THEODORE TE'S "LEGAL EDUCATION IN THE PHILIPPINES: CONFRONTING THE ISSUES OF RELEVANCE AND RESPONSIVENESS": A COMMENTARY*

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Legal Education in the Philippines: Confronting the Issues of Relevance and Responsiveness[1] ("*Legal Education*") makes the point that legal education is as much about the transformation of law as it is the making of lawyers. It challenged, and continues to challenge, the framework of legal education in the Philippines which delivers content rather than defines it. While the methodology—whether case method or experiential—employed in the law school classroom today continues to be demanding, if not severe, I imagine that it also presents a convenient setting for law students to be numbed against the intense intellectual and moral burden of the professional life they aspire to join. The life that awaits a future lawyer is one that continues to evolve within the context of the changing face of injustice, made more poignant in a nation challenged and confounded by the prosecution of our highest officials, valiantly recovering from one upheaval to another, attempting to stitch the widening divide in wealth, all in a world steadily advancing in technology but ever mired in pockets of violence and perpetual conflict.

To set the Filipino lawyer with the mettle for the legal profession of the 21st century, we must look beyond cognitive and rational, an examination that begs the scrutiny of Philippine legal education's purpose, methods, and constraints. *Legal Education* is an invaluable resource that provides the scope for understanding the purpose and function of legal education. It is a finely nuanced article that looks to the view and belief we take of law and lawyers as the foundation of any reflection toward reforming legal education. In this article, Theodore O. Te, now Deputy Court Administrator, postulates that the "function of legal education in the context of a developing nation such as the

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[1] Theodore O. Te, Note, *Legal Education in the Philippines: Confronting the Issues of Relevance and Responsiveness*, 63 PHIL L.J. 198 (1988).

Philippines must then be not only to impart the basic doctrines in jurisprudence as well as the contents of the law itself to the students of law but more importantly, to shape consciousness among the students as well as among the members of the basic sectors of society."[2]

Few today will contest the continued relevance of the various approaches deployed in our law school classrooms—including the case method—in developing the cognitive. But the task that *Legal Education* ascribes to the teaching of law transcends the acquisition of knowledge and explores the ethical and practical. Written in 1988, it explores the remoteness of law to those who, having less in life, need more in law, and develops an argument for the reconceptualization of legal education and the reformation of methodologies (particularly in refining the practice already developed in clinical legal education, a program established in the 1970s despite the oppressive regime in place at the time). The questions that *Legal Education* invites us to consider are "Where will the Filipino lawyer choose to go?" and "To which enterprise will the knowledge and skills be invested?" It is not insignificant that *Legal Education* was written the year after the 1987 Constitution was ratified; its take on legal education, at once reasoned and visceral, closely followed the emphasis on social justice under the Charter, considered pro-people, pro-poor and anti-dictatorship. Laws were later passed to give life to these constitutional provisions.[3] But it would not be until twelve years after the ratification of the Constitution that the Social Reform and Poverty Alleviation Act [4] came into force. The National Anti-Poverty Commission ("NAPC") was created under the Act to serve as a forum for the sustained engagement of the basic sectors[5] and government on anti-poverty

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[2] *Id.* at 202, *citing* Merlin M. Magallona, *Comments on Legal Education in the Third World*, 53 PHIL. L.J. 87 (1978).

[3] Beginning with Rep. Act No. 8980 (2000), entitled *An Act Promulgating a Comprehensive Policy and a National System for Early Childhood Care and Development (ECCD), Providing Funds therefor and for Other Purposes*; and Rep. Act No. 8759 (2000), entitled *An Act Institutionalizing a National Facilitation Service Network Through the Establishment of a Public Employment Service Office in Every Province, Key City and other Strategic Areas Throughout the Country*; followed by other key social justice legislation such as Rep. Act No. 9262 (2004), entitled *An Act Defining Violence Against Women and their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, and for Other Purposes*; Rep. Act No. 9719 (2009) or the *Magna Carta of Women*; Rep. Act No. 9481 (2007), entitled *An Act Strengthening the Workers' Constitutional Right to Self-Organization, Amending for the Purpose Presidential Decree No. 442, as amended, otherwise known as The Labor Code of The Philippines*; and Rep. Act No. 9281 (2004), entitled *An Act to Strengthen Agriculture and Fisheries Modernization in the Philippines by Extending the Effectivity of Tax Incentives and its Mandated Funding Support, amending for this purpose Sections 109 And 112 of Republic Act No. 8435.*

[4] Rep. Act No. 8425 (1998). It was signed into law in December 1997 and became effective on June 30, 1998.

