

# COMMENTS ON LEGAL EDUCATION IN THE THIRD WORLD

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## I. Introduction

My assignment in this Conference is to submit for discussion comments on a report entitled *Legal Education in a Changing World*. This was prepared by an international group of distinguished legal scholars, under the auspices of the International Legal Center.

The report is a study of legal education in Asia, Africa and Latin America. Its structure consists of the following components:

- (a) a general description of the present situation of legal education in the Third World, with particular stress on legal education in universities;
- (b) a case for giving legal education a high priority in educational development; and
- (c) a system of planning to realize the potential of legal education as a resource for development.

Thus the report forms part of a broader advocacy, at least on the part of the International Legal Center, for a positive correlation of law and development. In this sense, the report is an expression of optimism as well as of *unrealism* about the role of law in social change.

The methodology of the report deserves comment. In describing the present state of legal education in the Third World, the report recognizes the need for national specificity as well as the dangers of generalizations. But just the same a meaningful portrayal of the present situation does not emerge from a marshalling of empirical data, but from a disciplined process of abstraction which the report achieves. While the working papers, on which the study was based, may have necessarily presented fragmented concrete pictures, the report has succeeded in generalizing significant features of the relevant reality, in synthesizing major trends and in formulating a distinct perspective by which the dynamics of the situation under study can be clarified and its possibilities projected. In its own language, the report does not "set out a specific blueprint of recommendations" but

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describes "some perspectives and tools of analysis." It is not a factual study, but a concept paper.

The report is a critique of the *traditional concept* under which legal education operates at present in the Third World. At the same time, it is a presentation of an *alternative concept*, namely, the concept of legal education in the context of development. It advances legal development as a component of social development. Again, a particular quality of interconnection between law and development emerges as a decisive assumption.

## II. *The Present Situation and the Alternative*

In its analysis of legal education as it exists in the Third World, the report isolates certain "shared characteristics" of university law schools in that region, despite their "obvious differences." Such shared characteristics, given below, are then generally identified as the fundamental features of legal education in the developing nations.

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 problems of the public sector or problems of the mass of people in society."

3. They are controlled by the elites of the legal profession whose economic base is tied up to such private commercial interests.

4. The trend is for these schools to recruit students from the upper classes of society and orient them towards "urban, elite white-collar positions."

5. The values of the law schools are nurtured in an elitist environment, which "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 to ignore the study of socio-legal contexts, policy assumptions and actual effects of legal rules." The content of the 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 of social change.

In brief, legal education is alienated from the requirements of the larger social environment. Its role and objectives are far removed from the problems of social change and development. Instead of being a dynamic

intellectual resource for distributive justice, it finds itself in confrontation with the demands for fundamental progressive reforms in society.

The report presents a strong case for the reconstruction of legal education by transforming it into a major factor for influencing social development. In this effort, it confronts a central question: Whether law is a "foundation," an independent force which brings into motion those social process; or a "superstructure", merely a resultant of social processes. The report takes a refreshingly creative approach. A combination of both can provide an enriching perspective for legal education in its active role in development: "For those who adhere to the former view [law as foundation], study of law should be concerned with building political institutions and the system of governance, with the study of ways and means to organize and expand economic activities in society and secure distributive justice, and generally with effecting orderly changes in the social order. For those who accept the latter position [law as superstructure], an analysis of the law and the legal system should serve to reveal the classes whose interests are served by the state and the mechanisms by which these interests are served."

### III. *Implications and Limitations of the Report*

1. The report's insights into the nature and problems of legal education in the Third World bring into bold relief the social context of the subject. Indeed, the general description of legal education contained in the report may be said to be largely a reflection of the conditions of the social system prevailing in that region of the world. Hence, if the report is taken as indicating the crisis of legal education, this may imply a symptomatic representation of the social crisis in the relevant countries.

However, it would be pertinent to point out that the report fails to make explicit the distinction between a market or capitalist oriented country, on one hand, and a socialist or socialist-oriented one, on the other. The report's critique of the existing state of legal education should be meant to be of particular relevance to the former group of countries.

So fundamental a factor as a social or economic system, whether it is of capitalist or socialist orientation, must be considered as decisive in determining the conditions of legal education as part of the whole cultural framework and educational environment. To be sure, in both groups of countries legal education is characterized by problems. But the nature of such problems is qualitatively different in each social system.

