 Pa. B.A.Q. 7 (1940); Brown, "The Sources of the Spanish-Civil Law," 5 Int'l and Comp. Law Q. 364 (1956); Merryman, *The Civil Law Tradition*, (1969); von Mehren, *The Civil Law Systems: Cases and Materials for Comparative Study of Law* (1957).

³⁵See, ILC Newsletter No. 7 and 8, dated December, 1972, and March, 1973, respectively. Also see Interim Report on Law and Development in Latin America and the Caribbean (unpublished paper dated March 8, 1971, on file at ILC).

³⁶Interviews with Nita Manitzas of Ford Foundation office in Chile, June 15, 1973, and Jim Gardner of Ford Foundation, at Harvard Law School during February-April, 1974.

³⁷See, generally, *First Steps* (1974), cumulative report on the first three years of operations of the Inter-American Foundation.

³⁸See, generally, note 24 and Gardner, *supra* note 10.

³⁹For various views on the subject, see, generally, "The Future of Law and Development Research" (Report of the Research Advisory Committee on Law and Development, dated April 15, 1974, on file at the International Legal Center, New York); Tomasini, "Law and Social Change in Latin American," (unpublished paper presented at the Conference on Legal Education and Development, Valparaiso, Chile, 1971); also, see, generally, Thome, "Some Ideas Regarding Legal Research in Latin America" (unpublished paper dated 1971, on file at the Inter-American Foundation); and Karst, "The Study of Latin American Law and Legal Institutions" in Wagley, ed., *Social Science Research on Latin American* (1964), at pp. 291-332; Auerbach, "Legal Tasks for the Sociologist," 1 Law and Soc. R. 91 (1966); Skolnick, "Social Research on Legality," 1 Law and Soc. R. 105 (1966); Selznick, "The Sociology of Law," in *Sociology of Today* (1959) at pp. 115-127.

⁴⁰See Section IVD2b in text.

⁴¹Interviews with Barry Chevannes and Edward Laing on September 9, 1974, and October 21, 1974. See also Inter-American Foundation Public Statement, dated

June 11, 1974, on contract with Edward Laing and Barry Chevannes for services provided in evaluating the Kingston Legal Aid Clinic Project.

⁴²See, generally, Comment: "The Peruvian General Law of Industries," 12 Harv. Int'l L. J. 312 (1971).

^{42a}See Araujo and Oliart, "Community Enterprise and Agrarian Reform in Latin America", in *KIDMA*, Israel Journal of Development, Tel Aviv, Israel (1974).

^{42b}See Roca, *Propiedad Social en el Perú: Su Sistema de Financiamiento* (Escuela de Administración de Negocios para Graduados, Lima, Perú, 1974); and Montalvo and Scurrah, *Participación Laboral en la Gestión Empresarial* (Escuela de Administración de Negocios para Graduados, Lima, Peru, 1974).

⁴³See ILC Newsletter No. 7, dated December, 1972, at p. 5, announcement of a conference held in Caracas, Venezuela, February, 1973, for the purpose of formulating plans for a program of comparative inter-disciplinary studies of development corporations in Latin America.

^{43a}See "The Future of Law and Development Research", at pp. 46-48.

⁴⁴With regard to foreign scholars doing research in Brazil or other Third World countries, Trubek says "to the extent that scholars in the developed world can have any genuine understanding of legal life in Brazil and throughout the Third World, they will attain it only through more careful study, oriented by clear concepts, and an awareness of the preconceptions and normative values affecting the researcher . . . They must keep their value preferences and intellectual preconceptions from blinding them to the actual phenomena of legal life in the Third World." See Trubek at pp. 49-50. Also, see Steiner at pp. 83-86.

⁴⁵The program was established with the assistance of an Inter-American Foundation grant.

⁴⁶The social science and law faculties were traditionally combined in Latin American universities until the past few decades when the social science faculties were separated from the law faculties.

⁴⁷See Metzger, note 14, *supra*, at p. 4.