[5] § 3(a) defines basic sectors as those referring to the disadvantaged sectors of Philippine society, namely: farmer-peasant, artisanal fisherfolk, workers in the formal sector and migrant workers, workers in the informal sector, indigenous peoples and cultural communities,

program development and flow of resources. Under the Act, and through NAPC—despite the struggle to establish itself as the poverty reduction manager and coordinator of the government—basic sector participation [6] and representation were considered to have been institutionalized at the highest level of governance.[7]

Yet, the framework for the delivery of legal education towards the qualification of lawyers adequately knowledgeable and skilled to work in the growing gap of addressing the needs of the basic sectors has been slow to follow. A significant step towards reform of Philippine legal education came in 1993, with the passage of Republic Act No. 7662, entitled *An Act Providing for Reforms in Legal Education, Creating for the Purpose a Legal Education Board, and for Other Purposes*, and popularly known as the *Legal Education Reform Act of 1993*. This law provides that legal education in the Philippines is geared not only to prepare students for the practice of law, but also to "increase awareness among members of the legal profession of the needs of the poor, deprived and oppressed sectors of society,"[8] and "contribute towards the promotion and advancement of justice and the improvement of its administration, the legal system and legal institutions in the light of the historical and contemporary development of law in the Philippines and in other countries."[9] To achieve these objectives, the Legal Education Board ("LEB") was established with the mandate to, among others, "prescribe the basic curricula for the course of study aligned to the requirements for admission to the Bar, law practice and social consciousness, and such other courses of study as may be prescribed by the law schools and colleges under the different level of accreditation status."[10] It is also interesting to note that the LEB is vested with the power to "establish a law practice internship as a requirement for taking the Bar which a law student shall

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women, differently-abled persons, senior citizens, victims of calamities and disasters, youth and students, children, and urban poor. It is interesting to note that this definition is similar to that used in *Legal Education*: "For the purpose of this article, the term 'basic sectors' should be taken to mean members of the urban poor, labor force, peasantry, farmers, indigenous peoples, subsistence fishermen as well as other similarly marginalized and oppressed sectors of Philippine society." Te, *supra* note 1, at 198 n.4.

[6] The 14 basic sectors represented in NAPC are farmers and landless rural workers, artisanal fisherfolk, urban poor, indigenous cultural communities/indigenous peoples, workers in the informal sector, workers in formal labor and migrant workers, women, youth and students, persons with disabilities, victims of disasters and calamities, senior citizens, non-government organizations, children and cooperatives. (Rep. Act No. 8425 (1998), § 6(3)(a)-(c))

[7] Fernando T. Aldaba & Joselito T. Sescon, Review and Assessment of the Implementation of RA 8425, Report prepared by the Ateneo de Manila University for the National Anti-Poverty Commission (Nov. 2010).

[8] Rep. Act No. 7662 (1994), § 3(a)(2).

[9] § 3(a)(4).

[10] § 7(f).

undergo with any duly accredited private or public law office or firm or legal assistance group anytime during the law course for a specific period that the Board may decide, but not to exceed a total of twelve (12) months. For this purpose, the Board is mandated to prescribe the necessary guidelines for such accreditation and the specifications of such internship which shall include the actual work of a new member of the Bar."[11]

Despite progressive legislation leading to mandated reforms in legal education, Raissa H. Jajurie, former Executive Director of Sentro ng Alternatibong Lingap Panligal or SALIGAN and now member of the Bangsamoro Transition Commission, lamented that "no matter which way one cuts it, there are just not enough alternative lawyers. Of the tens of thousands of practicing lawyers in the Philippines today, only a handful practice developmental or alternative law. To effectively work for human rights and social justice, there is a real need for more than the 80 or more who are currently working full-time with the [Alternative Law Groups]."[12]

Indeed, as late as 2003, some 15 years after the publication of *Legal Education*, necessary reforms to fortify legal education on issues affecting the marginalized remain unrealized.[13] The Ateneo Human Rights Center ("AHRC") conducted a baseline study in 2003, to provide data to the Alternative Law Groups ("ALGs")[14] on human rights course offerings and legal aid (as well as internship) programs in law schools. The baseline study was made possible as part of the Justice Initiatives Support Project in the Philippines ("JURIS" or "JURIS Project")[15] for the formation of students in law schools towards alternative lawyering. The aim of the study was to provide information to ALGs

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[11] § 7(g).

[12] Ma. Ngina Teresa V. Chan-Gonzaga, *Curriculum Review and Development Towards Alternative Lawyering, in* INROADS: ALG STUDY SERIES 42 (2006) *citing* Raissa H. Jajurie, *Alternative Lawyering: An Invitation to Law Students*.

[13] *Id.* at 40.

[14] The Alternative Law Groups is a coalition of 19 non-government organizations with legal program components that adhere to the principles and values of alternative or developmental law. The member organizations have distinct programs for developmental legal assistance that is primarily concerned with the pursuit of public interest, respect for human rights and promotion of social justice. ALG members' operations cover a wide area of concerns involving justice issues of the poor and marginalized groups in the Philippines. These include issues on women, labor, peasant, fisherfolk, children, urban poor, indigenous peoples, persons living with HIV-AIDS, local governance, and the environment. At the heart of the ALG's developmental law program is the dual work of empowering the poor and the marginalized and effecting justice system reforms.

