REFORMS IN GRADUATE LEGAL EDUCATION

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It is important to stress, at the outset, that curriculum revision should not be the only concern in planning legal education. It should, of course, rightly be the first in a series of plans in which such matters as library adequacy, quality of faculty, critical researches, salaries, admission policies, the bar examination — and beyond, the ethics of the legal profession, development, and political ideals are important ingredients.

Some attempts have been made in the Philippines to define the aims of legal education. Since 1976, there have been about four important meetings of legal educators. There has also been continuing work done by a national committee on legal education constituted to introduce reforms to the curriculum of law schools in the country in which some thought has been given to such matters as core curriculum and electives.

The committee on legal education has outlined for the legal profession the aims of legal education in the following words:

> The law schools should thus aim to (1) prepare the students for advocacy, counseling, problem-solving and decision-making; (2) infuse them with the ethics of the legal profession and the responsibilities of leadership; (3) develop in them the desire and capacity for self-study and improvement; (4) contribute toward the advancement of the legal system; and (5) produce socially committed lawyers of integrity and competence.[1]

May not these aims be inadequate because they miss a linkage with societal aspirations and social realities?

Of course, criticism may not be limited to the reform activities in the Philippines. In a recent forum on legal education in Singapore, some educators have expounded the view that legal education is not really aimed at "service orientation" but rather at the production of a "disciplined professional class."[2] This leads one to think that such universities as Hongkong are possible imitations of their prototypes in Europe where, in the last 400 years, the university was not expected so much to push back the

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1 Report of the Committee on Legal Education, 1979.

2 Lecture by the Dean of the Faculty of Law, during the seminar on legal education sponsored by the Southeast Asia Institute for Research in Higher Education and the Asian Center for Law in Development, Hongkong, October 28, 1980.

frontiers of ignorance among the masses of people, nor, with its critical awareness, to perform a dialectical role in society as servant and critic. Rather, its role has been to conserve knowledge and transmit it to the ruling class so that their "enlightened" rule may be perpetuated. Policy-makers in this last score of the 20th century, who have awakened to the imperatives of justice and equity and self-reliant development, would find the traditional Oxbridge and Continental models of tertiary education genuinely antisocial. They go against our democratic values.

Lasswell and McDougal[3] have urged that legal education should be a systematic training for policymaking in the promotion of democratic values in society. The primary objective, they have said, is to provide efficient and systematic training in all areas of social life where lawyers have or can assert responsibility.

Legal education in the Philippines should not aim at the production of a "disciplined professional class." Elitism has no place in a democratic polity. On this point, however, it should be added that if legal education should be made meaningful to our people, it should no longer be confined to advocacy or personal litigations before the courts. Rather, legal education should see as one of its primary roles, the empowerment of the masses of people who are less advantaged in society.

It should, among others, see as one of its significant roles the representation of the interests of groups, rather than the carrying out of a private practice-oriented approach to the study of law, particularly for the more affluent sectors of society. The provision of the narrow range of largely court-centered services to individuals rather than groups and collective needs (as in the case with the proliferating legal aid services in the country) ignores the fact that knowledge of law is necessary for access of the group to an effective advocacy in official fora. The majority of people in the Philippines need a capacity to use law in their dealings with people in power — with landlords, bankers, employers, barangay captains, the police, and the military. They need legal resources not simply to protect their rights in court but to enable them to make wise choices in constitutional plebiscites that would affect their lives and fortunes, and to articulate their interests to officials in an agricultural bank or a sugar commission or bureau of forestry. Indeed, legal education should be a systematic training for the development of man for meeting human needs, both material and non-material in the context of our society for effectuating justice in human relationships.

Ideally, the planning of legal education should be influenced by many variables: for example, development policies and the way law is perceived and used in political and economic processes and policies, the character

[3] Lasswell & McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 YALE L. J., 203 (1943).

of the legal profession and the kinds of future needs for law-trained persons, etc.