⁴⁸See Friedman, "Legal Culture and Social Development," Law and Soc. Rev. 29 (1969) at pp. 43-44.

^{48a} and ⁴⁹ See Metzger, note 14, *supra*; Metzger also feels that legal aid can strengthen the legal profession and improve the quality of legal services by strengthening the financial base of the profession; I do not necessarily agree.

⁵⁰For studies of the U.S. experience with legal service programs, see, generally, Cahn and Cahn, "The War on Poverty: A Civilian Perspective," 73 Yale L. J. 1317 (1964); Carlin et al, "Legal Representation and Class Justice", 12 UCLA L. R. 381 (1965); Handler, "The Role of Legal Research and Legal Education in Social Welfare", 20 Stanford Law Review 669 (1968); and Finman, "OEO Legal Services Programs and the Pursuit of Social Change: The Relationship Between Program Ideology and Program Performance," 1972 Wisc. L. R. 1001. For a comparative study of the performance and rationale of legal services programs in England and the United States, see, generally, Green and Green, "Legal Profession and the Process of Social Change: Legal Services in England and the United States", 21 Hastings L. J. 563 (1970). The historical development and traditional rationale for legal services to the poor are described in Cappelletti and Gordley, "Legal Aid: Modern Themes and Variations," 24 Stanford L. R. 347 (1972).

⁵¹See Ginsburg, "The Availability of Legal Services to Poor People and People of Limited Means in Foreign Systems", 6 International Lawyer 128 (1972).

⁵²See, generally, Bates and Leitell, "Legal Services to the Poor in Chile", in *Legal Aid and World Poverty* (Praeger Publishers, New York, 1974), at pp. 132-152. The project has received valuable technical assistance from the International Legal Center, New York.

⁵³Interview with Luis Bates, Director of the Catholic University Legal Assistance Center, June 18, 1973.

⁵⁴See, generally, Seidman, "The Communication of Law and the Process of Development", 1972 Wisc. L. R. 686.

⁵⁵See Bates and Leitell, *supra* note 27, at pp. 15-16.

⁵⁶Interview with Barry Metzger, International Legal Center, March 20, 1974; see also Platt, "Clinical Legal Education in Chile" in *Selected Readings in Clinical Legal Education* (ILC Council on Legal Education for Professional Responsibility, CLEPR, New York).

⁵⁷See the "Miami Herald" article, Feb. 28, 1973, p. 3, entitled "Experimental Legal Aid Approach in Chile Draws Widespread Interest."

⁵⁸The Commonwealth Caribbean Countries have common law systems. Haiti and the Dominican Republic have civil law systems.

⁵⁹While substantial assistance was provided for legal education reform in Latin America during the last decade, almost no assistance has been given to legal education or law reform in the Caribbean, according to my discussions with Ford Foundation and ILC officials.

⁶⁰The UWI Law School will graduate its first class of lawyers in June, 1975.

⁶¹The expansion program was begun in January, 1973, with a grant from the Inter-American Foundation. See Inter-American Foundation Public Statement, dated December 20, 1973, on grant made to Kingston Legal Aid Clinic.

⁶²See the "Guyana Graphic" article, July 9, 1974, p. 1, entitled "Government Can't Finance A Legal Aid System".

⁶³Interview with Dr. E. Watkins, Director of the Jamaican Law Reform Office, February 8, 1974.

⁶⁴Interview with Ronald Thwaites, Director of the Kingston Legal Aid Clinic, February 9, 1974.

⁶⁵Interview with Norman Hill, Vice-President, Organization of Commonwealth Caribbean Bar Associations, February 9, 1974.

⁶⁶See Inter-American Foundation Public Statement, dated June 12, 1974, to the Organization of Commonwealth Caribbean Bar Associations.

⁶⁷See Inter-American Foundation Public Statement, dated June 28, 1974, on grant made to the Centro de Investigaciones Pro-Defensa de Intereses Públicos, Bogotá, Colombia.