[15] The study was supported by the Canadian International Development Agency. Unfortunately, according to the report, law schools generally do not have a placement record of alumni and it was not possible to determine the number of alumni who are placed in alternative and public interest law practice. Chan-Gonzaga, *infra* note 16, at 2.

in formulating plans to reach law students and law schools across the country.[16] Of the 90 schools across the country that were considered and evaluated, only 21 schools reported offering human rights courses, whether as electives or as mandatory course requirements, and only 23 reported offering clinical legal education, defined as any course offering which integrated an academic and theoretical course with clinical or practical applications. The National Capital Region presented the most number of schools with this course offering; it was also the location for the most schools with legal aid or human rights programs. Among the reasons offered by respondent schools for the lack of these course offerings in their law programs include "the fact that most of the students are working and therefore the school chooses not to institutionalize such programs as the majority of their students do not have the time to spend on such practicum requirements," the necessity for concentrating on the bar, and lack of contacts.[17]

Several programs have since followed. The Supreme Court's Action Program for Judicial Reform ("APJR") acknowledged that lack of understanding by judges and law practitioners of the cases involving the poor and how in fact "such lack disadvantages the poor in more ways than one."[18] As a result of this observation and the recognition that access to justice by the poor is influenced by several factors, including the availability and quality of lawyers, among the recommendations from the APJR include "(1) training of judges and lawyers on cases involving the poor, (2) widening and deepening their knowledge and understanding of the circumstances of the poor and the specific context of their involvement in the conflict, (3) the application of laws in the resolution of cases involving the poor, and (4) instituting subjects on criminality, conflicts, and the judicial system, involving the poor, in the law curriculum."[19]

It seems that what former University of the Philippines College of Law Dean Merlin M. Magallona noted resonates today:

> What gives compelling direction to law schools, however, is the nature of the bar examinations, which has the effect of tailoring the curriculum content, the method of teaching, and the operational objectives of the law schools to the singular demand of giving the correct answers in the qualifying examinations largely recalled from memory [...]. Still the gravitational pull of the bar examinations

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[16] Ma. Ngina Teresa V. Chan-Gonzaga, *Baseline Study of Law Schools: Human Rights Offerings and Programs, in* INROADS: ALG STUDY SERIES 1 (2006).

[17] *Id.* at 39.

[18] Supreme Court of the Philippines, Action Program for Judicial Reform 2001-2006: Final Report with Supplement, at 2.16 (2001).

[19] *Id.* at 2.16-2.17.

> redirects the resources of law schools away from meaningful reforms opened by the new policies and standards and they simply operate on the pragmatism of making it in these examinations. [...] As constituted now, it has become a bottleneck in the need to release the potential of legal education.[20]

There is no direction towards legal education that is developmental, or one that "seeks to train students not only to take steps to solve the client's specific legal problems but also to tackle the roots of such problems, which are liable to manifest itself in other problems if they are not cut off."[21] For legal education to be developmental "it must be one that gives the people the chance to decide for themselves the changes in the laws which are to govern them, based on an informed appraisal of their needs and interests, and the manner by and pace at which to achieve these changes in law."[22]

Reporting on the implementation of Republic Act No. 8425 in 2010, despite different interventions and approaches, government's anti-poverty efforts have yet to produce significant impact in reducing the number of poor people in the country. Speaking in 2012, Undersecretary Florita R. Villar of the

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[20] *Id.* at 12, *citing* Merlin M. Magallona, *Re-creating Legal Education for Justice and Development* 9-10. This is an important point even today, considering that in the last decade, the highest passing percentage in the Bar Examinations was only 31.95% in 2011, with 1,913 out of 5,981 bar candidates, and the lowest being 17.76% in 2012. Reforms in the bar examinations continue to be explored, but whether these will eventually result in meaningful changes in the law curriculum and legal education will have to be determined. In 2013, for example, the 2013 Bar Examinations departed from the norm through the following changes:

a. The consultative approach in dealing with Bar Examiners in the preparation of the Syllabus;
b. The shortened Syllabus, which can be further reduced particularly in multi-topic subjects like Mercantile Law and Criminal Law;
c. The injection of questions with ethical components in every Bar subject, separately from Legal Ethics; the topic Legal Forms has been deleted from the 2013 Bar Examinations;
d. The adoption of a uniform four-hour period for each bar subject;
e. The use of new communication tools in setting standards and in dealing with law schools, examinees and examiners, in the form of Guidelines to examiners, Guidelines in answering questions, and Guidelines on the Bar in general, mostly uploaded through the SC PIO website;
f. The recognition of new concerns (such as security threats) and external linkages in the conduct of the Bar examinations; recognition of the use of new technology in the Bar examinations; and
g. The examination of the format of the questions in the coming Bar examinations.

Supreme Court of the Philippines, *1,174 (22.18%) Pass 2013 Bar Examinations; UP Grad is Topnotcher*, *available at* http://sc.judiciary.gov.ph/pio/news/2014/03/03-18-14.php (last visited May 25, 2014).

[21] Te, *supra* note 1, at 216-17.

[22] *Id.* at 217.

Department of Social Welfare and Development of the need to re-think development approaches considering the "enormity of the issue of poverty and the increasing inadequacy to address the problems of the poor and vulnerable sector."[23] The number of our poor families and population makes it imperative to implement "a no-nonsense social protection policy for the poor and vulnerable sector." Social protection is defined as "policies and programs that seek to reduce poverty and vulnerability to risks and enhance the social status and rights of the marginalized by promoting and protecting livelihood and employment, protecting against hazards and sudden loss of income, and improving people's capacity to manage risks."[24] It is not farfetched to say that responsive legal services come within social protection, but is the framework of legal education succeeding in shaping lawyers towards this vocation, whether in alternative lawyering or in their specific professional setting? Is legal education prepared to enable and empower ordinary citizens, whether through paralegal training programs or educational outreach activities?

