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."
>
> - 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 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 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

---

* *Vice Chairman*, Student Editorial Board, Philippine Law Journal, S.Y. 1988-1989.

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

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

3 *Id.* at 117.

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.

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 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 must be pointed at the formerly colonial now neocolonial system of power prevailing within the country for the unresponsiveness of the law. It is said that legal theories are built mainly upon theories of authority.[7] The legal system of the Philippines has been a product of wholesale transplantation by the various colonizers of the country. Thus, we have the imposition of the Spanish civil law system during

---

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

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

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

the hispanization of the Philippines and, subsequently, the adoption of the American common law system during the American occupation.[8] Under these circumstances, and within this context, it is plain that the Philippine legal system and the laws that it produces will be unresponsive and irrelevant to most members of Philippine society. This is easily explained by the fact that legal institutions are inherently tainted, sharing the deficiencies of the social order and serving primarily as instruments of domination.[9] The wholesale transplantation of the Spanish and American legal systems has virtually assured the inherent biases contained in these colonial systems. Concepts of property, property relations and legal relations which are inherent and hitherto unique in Spanish and American culture and society have been made part of the Philippine legal system by the simple expedient of colonization.

Law is but a reflection of the structure of social and economic relationships existing within a society. Ultimately, in any such society, it is the people who hold the political, military, and economic power who make the final decisions. Any laws which are produced are only the result of political compromises reached between and among the interests which they represent, translated into legal and statutory form.[10] 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]

More often than not, law is used as a cleansing agent and deodorant to cleanse the stain of illegality and perfume the odium of certain governmental acts. It has been often used to justify certain positions and

---

8 Romero, *The Challenges to Legal Education in the Philippines*, 52 PHIL. L. J. 488 (1977).

9 NONET & SELZNICK, *supra* note 7.

10 Medalla, *Law and Philippine Nationhood*, 53 PHIL. L. J. 287 (1978).

11 Sanidad, *Facade Democracy*, 54 PHIL. L. J. 318 (1979).

12 PAUL & DIAS, *supra* note 5, at 2.

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

acts of government which are challenged in the courts of law. Governments holding power are not the least disinclined to avail of these features of the law. In not a few instances, government has used the law and legal institutions to cleanse and "legitimize" its acts. Ferdinand Marcos sought to impose a constitution tailor-made for his totalitarian rule and by-pass the constitutional requirements of ratification through a series of citizens' assemblies.[14] The Supreme Court in *Javellana v. Executive Scretary*[15] in a severely divided opinion legitimated the ratification of the 1973 Constitution and in effect condoned Marcos's open disregard of the constitutional requirements for ratification when it declared that "this being the vote of the majority, there is no further judicial obstacle to the (1973) Constitution being considered in force and effect." This is but one of the many instances when the "conscience of the government"[16] has been used to legitimate acts of government which might otherwise be infirm when the stern majesty of the Constitution is to be strictly followed. The Court has also been used to legitimize governments, although at times, it has been a willing accomplice. In *Lawyers' League For A Better Philippines v. President Corazon C. Aquino,*[17] the legitimacy of the Aquino government was questioned. The High Court deemed the petition as one that merely sought an advisory opinion and dismissed the case on the grounds that the petitioners had no standing and no cause of action. Before dismissing the petition however, the Supreme Court in what will be considered very significant *dictum*[18] ruled that the Aquino government "is not merely a *de facto* government but it is in fact and law a *de jure* government." By so doing, the Supreme Court legitimated itself by disposing of the constitutional question which could have been used to attack the very legitimacy of the Court itself.

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 relationships 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

---

14 Javellana v. Executive Secretary, 50 SCRA 30 (1973).

15 50 SCRA 30 (1973). *See* Occena v. COMELEC, 104 SCRA 1 (1981) and Mitra v. COMELEC, 104 SCRA 59 (1981) wherein the Court upheld the ratification of the 1973 Constitution.

16 Javier v. COMELEC, 144 SCRA 194 (1986), Cruz, *j., ponente.*

17 G.R. No. 73748, 73972, 73990, May 22, 1986.

18 This *dictum* was reiterated by the Supreme Court in the later case of *In Re Saturnino Bermudez*, G.R. No, 76180, Oct. 24, 1986 which the Court also dismissed.

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.