There are immediate and specific aims, of course, of graduate legal education. These are aims which may be necessary to achieve the longer-term ultimate aims. One of them is to give our graduate students more thorough training in research methods, including training in social science concepts and methodology—something very necessary particularly if they are in the academe. This is the rationale behind the requirement in our own graduate program in the College of Law, for the student to pass a 3-unit course entitled Thesis Seminar — which is really a course designed to improve skills in legal research—to complete his requirements for the LL.M. degree, in addition to a Master's thesis with a weight of 6 units.

Legal education should be integrated with the aspirations of society. In the Philippines as a nation and in the world community at large, a sense of solidarity should pervade human relations. On the basis of such a solidarity, a more just, participatory and sustainable society should emerge—a society in which man can achieve human dignity and self-actualization.

What is a just society? It is one which guarantees all peoples that human life would be kept human under the stresses and opportunities of economic growth. In the realm of international economic law it finds expression in the movements to restructure existing institutions and power relationships towards a new international order. In domestic situations, it means, among others, effectively minimizing the differential capacity to utilize law which results in continuing impoverishment and oppression of vast numbers of people.

A participatory society is one in which all persons are adequately represented in the decision-making processes that affect their lives. Systems of participation and control will, of course, take different forms in different societies. This is more than a matter of legislation; it involves training and equipping the oppressed to perceive their true interests and to defend their rights. This would necessitate mobilization which would induce substantial changes in different forms of administrative and institutional frameworks as well as power structures.

A sustainable society, on the other hand, is one in which "the number of people, the rate of use of resources and the rate of pollution of the biosphere are within the capacity of the earth to support and in which the acceptable quality of life should be sustained indefinitely for all people."[4] It focuses on the problem of how we should treat our natural environment so that the life of our species may be indefinitely sustained.

[4] Political economy, Ethics and Theology: Some Contemporary Challenges, Geneva CCPD, World Council of Churches, 1978.

Pervasive changes are necessary to enable a transition to a more just, sustainable and participatory society.

Unfortunately, the existing curriculum of law schools in the Philippines is far removed from the concerns of society, indeed, almost irrelevant to our struggle for a just, sustainable and participatory society. Much of what currently passes for instruction are mere descriptions or normative analyses of legal doctrines and institutions, bereft of any conscious effort to develop a more systematic understanding of the role of law in the processes of social change and development. Law is studied as an independent established discipline and tends to ignore the role of social and economic forces in the development of specific legal regimes and the reciprocal influence of such legal regimes on society. The unconscious assumption is that the ultimate function of law is to maintain existing social institutions in a sort of timeless *status quo*. In this situation, legal education, to some extent, becomes an obstacle to development rather than a facilitator. It tends to maintain a profession and legal culture which are fundamentally arrayed against progressive reforms in society. It fails to expose contradictions between avowed development policies and the reality of the laws in action.

One of the more concrete and positive directions we are striving to undertake in our graduate program is to consciously develop Asian perspectives and Asian approaches and strategies to shared problems of development, providing opportunities for scholarly investigations and researches on the opportunities of transforming legal education in Asian countries into a positive force for influencing social development. Our graduate program is thus actively collaborating with other law schools in the region in providing a vehicle through which Asian scholars and policymakers can contribute to international dialogues and make an impact on international agencies and conferences.

If it is important to undertake multi-disciplinary research to facilitate better understanding of legal cultures, law and the actual workings of the legal systems, it is also important to undertake comparative studies and international collaborative efforts to create more useful, informed bodies of literature concerned with the uses of law to address problems of social change. Thus, in addition to two traditional courses — comparative civil law and comparative constitutional law — the Graduate Studies Program is modestly embarking in researches and workshops on Muslim Law in theory and practice, as well as on the administration of criminal justice in China. A course on human rights in the Asian context is now being developed. At the same time, an existing course on comparative commercial law has been the vehicle in the study of development laws, investment incentives, tax policies, and social change in the ASEAN.