Indeed, when we speak of alternative lawyering today:

> [It is] not limited only to concerns of public interest and rendering of free legal assistance. Alternative lawyering is first and foremost lawyering for social justice. Its work does not simply involve handling disputes between parties or representing them in litigations. The primary goal of alternative lawyers is to "contribute to the correction or elimination of deeply rooted unjust social structures and relations." Secondly, alternative lawyering is lawyering for social change. It uses law as an instrument or tool to effect social change both in the micro and macro level of the country. Third, alternative lawyering is for social development. Its objective is to "work for a holistic, sustainable development of persons and communities, in a society that is more just, more peaceful, and more humane."[25]

Alternative lawyering, more than any other sphere of law practice, demands creativity and decisiveness—attributes that are not specifically cultivated in the law school classroom. While numbers are increasing as clinical aid programs also expand in number and grow in content, we are still mindful of

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[23] Florita R. Villar, The Philippine Social Protection Framework and Strategy: An Overview, Presentation made on the occasion of the 12th National Convention on Statistics, EDSA Shangri-la Hotel, Mandaluyong City (Oct. 1 – 2, 2013).

[24] National Economic and Development Authority (NEDA) Social Development Committee (SDC) Resolution No. 1 (2007). Adopting a Philippine Definition of Social Protection.

[25] Sedfrey M. Candelaria & Maria Cristina T. Mundin, *A Review of Legal Education in the Philippines*, 55 ATENEO L.J. 567, 592 (2010). (Citations omitted.)

former Chief Justice Hilario Davide's remarks in 2000, during the First Alternative Law Conference:

> It is troubling that the lawyers who advocate such worthy causes, often without certainty of remuneration, are called the alternative. An alternative is second choice. You should be considered the mainstream, the first choice, the true and ideal lawyers. Better yet, the conscience of the legal profession. I urge you to continue in your chosen path, not because there is a shortage of "alternative lawyers," but because your work elevates the standards of the profession.[26]

Legal Education closes with palpable exasperation, given the divide between law and development that legal education appears to have no hope of bridging:

> In the final analysis, there can be no meaningful development towards a genuinely relevant and truly responsive legal education for so long as the legal and social system of the Philippines is a reflection of skewed relations of property and power. Those within the centres of power will make no move towards meaningful reform and will most likely resist any such moves. The ultimate solution lies with those who are "powerless." Any movement for changes in the social and economic system prevailing and such movement have frequently come from forces outside the established centres of power. The movement for change in the legal system and consequently in the system of legal education must necessarily involve a transformation of society. [...]
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> The realization that legal education as it exists presently may be of limited importance to development is a humbling experience for most lawyers and students of the law. Yet the lesson in humility, according to Senator Diokno, may yet be the most valuable contribution that the legal profession can make to development: "the lesson that to win justice, the poor, the dispossessed and the oppressed—who are the people—must rely not on the law, but on their own organized efforts and strength," and that ultimately, it is the people and their struggle for change that will make the difference and not the lawyer and his laws.[27]

Revisiting *Legal Education* on the occasion of the Philippine Law Journal's 100th Anniversary is also an opportunity to reflect upon the role of law journals as part of legal education. The late Associate Justice Irene R. Cortes remarked:

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[26] Hilario Davide, Keynote Address delivered at the First Alternative Law Conference: Lawyering for the Public Interest, Malcolm Hall, University of the Philippines, (Nov. 8, 2000).

[27] Te, *supra* note 1, at 217-18. (Citations omitted.)

> As part of legal education, what role does the [JOURNAL] play? The publication itself serves as teaching aid for it contains articles on significant legal problems. At times, it has been cited by the bench and the bar. And for law students the [JOURNAL] is training ground for future work in the legal profession.[28] [...]
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> To establish what fields of law need change and how the administration of justice may be improved requires more than a bare assertion and formulation of proposals. Reflection, through study, and well reasoned positions will have to be the bases for proposed reform or innovations.[29]

With the continued thinking in the improvement and development of legal education, I hope that *Legal Education* will help invigorate the reflection upon the future of legal education. Its most provocative idea, I believe, is that lawyers are teachers and that their education should be directed at enabling them to respond to the need of empowering the basic sectors of Philippine society to achieve social justice. It is a reminder that we need to map the lawyers' constituency and mark where the need for legal services is most dire. Implicit here is the attention that legal education—and the institutions which provide it—must devote to forming the intellectual dexterity and fortitude that this new age demands of the Filipino lawyer, particularly of those who intend to serve in the public sector or pursue public interest law. Thought must be given towards designing legal education that invites law students to become lawyers fully engaged in the enterprise of crafting solutions to the critical problems of our nation.

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[28] Irene R. Cortes, *Legal Education in the Philippines: The Role of the* Philippine Law Journal *in the 1990s*, 65 PHIL. L.J. 1, 3 (1990).

[29] *Id.* at 6.