Among the shared characteristics of university law schools, the report prominently notes as problematical the fact that the study of law is too much oriented to emphasizing its relation to private commercial activity and private affairs rather than to problems of the broader mass of people. This is not a matter of serious concern in socialist or socialist-oriented countries, and the general outlook of the report that legal education should properly seek orientation in the context of social development loses much pertinence with respect to those countries. As the report itself takes note, "the socialist model emphasizes the role of law as instrument of social change."

2. The report underestimates the dimension of the problem that university law schools are patterned after a foreign model, which in most cases is the result of colonialism. In this case, the transference not only of legal education but of the whole legal culture is not a past event but a continuing process sustained by the still dominant social ramifications of the colonial power, which now activates whatever influence it holds on its former colony to halt the process of the latter's independent development.

Particularly in a Third World country where the transfer of governmental powers was not achieved through national liberation struggle but through gradual transitional stages to a conservative pro-colonialist national leadership, legal continuity is the natural result of compromise and alliance on a class basis between the colonial power and the new national leadership. A "ready-made" constitution framed under the auspices of the former colonial power and already available at the time of political independence serves as the vehicle of legal, political, and various ideological influences being carried into the legal culture and State apparatus of the former colony. Under a regime of political independence, State power springs from a new source but the conceptualization of its expression has remained the same. Ideas of law and government and the structure of the State apparatus are still the bearer of legal continuity with the colonial regime. The whole educational environment of judges, prosecuting officers, practising lawyers, and the civil servants as a whole still operate on the basis of the social and political assumptions implanted by the colonial power.

Law is not a body of self-contained rules standing apart from the social framework. It is in fact a normative expression of social relations. That is why legal continuity with the former colonial regime is at the time a medium of economic and social continuity of colonial influences.

Legal continuity is not autonomous from both internal and foreign economic relations of a Third World country of colonial background. The penetration of foreign private capital and trade, mostly coming from the

former colonial power, acquires a powerful vested economic and political interests in the continuity of legal conceptualization and interpretation favorable to both the foreign and native elites.

3. One other related problem does not find articulation in the report, namely, that in some Third World countries legal education is organized as a commercial activity. Where this system prevails vocationalism absorbs practically the whole of legal education, as in the case of the Philippines. The tendency (if not already a reality) to make legal education merely a training for a trade has certain inevitable consequences among which are as follows:

(a) Elimination of courses from the curriculum which do not directly serve the practical (lucrative) ends of the law practitioner and the addition of those which are required by the demands of the trade. This elimination-addition process logically leads to quantitative accretion of subjects rather than the qualitative development of methodologies in the handling of political, economic and social problems which have been transmuted into legal relations.

(b) The reduction of the study of law into a body of technical rules-of-thumb results in the segregation of law from the study of policy questions. The fine technicalities of the law assume importance independent of its political, economic or social substance. Law as thus conceived becomes a fetish and studied in an abstracted manner, seemingly neutral to such questions of substance. Consequently, graduates of law schools are alienated from the science of law as an interdependence of form and substance or as a unity of legal rules and social conditions.

(c) Thus the study of law becomes sanitized from the "virus" of political and social ideas which are the natural components of social relevance of legal education. Consequently, legal education, or the profession itself, is "de-politicized". It becomes as politically neutral as masonry or dress-making. But its political neutrality is precisely its politicalization (on the regressive side): as seen merely as a technical tool it hides its real political content as an expensive utensil available only to corporations and other privileged classes.

4. As clearly implied in the report, the legal profession finds its economic base on the interests of the elites and more affluent members of society. In this context, legal education assumes a particular orientation that is meaningful in relation to that traditional economic base. The character of the law school necessarily adjusts to the pragmatic demands of the profession, and accordingly narrows down to the visibly lucrative interests of the affluent clientele. The logic of the situation is clear: law and legal

education, as determined realistically by objective and by subjective individual intentions, cannot find economic base in "the problems of the public sector or problems of the mass of people in society"; they find rationale in the narrow class interests of the elites. Thus, the alienation of legal education from the needs of the broader sectors of the population. Hence, law is transformed from a social phenomenon to a private vocation.

There is an aspect of what the report calls "the private-practice oriented approach to the study of law" which is fraught with serious social implications. In a society where the corporate interests of the clientele (such as the multinational corporations) are in conflict with the larger interests of the country, legal concepts stand the danger of being used with dangerous anti-social dimensions, in the hands of the law profession which thinks that the social consequences of its legal arguments are none of its responsibility.