Right now, the content of Philippine legal education has been a static reflection of legal education in two countries from which the law and legal system were derived. Is it not imperative that the intellectual universe in our law schools should clearly depict law as a political instrument used to allocate power and resources in our polity. Little attention has been paid to the problems of agrarian reform, and administration of justice, government regulation of the economy, the expansion of public enterprise, the impact of fiscal and monetary policies, and the immobilism and corruptibility of bureaucracy. Legal education has paid scant attention to these problems because they lie outside the concern of traditional law teachers and most of the profession — and because there has been no literature dealing with these problems in an appropriate context for legal education. The literature produced by lawyers in the Philippines as in the rest of the Third World, be it said in fairness, is, unfortunately, usually legalistic and expository; it reflects a view of law as an autonomous, self-contained discipline. Notably lacking are systematic efforts to explore relationships between law and policy; between law and class biases; between law and the political economy. Just to give one example, the public management of our economy is pervasive. But while lawyers increasingly work with state enterprises or regulatory bodies, the content of administrative law is based almost entirely on foreign concepts developed during earlier periods of colonial history. The impact of this kind of anachronistic law on public administration, and on people, is seldom systematically addressed.

Of course, there are some lawyers critical of the narrow content and orientation of legal education. Some legal educators in the Philippines have been advocating the tightening of the formal requirements for admission to our law schools, and, equally important, the deglamorization of the bar examinations in the Philippines[5] — and rightly so. These reforms are, indeed, a response to the felt needs of society. But these are not enough. On the substantive contexts of our legal education programs, there is a need for vigorous exchanges and discussions on the law curriculum in its entirety and totality, with a view towards gearing it foursquare to the goal or goals of legal education in the Philippines during these waning years of the twentieth century.

A hard look at the curriculum of the law schools of the Philippines and a review of the various conferences that have been held to reform it immediately brings out the sad fact that there are no forthcoming commitments to make the problems of poverty and the social gaps a central feature of legal education. One would look in vain for intimations of how the legal system contributes to conditions which create and maintain peripheralization.

[5] See, *e.g.*, New Thrusts in Legal Education, Proceeding of the Conference on Legal Education, Philippine Association of Law Professors, 1979.

This is the reason why the ad hoc faculty committee selected for the purpose has included among the most recent batch of new courses at the Graduate Studies Program of the College of Law, a course called "Law and Poverty" which, appropriately, should have been called "Access to Law and Distributive Justice" or "Law, Poverty and Development." The course description is as follows:

> *Law and Poverty* — This course focuses on the gaps and on the political economy of development and traces continuities in the way power, and thus often, law and legal institutions, have been used by dominant groups and classes to maintain and legitimize economic relations and the allocation of resources. It inquires into how the legal system contributes to conditions which create resource misallocation, poverty and the peripheralization of peoples. The central problems of social justice, differential access to resource and legal development are pressed. The focus of the course is on the central question: What legal resources might be provided to help the poor create self-reliant, participatory structures for their own development?
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> A corollary problem is how structural barriers, such as language, illiteracy, ignorance of procedure and of one's basic rights under the Constitution, the labor code, and other social legislation can be minimized so as to diminish differential access to resource allocation.

We have been talking about equity, social justice, human dignity. We are hoping to inculcate these democratic values to some extent in our Graduate Program as, in addition to "Law and Poverty", we offer two-semester course on Human Rights. The first semester deals with the concept of human rights as an international movement, and the observation of human rights in different polities. The course deals with human rights in its three categories, namely: (1) personal security, (2) civil and political rights, and (3) basic human needs. In the Asian context, what can be more relevant during times of emergencies — which in some contexts have become perpetual emergencies — than the observance of these rights without which no human being can attain human dignity?

This is followed by a second course entitled "Human Rights in the Asian Context."

These courses, we are sure, will give intellectual support to the present undertaking to make the U.P. Law Center the situs of a projected Asian Center on Human Rights and Humanitarian Laws. Moreover, two courses on Human Rights, together with a course on Comparative Constitutional Law, continuously remind our graduate students, hopefully, of what the Harvard Law School euphemistically phrases as "the shaping and application of those wise restraints that make men free." The importance of such a reminder cannot be overemphasized, however, if there is a general thread which runs through the fabric of Asian societies today, more than any other, it is government lawlessness. The words of Lasswell and McDougal have an authentic ring when they write:

> In some places. . . . elections have ceased to be free and have become ceremonial plebiscites. Balanced public discussion has given way to discussion directed by a monopoly of government and party. In place of dynamic executive balance, there has risen extreme concentration of power in the hands of the executive. Where the institutions called parliaments yet survive, they are mummified into assemblies for the performance of rites of ceremonial ratification of executive decisions. . . . With the sweep of regimentation, the balance is lost between private zones of living and the zones appropriate to official direction.[6]