EXCERPTS FROM
LEGAL EDUCATION IN THE PHILIPPINES: CONFRONTING THE ISSUES OF RELEVANCE AND RESPONSIVENESS*

Theodore O. Te

> *"If the law schools do not respond to the winds of change, society may well conclude that they are irrelevant. Let us not as lawyers and legal educators be misled by our monopoly of the courts and the judicial processes. We can be in the vanguard of progress if we have the vision of the larger needs of society. We can be left behind if our vision is limited by self-interest either as educator-bureaucrat or practitioner."*
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> —William Pincus[1]

Law is a reality. However vehemently one may try to assert the nullity of this formulation, he is ultimately faced with the inescapable fact of the proposition's indubitability. Law pervades every aspect of human relations, and it affects every person, albeit in varying degrees and with multifarious effects. It has been urged that the idea of law should always be associated with justice[2] and that law without justice is a mockery, if not a contradiction,[3] but there exists merely a tenuous relationship between law and justice. And ironically, at times, law and justice may be considered the strangest of bedfellows. It is therefore important that one knows what the law is, what it does and how it may be used in the most beneficial manner possible in the hope that the ends of justice may be served through the use of law.

In developing countries like the Philippines however, the phenomenon of justice through law would seem to be the exception rather than the rule. Frequently, injustice is foisted and perpetuated not inspite but precisely because

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* These are excerpts from Theodore O. Te, *Legal Education in the Philippines: Confronting the Issues of Relevance and Responsiveness*, 63 PHIL. L.J. 198 (1988). The excerpts, including the accompanying footnotes, are republished as they were in the original.

[1] 53 A.B.A.J. 436 (1967).

[2] D. LLOYD, THE IDEA OF LAW 116 (1981).

[3] *Id.* at 117.

of the law. Because of this, the attitude of most ordinary citizens towards the law is that of indifference and apathy.

Majority of the members of what is termed "the basic sectors,"[4] because they are affected adversely by the law, want nothing to do with it. Several factors may be seen to contribute to this aversion. The judicial process is one that generates delays and expenses which often inflict inordinate hardships on litigants, and is usually premised on values which are often hard for members of these sectors to comprehend or appreciate, much less share. Ordinary people who seek out lawyers and go through the court processes are handicapped by language barriers and processual complexities.[5] It is within this context that the law and legal education may be perceived to be irrelevant and unresponsive.

This article seeks to present a critique of the traditional system of legal education in the Philippines as a third world nation, and present alternative concepts of legal education to confront the issues of responsiveness and relevance.

I. "DURA LEX . . ."

The traditional system of legal education involves imparting knowledge from a professor to a student within the narrow and rigid confines of the four walls of a classroom. The student of the law is enthralled [to] no end by the majesty of the law but learns to appreciate its beauty only within the context of a formalistic and inflexible relationship of student and teacher. Legal education however must not stop at imparting to students of law the strict letter of the law, for more often than not, the students fail to see the forest because of the trees. Legal education must not also be restricted to students of the law enrolled and bound by the formalities and traditions of institutions of legal education and higher learning. Legal education must continually strive to adapt itself to the context within which it finds itself. Failing this, any system of legal education will not have addressed adequately the issues of relevance and responsiveness.

As one of the highest expressions of social consciousness, the law reflects with utmost fidelity, and better than any other human means of expression, the characteristics of the society it serves.[6] Thus, an accusing finger

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[4] For the purpose of this article, the term "basic sectors" should be taken to mean members of the urban poor, labor force, peasantry, farmers, indigenous peoples, subsistence fishermen as well as other similarly marginalized and oppressed sectors of Philippine society.

[5] PAUL & DIAZ, LAW AND LEGAL RESOURCES IN THE MOBILIZATION OF THE RURAL POOR FOR SELF-RELIANT DEVELOPMENT 1 (1980).

[6] Villena, *A Law For Liberation*, 2 REV. CONTEMP. L. 69 (1977).

must be pointed at the formerly colonial now neocolonial system of power prevailing within the country for the unresponsiveness of the law [...] The legal system of the Philippines has been a product of wholesale transplantation by the various colonizers of the country. Under these circumstances, and within this context, it is plain that the Philippine legal system and the laws it produces will be unresponsive and irrelevant to most members of Philippine society. This is easily explainable by the fact that legal institutions are inherently tainted, sharing the deficiencies of the social order and serving primarily as instruments of domination.[9] [...]

Law is but a reflection of the structure of social and economic relationships existing within a society [...] The purpose of such laws would be to maintain the existing property relationships and increasing advantages to some by decreasing them for others.[11] Those interests that are nowhere near the centres of power are left out of the political equation, and more importantly, law-making. In a variety of ways, dominant private groups working with those holding power use the law and the legal institutions, often contrary to its avowed purposes and sometimes in violation of the law's clear terms, to legitimize inequitable distribution of resources and to enhance political suppression.[12] Thus, systems of production are protected by laws deliberately designed to preserve the power and safeguard the interests of the dominant sectors. The characteristic features of such laws are partiality and a repressive absolutism which precludes any hearing of the other side.[13]

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II. "... SED LEX"

It stands to reason that any set of laws that is passed by a legal system that is a reflection of skewed property relations and inequitable distribution of wealth will be far from neutral. By virtue of the perpetuation of the neocolonial structure of authority and power cleansed only by the appointment of certain citizens also belonging to the dominant elite, the interests of the neocolonial masters are preserved and the broad masses of the people are left out. As a result, injustice is foisted through law, upon the basic sectors of society, who are left out of the law-making process and who find their interests not only unprotected and unaddressed, but frequently trampled upon and run over.