The report hits upon a dilemma. It relies on the internal mechanics of the legal system for changes in the law, which can be the resource of social development. On the other hand, it is precisely the social and economic determinants of law as discussed above, which act as a fetter to the desired legal development. Given such determinants, the social development that may be shaped through the expected role of lawyers is necessarily biased by elitist dominance, which the report itself criticizes. Thus, the class character of a given Third World country splits up the good intention of the report into contradictory features.

In the social context in which the report sees legal education, the contribution of law and the legal system to social development is one which reinforces the elitist dominance in the direction and content of that development. More accurately, it is not that the education of law-trained person serves as obstacles to development; it is rather that considering the ideology propagated through legal education, it provides a particular orientation and bias to development, i.e., in furtherance of the narrow class interests of the foreign and local elites.

What comes into question, therefore, is the meaning of *development*. Development for whom and by whom? It is unfortunate that, though unwittingly perhaps, those who recommend the facilities of legal system as a resource for social and economic development are in effect proposing that, to put it simplistically, lawyers should develop the people. But who will develop the developers? If it is granted that the economic base of the legal profession rests on landed and corporate vested interests, how can the professional agents of the privileged classes become a medium for genuine change?

5. A one-sided emphasis on the potential role of the legal system (or legal education) as a resource of social development entails the danger of erroneously isolating the legal factor as the most decisive force in the required social changes, with the result that concern for change is diverted from the real causes of the social crisis, or is deflected away from the real explanation of social backwardness and economic underdevelopment in the class character of society, in which the power of exploitation of foreign and local elites prevail. It may serve to disguise the true nature of underdevelopment and may have the effect of falsifying the nature of development required. If we are to be guided by this one-sided outlook, the direction of change would be toward the peripheral problems, toward changes which are not only compatible with the interests of the ruling classes but changes which remove the obstacles to the further expansion or propagation of their exploitative interests. This is of particular relevance to many Third World countries which are in transition from feudal or semi-feudal state. The most crucial question is the path of development they would take, capitalist or socialist. In countries where the democratic and popular forces have not overcome the re-vitalized forces of colonialism, the ruling classes, particularly the foreign monopoly capital, take active interest in using legal institutions as a complementary instrument for "modernization", i.e., the dismantling of feudal structures to pave the way for the accelerated growth of capitalism, thus ensuring capitalist development. Obviously, in this light, the colonial orientation of law schools in the Third World, the importance of which the report under-estimates, assumes a distinct significance. It is in this context too that the question of "legal education in a changing world" is very much related to the struggle between the two world social systems, socialism and capitalism. It is important therefore, to consider the identity of the political forces behind the effort to promote changes in legal education in the Third World.

#### IV. *Legal Education and Development*

Legal education is a process of shaping social consciousness and its retooling to the concrete functions of the law. Like any form of education, it finds continuity in organization and action. But in a class society, the functions of the law take on a class character, and the organizational and professional activities of lawyers are generally absorbed by the interests of the ruling classes. In a word, the law operates against the people. But the fault is not in the law, but in the fact that the people are not in the control and exercise of power. In this sense, development primarily means political development, i.e., the activation of the broad masses of

people into organized political force, so that the people's struggle for their own interests is the very vehicle for social development. With the people, through their mass organizations, as the medium of change, development is necessarily a movement for the revolutionary transformation of society to achieve economic democracy and social equality. The victory of the movement is not to be reckoned only in terms of ultimate result, but in terms of the gains from everyday struggle to advance and defend the rights of the people and expose the innumerable sources of injustice. Thus, development involves no less than the confrontation between the forces of liberation and the power of exploitation, a conflict which splits up the legal system into two opposing parts and lend contradictory features to law and legal education. The Bill of Rights consists of two parts: the enumeration of rights and the definition of their nullifying limitations. The expropriation clause is combined with the due process clause. Social-reformist concept of property in public law coexists with the archaic rigidity of private ownership in private law. Socialization of natural resources in the Constitution is opposed by private appropriation in administrative implementation. Social justice under the Constitution but economic serfdom in private contract of employment. Every student of law, every lawyer, takes position on one side or the other. It is the function of legal education to illumine the function of law in society and to provide insight into its class ramifications. In this way, the study of law would be less of a romantic nonsense and would contribute to the understanding of concrete social reality on a class basis. With that facility of understanding, the law school can then bring the law graduate to the threshold of relevant action in keeping with his purposive role in social development.