We have said that courses at the graduate level should seek to equip law-trained people with skills to enable them to respond to the new imperative of adjustment imposed upon us by new international economic and political forces shaping our world and our concerns not only in the policies and conduct of government but also in the daily processes of international trade, investment and finance. Because of this belief, the Graduate curriculum offers a course on International Economic Law, the content of which includes the principles of international economic law, i.e., the problems of international economic order and the co-existence of sovereign economies, and the limitations of economic sovereignty; the standards of international economic law; the law of economic warfare and the law of international economic institutions, including the international financial institutions, the General Agreement on Tariffs and Trade; and sectional economic organizations.

This is followed by a second semester course entitled Law and the New International Economic Order. As the nomenclature indicates the course is intended to give us a view into the evolution and progress of a new international economic order in our time. It utilizes such United Nations documents as the UN Declaration on the Establishment of a New International Economic Order, the Program of Action on the New International Economic Order, the Charter of Rights and Duties of States, and the UN General Resolution on Development and International Economic Cooperation.

Quite obviously, the rationale for the course is our understanding that international law is the product of the European mind, originating in a common source of European belief, which was regarded both as a "law for civilized countries" and a "civilized law" with the notion of civilization being partly conceived of as embracing Christendom and partly as including all states powerful enough to exert an independent influence. It was thus not an international law established by common accord but an international law the application of the concepts and principles of which was based on relations of exploitation and dependence between a small group of states which exercised a collective hegemony over Europe and the nations and peoples of Africa, Asia and Latin America which were brought into the ambit of international law as objects of colonial exploitation. In this way

[6] Lasswell & MacDougal, *op. cit. supra,* note 3.

it was able to serve as a legal basis for the various political and economic aspects of imperialism.

The question is, whether this international law can now be harnessed, not to conserve the present order but to evolve into a new legal system that the present international society is waiting for, in which development will bring about a more just, participatory and sustainable society.

These are some of the immediate and partial responses we have made in the Graduate Studies Program to the imperatives of social change. We are hoping that with these efforts, our international law courses will produce more imaginative and less tradition bound students of international law and build up a cadre of scholars interested in courses in international law and diplomacy. Needless to state, the lack of good international legal scholars is, unfortunately a handicap in the formulation of Philippine international economic policy at a time when such scholars are needed even as nations awake to the need for a new international economic order.

On a related field, because of our concern for sustainability, including the protection of the environment, as a measure of both intra- and inter-generation justice, as well as our concern for the fundamental problems caused by the exploitation of natural resources, we have just added a course into our graduate legal program — on Law and Environment. The course of study is expected to go beyond the discussion of the laws and regulations; if it inquires into the nature of environmental deterioration and the type of pollution which damages the earth's natural life-support system and ultimately into the complex problem of how we should treat our natural environment so that the life of our species may be indefinitely sustained.

As a corollary, we have also activated and revised the substantive content of our traditional course on Natural Resources which is offered as an elective in the Graduate Program. This course does not only focus on the legal aspects of both the preservation and conservation of renewable natural resources; it also zeroes in on the problem of the rapid depletion of non-renewable resources. The energy problem in its global context is tackled from aspects of fuel supply and the serious social and environmental stresses which result from the requirement of more energy in the modern life of the expanding population. The alternatives of "hard path" and "soft path" strategies or energy utilization are also looked into, given the latest international analysis of global energy by the International Institute for Applied Systems Analysis, which is the most ambitious effort yet to determine the world's long term energy need — which concludes that the shifting from fossil fuel to more sustainable sources of energy will take a century and only with pain and high cost. All of these have to be considered — not only with the knowledge now made certain that the energy crisis is definitely not a temporary phenomenon and can not be easily solved, but also in the light of the new legal understanding of such

traditional international principles as state sovereignty over natural resources and of nationalization as an aspect of such sovereignty.