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[9] NONET & SELZNICK, *supra* note 7. [NONET & SELZNICK, LAW AND SOCIETY IN TRANSITION: TOWARD RESPONSIVE LAW 4 (1978).]

[11] Sanidad, *Facade Democracy,* 54 PHIL. L. J. 287 (1978).

[12] PAUL & DIAZ, *supra* note 5, at 2.

[13] Villena, *supra* note 6, at 74.

Law in dependent and oppressed societies is a law made not for the nation as a whole but for the benefit of a narrow sector and it is intrinsically unjust. Some reasons are given for this unjustness. Firstly, the majority of the population has no share in drafting the law.[19] Secondly, it is partial and designed to preserve the *status quo*.[20] Thirdly, it is often anachronistic and outdated and fails to correspond to the stage of the development of relations they are supposed to govern.[21] Lastly, it is enacted for the purpose of combatting liberty, and as such, ceases to be the instrument which governs relations within society and becomes an instrument for repressing the people's ardent desire for liberation.[22]

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The function of legal education in the context of a developing nation such as the Philippines must then be not only to impart the basic doctrines in jurisprudence as well as the contents of the law itself to the students of the law but more importantly, to shape consciousness among the students as well as among the member of the basic sectors of society.[23] The overriding importance of this function is all the more emphasized when one realizes that it is only when the basic sectors of society are politically conscious and are able to transform such political awareness into effective political power that laws shall advance and protect their interests.[24]

III. THE ISSUE OF RELEVANCE

A. Ignorantia Legis Neminem Excusat

The effects of colonial rule and the neo-colonial structure of power existing within Philippine society at present can not be better demonstrated than by pointing to the fact that for close to a century now, practically all law teaching has been done in English.

No more telling point may be demonstrated in order to show that legal education has been alienated from the larger social environment and that it serves as a stumbling block to national development than the problem of

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[19] Villena, *supra* note 6, at 75.

[20] *Id.*

[21] *Id.* at 76.

[22] *Id.* at 78.

[23] Magallona, *Comments on Legal Education in the Third World*, 53 PHIL. L. J. 87 (1978).

[24] Medalla, *supra* note 10. [Medalla, *Law and Philippine Nationhood*, 53 PHIL. L. J. 287 (1978).]

language. There are eight major languages and more than eighty-five dialects spoken in the Philippines,[25] yet almost the entirety of the law is drafted, interpreted and taught in English. It is clear that the law in its present form can never be relevant to the members of the basic sectors of society, for it is couched in a language that is incomprehensible to many of them. [...] It would seem therefore that as the law and the state of legal education exists at present, the members of the basic sectors of society would again be left out in the cold.

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At this point in time, there has yet to be evolved a national language that may be comprehensible to all Filipinos across the archipelago And because of the geographic divisions, people from all regions throughout the country insist on their own regional dialects. There is no attempt to evolve a national language which would be based on the various regional dialects and languages throughout the archipelago. [...] English would seem to the most feasible compromise. Yet it may also be the costliest as it stands as the greatest fetter to the development of a national consciousness or identity in all Filipinos all over the archipelago. Further the continued use of English may yet constitute the greatest obstacle to the development of a system of law that is not a reflection of the colonial past but rather a manifestation of the needs and aspirations of the Filipino people expressed in a manner that reflects the unique culture and distinctive psyche of the Filipino.

B. Features of Legal Education in Developing Nations

Some ten years ago, Professor Magallona had the occasion to present fundamental features of legal education in developing nations. Despite the lapse of time, it must be noted that the features pointed out by Magallona remain.[31] It

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[25] Cortes, *Legal Education in the Philippines: A Critical Appraisal* in LEGAL EDUCATION IN ASEAN UNIVERSITIES: A CRITICAL APPRAISAL 36 (1986).

[31] These features were identified by Magallona in his *Comments on Legal Education in the Third World,* 53 PHIL. L. J. 62 (1978). According to Magallona, these features are the following:

> 1. These schools are patterned after a foreign model and this 'has limited the outlook, content, methods, research and continuing development of the institution.'
>
> 2. They are dominated by a private-practice oriented approach, 'one which emphasizes the study of law in relation to private commercial activity and the private affairs of more affluent persons rather than the problems of the public sector or problems of the mass of people.'
>
> 3. They are controlled by the elite of the legal profession whose economic base is tied up to such private commercial interests.
>
> 4. The trend is for those schools to recruit students from the upper classes of society and orient them towards 'urban, elite, white-collar positions.'
>
> 5. The values of law schools are nurtured in an elitist environment, which

is a reflection both of the structural rigidity of the neo-colonial system of power and the inherent conservatism of the legal profession that these features remain until the present time.