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]

These observations are taken from the Latin American legal system yet the characteristics are very similar to the features of the Philippine legal system. In this context, it is plain that the bare content of the law would be unresponsive and irrelevant to the members of the basic sectors of society and would serve to further oppress.

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 members 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]

---

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.

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 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. And because the law is drafted almost entirely in English, the medium of instruction for legal education must, of necessity, be English. Again, the medium would be one that the members of the basic sectors can not identify with and appreciate. It would seem therefore that as the law and the state of legal education exists at present, the members of the basic sectors or society would again be left out in the cold.

As it exists presently, the legal system and the system of legal education allow too much room for injustice. Law enforces the maldistribution of wealth and power but it does so in such a complicated and indirect manner so as to leave the observer bewildered. It has been said that the books of law are among the most formidable bewilderers.[26] It is not enough that the law is formulated in an alien tongue, encompassing values which the ordinary Filipino would find hard to appreciate, it is also inherently technical and complex -- containing terms and language so involved that even educated laymen would find hard to comprehend.

It is enshrined that ignorance of the law excuses no one.[27] Yet laws are relevant only to the extent that they are known and understood. In its present form, the assumption that everyone is familiar with the law becomes an absurdity. Further, laws are

---

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

26 NONET & SELZNICK, *supra* note 7.

27 CIVIL CODE, art. 3.

meaningful only to the extent that they are enforced and interpreted according to the their spirit and purpose. Unenforced, they remain only scraps of paper. Misenforced and misinterpreted, they may be turned into instruments against the very purpose and aims for which they are enacted.[28]

The continued use of English as the main medium of instruction in colleges of law serves to effectively place legal education out of the reach of the members of the basic sectors of society. It is clear that only those belonging to the sectors which enjoy considerable material wealth and resources could ever hope to attain a level of competence in the English language so as to make the law relevant to them. The members of the basic sectors who do not enjoy facility in the English language can never hope to attain this level of comprehension. The law becomes irrelevant to them because they do not understand it. The law becomes a greater and heavier burden rather than a valuable tool.

The only way to make the law relevant and meaningful to the members of the basic sectors of society is to make the law more understandable. And this can be done only through the use of a language that is comprehensible to every Filipino. The Constitution has taken the lead in this regard. It is mandated for the first time that our national language is to be called Filipino and is to be evolved and developed from out of the existing Philippine languages as well as other languages.[29] Significantly, it is also mandated that "for purposes of communication and instruction, the official languages of the Philippines are Filipino and, until otherwise provided by law, English."[30] There is therefore no legal impediment to the requirement that all legal education as well as law-making be conducted entirely in Filipino, as such a move would be in absolute fidelity to the Constitution's solemn command. There are however seemingly insurmountable practical problems.

At this point in time, there has yet to be evolved a national language that may be comprehensible to all Filipinos across the archipelago. It is a reflection of the long years of colonial rule that there is a marked absence of a national identity, which is manifested pointedly by the absence of an indigenous national language. 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. Ironically,

---

28 Medalla, *supra* note 10, at 89.

29 CONST. art. XIV, sec. 6.

30 CONST. art. XIV, sec. 7, par. 1.

English enjoys greater popularity across the archipelago than some of the indigenous languages and dialects. *Tagalogs*, for instance, would resist moves to impose *Cebuano* in its pure form on them just as the fiercely regionalistic and combative *Cebuanos* would thwart moves to make *Tagalog* as the national language. This is not to mention the similar attitudes of the *Ilocanos, Ilonggos* and *Warays* to this issue. Owing to the extremely regionalistic nature of Filipinos as well as the geographical and oftentimes cultural barriers, the development of a national language would seem to be an impossibility. English would seem to be 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 occasion to present certain 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 is a reflection both of the structural rigidity

---

31 These features are 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 '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 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 for social change.

of the neo-colonial system of power and the inherent conservatism of the legal profession that these features remain until the present time.

The fact that legal education in the Third World is patterned after a foreign model, as indicated by Magallona, stifles the outlook, intent, methods, research and continuing development of legal education. The imposition by foreign colonizers of their systems of law insures the protection of their interests but sets aside the interests and needs of the members of the basic sectors of society, which may be reflected in alternative and indigenous concepts of law, government and justice. Any hopes for the development of a truly Filipino legal system through meaningful and progressive reforms are thus dashed.