In addition, we have been offering for some time now, as is to be expected, a course on international business transactions but with a special emphasis on the negotiation of the contents of international business contracts — looking at the traditional injustices in many of these contracts because of inequalities of bargaining power between the protagonists and the new circumstances accepted by the international community as warranting renegotiation of the terms and conditions of such contracts. Naturally, the course focuses also on transnational corporations, international investment and joint ventures. In fact, the U.P. College of Law/Law Center has participated in two-year regional workshops on these subjects. The papers read in the series of workshops in Tagaytay, Jakarta, and Colombo are coming out in a volume entitled *Transnational Trade and Investments: Asian Perspectives* under the co-sponsorship of the International Center for Law in Development and the U.P. Law Center.

Finally, with the end in view of transforming the tax system into a more effective instrument of development within a regime of social justice and equity, a one-year Special Program on Taxation for Asian middle and senior tax level officials as well as for law teachers and private practitioners, has now been inaugurated in the College of Law. The tax program lays special emphasis on tax policy and tax administration, managerial accounting and control, and tax research.

Completion of the one-year tax program may be credited towards the LL.M. degree for those who are qualified to pursue the Master of Laws curriculum while a Certificate of Graduate Studies in Taxation may be given to non-lawyers.

Having described some aspects of our regular graduate program leading to a Master of Laws (LL.M.) and our special program in taxation, let us now briefly touch on the third component of our graduate program. We are offering a joint LL.M.-M.B.M. curriculum which integrates in one degree program the salient features of the LL.M. (Master of Laws) and the M.B.M. (Master in Business Management) programs which are offered independently by the College of Law and the College of Business Administration. The program is intended to provide the lawyer with the skills and training of a business administrator and at the same time enhance his knowledge of law. It provides the framework for the application of management decision-making and problem solving techniques in the legal field. It is ideal for the busy practitioner since it will enable him to earn in the shortest time possible (a minimum of two years) a degree which will give him exposure in business management and in law.

By way of concluding this paper, we must confess, with a good deal of sadness, that beyond our traditional courses on World Organizations and

Problems in International Law, we have not yet been able to pay sufficient attention to a growing fundamental problem which we face during this threshold of a new decade. Beyond the continuing concerns for social justice, participation and sustainability, there is an insistent and compelling imperative of undertaking concerted efforts to create a momentum for peace. All indications point to the alarming fact that the world is moving again into the danger of an East-West confrontation. Moreover, the spread of nuclear weapons to other states seems to be continuing. Governments are responsible for maintaining the security of their nations, yet as the final statement of the 1979 U.N. Session on Disarmament points out, nuclear weapons have become much more a threat than a protection for humanity.

Having discussed the need for curricular revision and the partial, perhaps halting and somewhat haphazard way it has so far been undertaken in the Graduate Studies Program — and surely without the dynamics necessary in a serious undertaking of this nature — we hasten to make the warning that, as observed by a recent report of an international committee on legal education,[7] many projects to reform legal education have simply concentrated on the restructuring of the curriculum of the law school. Magical effects, it says, are sometimes attributed to proposed changes in curriculum. If the existing curriculum can only be replaced by a modern one, it has been assumed that the result will be better educated graduates and lawyers — and perhaps great reforms in the law.

The report then went on to point out that curriculum discussion can be a much over-rated past time. It should form only one phase of educational planning — important, yes, but still one should remember that many of the most intractable problems of improving legal education relate more to implementation than to planning curriculum. Very little can be achieved, it warns, through a better selection and organization of courses, if the methodology continues to be inadequate, if the library is insufficient and research non-existent; if the faculty members are practicing lawyers who teach only part-time; and, what is more, if the final objectives sought are not reviewed in the perspective of the local environment. Faculty development, curriculum development and research planning, textbook development — these are integral parts of an effective reform in legal education.

Withal, we must pursue the discussions to reform the curriculum — and yes, we must also go beyond curriculum reform to other phases of educational planning. Behind our efforts should be the conviction that law is or should be a body of principles of the highest moral and pedagogical value which shapes the conduct of society. And that, beyond doubt, the College of Law is expected to contribute its share in the achievement of the good society.

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[7] Committee on Legal Education in Developing Countries, in *Legal Education in a Changing World,* (1975).