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Magallona's finding that legal education in third world countries is characterized by by a private-practice oriented approach, emphasizing "the study of law in relation to private commercial activity and the private affairs of more affluent persons rather than the problems of the public sector or problems of the mass of people" takes on greater validity within the context of contemporary Philippine society. The private-practice orientation is reflected in the curricula of most law schools which offer very little by way of courses meant to raise the consciousness of students regarding the social realities surrounding them.

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The reduction of legal education into a training for trade results in the elimination of courses which do not directly sere the practical ends of the law practitioner and the addition of those which are required by the demands of the trade. Further, this reduction carries with it the reduction of the study of law into a body of technical rules-of-thumb resulting in the segregation of the study of law from the study of policy questions. The study of law becomes sanitized from the "virus" of political and social ideas which are the natural components of social relevance in legal education.[34] The ultimate consequence is the "de-politicization" of legal education. [...]

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IV. THE ISSUE OF RESPONSIVENESS

For the most part, it would seem that the study of law is undertaken in a vacuum. The intricacies of the content of the law are expounded upon at great detail in total isolation from the realities of the larger society outside the classroom. Law students learn certain skills such as retaining large numbers of

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'stand in contrast to the environment of poverty and education provided elsewhere in the country.'

6. Law is studied as an 'independent, self-contained, established discipline and tend(s) to ignore the study of socio-legal contexts, policy assumptions and actual effects of legal rules.' The content of law courses fails to recognize the training of lawyers for participation in the processes of development and does not reflect the need for the legal system to be a vehicle for social change.

[34] *Id.*

rules organized into categorical systems, issue-spotting, elementary case-analysis and standard pro-con policy arguments that lawyers frequently employ in arguing cases.[37] [A]s a result of the limited experiences to be gained from a strictly classroom setting, several undesirable consequences arise.

Firstly, the student of the law is completely isolated from the problems and realities confronting a larger portion of society,[38] that portion of society whom he would be expected to serve after passing the bar. There is an excessive focus on technical skills and academic competence. This is all too plainly manifested by the great emphasis and high premium that is placed on one's performance in the annual bar examinations. It has come to a point that the prestige of a law school has become inextricably intertwined with the creditable performance of its graduates in the bar examinations. As a result, most law schools train their students for the bar examinations and most students enter or choose a law school with the bar examinations in mind [...]

* * *

Secondly, an absolute insistence on technical skills places undue emphasis on the lawyer as an advocate in formal litigations before the courts and administrative tribunals. The lawyer's role as a counselor and educator has been totally eclipsed by his role as an advocate. This has produced a litigation-prone legal profession that is greatly responsible for the clogging of court dockets with petty cases that more effective counseling would have resolved and prevented. Legal education must stress that victory in courts is not, and must not be, the primary objective of lawyers [...] Lawyers must be made to realize that their underlying purpose is to utilize their skills in order to assist people already in action to carry forward their own struggles or to put people in motion through education and organization. Any victory must be achieved by the people themselves through their own organizational strength and activity and the legal work of a lawyer must be directed principally towards helping create an atmosphere which people can more readily function, organize and carry forward their struggles.

V. CONFRONTING THE ISSUES . . .

A. Clinical Legal Education and Traditional Legal Aid.

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[37] Kennedy, *The Ideological Content of Legal Education* in POLITICS OF LAW 799 (1981).

[38] Tadiar, *Clinical Legal Education in a Professional Law School - - - - The U.P. Experience*, 1980 CLINICAL APPROACH TO LEGAL EDUCATION 12.

One of the alternatives presented to confront the problems of relevance and responsiveness is the concept of clinical legal education. This is best exemplified by the Office of Legal Aid of the University of the Philippines College of Law. It is based on the premise that by operating what is, in effect, a teaching law office, albeit one that confines itself to indigent clients, the clinical method would lead the student of the law through the variety of roles that he would be called upon to perform when he becomes a lawyer.[43]

The program is designed to give students a "feel" for actual practice in the hope that their legal education would become more meaningful and relevant. Thus, senior law students act as interns and undergo the same experiences that a practitioner would, but under the supervision of a supervising attorney. And pursuant to the *Student Practice Rule*,[44] these law interns would be able to appear in any court of the Philippines and defend indigent clients on behalf of a recognized clinical legal education program but always under the supervision of a supervising attorney.

* * *

Clinical legal education programs reflect and manifest a concrete recognition of the right of every person, regardless of socio-economic status, to "free access to the courts, and quasi-judicial bodies and adequate legal assistance."[46] It is, in essence[,] an institutionalization of legal aid, although in what the late Senator Jose W. Diokno would term the "traditional" sense.

Traditional legal aid is the known practice of giving free legal counseling and assistance principally to the poor and the indigent or those who are known in law as "pauper litigants." The need for legal aid that is free results from the inherent defects of the legal and judicial system [...] Traditional legal aid is simply characterized by a lawyer-client relationship without any monetary obligation on the part of the client.

This system of legal aid has, however, been criticized as being one that retards development. One of its foremost critics, Senator Diokno[,] had occasion to remark that:[48]

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[43] Tadiar, *supra* note 38, at 14.

[44] RULES OF COURT, Rule 138-A. This rule is contained in Supreme Court Circular No. 19 s. 1986. The University of the Philippines Office of Legal Aid was greatly responsible for the promulgation of this rule. Starting out as a proposed amendment to the Rules of Court in April 1980, continued efforts at follow-up and monitoring by the O.L.A. resulted in the Supreme Court's promulgation of the present rule.

[46] CONST. art. III, sec. 11.

[48] Diokno, *Legal Aid and Development* in JUSTICE UNDER SIEGE: FIVE TALKS 40 (1981).

[T]raditional legal aid, is in fact, the lawyer's way of giving alms to the poor. Like alms, which provide temporary relief to the poor but do not touch the social structures that keep the poor poor, traditional legal aid redresses particular instances of injustice but does not fundamentally change the structures that generate and sustain injustice. And like alms, traditional legal aid carries with it the germ of dependence that can prevent those it serves from evolving into self-reliant, inner-directed, creative and responsive persons who think for themselves and act on their own initiative. Unless that danger is guarded against, traditional legal aid can retard rather than promote development: for above all else, development is human development. [...]

In order for alternative legal education programs to become responsive and relevant to the Filipino people in general and the basic sectors in particular, such programs must be pro-people in orientation and developmental in approach.

B. A Pro-People Orientation to Legal Education

By a pro-people and not a purely client orientation is meant that legal education should strive to instill in the student of the law that his client is a member of society. [...] Students of the law should be trained to involve themselves with the social problems of their clients and be one with them in seeking the specific social causes of the legal problems, the particular social structures and forces that generate them and together attempt to work out both legal and social problems. The resulting awareness from such a process is likely to spur the student of law together with his client to work to reform the law and transform society. This is the beginning of development. The student of the law must be provided with channels wherein he may concretely grasp the problems, both social and legal, of his future clients [...]

* * *

Integration and interaction by the student of the law with the members of the basic sectors serve to heighten awareness on the part of the student as well as the members of the sector as to the ramifications of the concrete problems posed by the legal and social system within which they both work and operate. This heightening of awareness leads to a conscientization that must be transformed into action. To this end, the function of legal education must be to encourage the members of the basic sectors to cooperate with other groups similarly situated. [...]

* * *

The process of conscientization is, however, not a process that can be dictated or forced upon anybody. It is, by and large, a personal decision brought about by a heightening of awareness about the problems that plague the larger portion of society resulting from interaction with the members of the basic sectors of society. Before any such decision may be made[,] however, it is important that opportunities for such interactions be available [...]

* * *

A pro-people orientation to legal education demands that the law student view his client not as a means of getting a good grade or favorable recommendation from his supervising attorney. It demands that the law student stop and question his basic beliefs about the law and the people it seeks to serve and compare these with the realities prevailing around him. This is the first step towards conscientization. The movement towards conscientization should not stop at empathy or sympathy for the client, nor with the first implanting of awareness. Together with these must come the resolve to work together with the client and others similarly situated for effective and meaningful changes. Only then will clinical education become truly relevant and responsive.

* * *

C. A Developmental Approach to Legal Education

This approach is nothing more than the insistence that the teaching of law should serve to accelerate and not to impede development. This assumes particular relevance in the light of the fact that the existing legal and social system which is neocolonial quells any attempts at meaningful development and perpetuates the inequality existing between and among the sectors within Philippine society.

The essence of development is the right of the people to self determination. Development begins with a realization that every person has the power to effect changes within the society in which he functions and that it is only through organization and mobilization of the broad masses of the people that society may be transformed to achieve economic democracy and social inequality. Legal education is developmental when it seeks to train students not only to take steps to solve the client's specific legal problems but also to tackle the roots of such problems, which are liable to manifest itself in other problems if they are not cut off. It is a legal education which does not seek to impart what the law is and what rights the basic sectors have under the law, rather it is one that seeks to instill a critical view of the law with greater emphasis on what the

law should be. It is a legal education that does not seek to tell the people they are being oppressed but allows the people themselves to realize that they are being oppressed.

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VI. THE CHALLENGE AHEAD: EMPOWERMENT

In the final analysis, there can be no meaningful development towards a genuinely relevant and truly responsive legal education for so long as the legal and social system of the Philippines is a reflection of skewed relations of property and power. Those within the centres of power will make no move towards meaningful reform and will most likely resist any such moves. The ultimate solution lies with those outside the equation of power—the basic sectors of society who are "powerless." Any movement for genuine changes in the legal system must likewise be a movement for changes in the social and economic system prevailing and such movements have frequently come from forces outside the legal system, and consequently a change in the system of legal education, must necessarily involve a transformation of society. The challenge ahead lies in empowering the "powerless" majority and enabling them to decide for themselves the road they want to take by making them aware that the solution to a more relevant and responsive legal system lies in the transformation of society through the collective strength of a people united.

The realization that legal education as it exists presently may be of limited importance to development is a humbling experience for most lawyers and students of the law. Yet the lesson in humility, according to Senator Diokno,[53] may yet be the most valuable contribution that the legal profession can make to development: "the lesson that to win justice, the poor, the dispossessed, and the oppressed—who are the people—must rely not on the law, but on their own organized efforts and strength," and that ultimately, it is the people and their struggle for change that will make the difference and not the lawyer and his laws.

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[53] Diokno, *supra* note 48, at 43.