Magallona's finding that legal education in third world countries is characterized 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 problems of the public sector or problems of the mass of people in society" takes on greater validity today 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.

A great portion of the rural populace in the Philippines are peasants and farmers faced with the ancient problem of land. Yet agrarian law is not offered, even as an elective, in most law schools in the country. There are no courses regarding specialized laws affecting the urban poor yet a large majority of the residents in urban areas are literally urban poor. There are no courses on Philippine legal history and existing legal history courses make only a cursory mention, if any at all, of this important concern. Instead, great emphasis is placed on subjects which would allow the student to concentrate on law as a means of maintaining existing property interests.

Studies conducted to evaluate the curriculum of the University of the Philippines College of Law have, time and again, yielded a common consensus: "the curriculum should be revised to make it more relevant and responsive to the needs of society and to better equip the student for the broad and multifarious demands of the profession."[32] Yet no effective changes have been made in order to achieve this objective. In a way, Magallona's comments regarding legal education as a "training for trade" finds validity in this regard.[33]

---

32 Romero, *supra* note 8, at 497.

33 Magallona, *supra* note 23, at 85.

The reduction of legal education into a training for trade results in the elimination of courses which do not directly serve 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. This consequence has grave implications the relevance of legal education to the members of the basic sectors of society. It is not enough to feed the intellect and cram the mind with legal concepts; the legal educator should strive to impart the larger vision of utilizing the law as an instrument of social change.

"De-politicizing" legal education is not the same as making such politically neutral, for its "political neutrality" is the very essence of its politicization, albeit on the regressive side. This regressive politicization may ultimately result in legal education and law being viewed merely as technical tools, cloaking their real intents behind the facade of an expensive utensil available only to the privileged classes.[35]

Universities and colleges, as centres for scientific and cultural achievements, being the very places where national consciousness is forged and instilled are ultimate expressions of the degree of development reached by property relations in the society in which it corresponds. It is merely natural and logical therefore to expect a system of legal education reflective of the skewed property relations existing within Philippine society to prevail within the walls of the colleges of law throughout the country. To buttress this contention, one need be reminded only of the fact that laws are made and taught, in the overwhelming majority of schools, in the English language and that the curricula of these schools reflect the "training for trade" that Magallona has observed.

It is also not surprising that in colleges of law in most developing or underdeveloped nations, the function of the faculty is merely to produce technically-competent lawyers schooled in the law but shorn of any burning desire to seek justice and see it dispensed impartially. Law students -- their minds set on law rather than justice -- are taught to seek solutions to individual conflicts of interest with no thought for those problems which plague the universal conscience. Stripped of its

---

[34] *Id.*
[35] *Id.*

"politicized" nature, the law exists merely as a set of rules governing conduct, resting, like matter, on its inertial force -- resistant to change[36] and much of the time, useless to the point of irrelevance. It is only when the law is transformed to power , in the same way that matter is transformed into energy, that it becomes truly meaningful and relevant to the members of the basic sectors of society.

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 rules organized into categorical systems, issue-spotting, elementary case-analysis and standard pro-con policy arguments that lawyers frequently employ in arguing cases.[37] These skills should neither be overly exalted nor denigrated, for they represent skills that a lawyer uses and has to contend with in the crucible of practice. However, as 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, it being the "and-all" and "be-all" for them. Consequently, most students only take courses which are "bar subjects" and do not preoccupy themselves with "non-bar" subjects which may heighten awareness. This attitude highlights the problem of unresponsiveness of legal education to the needs of the broader masses of the people.

---

36 Bodenheimer, *The Inherent Conservatism of the Legal Profession*, 23 IND. L. J. 229 (1948).

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.

A graduate of any college of law , having completed a four-year legal education program and successfully hurdled the bar examinations, is qualified to practice law and is presumably able to solve the legal problems of his clients. Yet he may not always get the chance to do so, as the problems of his clients may not always be purely legal in nature, and in fact are frequently social in nature.

A case in point would be problems affecting the urban poor members of society. The most pressing problem of this sector is one of poverty in the countrysides. This problem has resulted in mass migration from the rural to the urban areas, which in turn has given rise to "squatting" due to the lack of available and affordable housing. The problem has reached pandemic proportions because of the unresponsiveness of government programs to the problems of the urban poor.[39] Under several laws promulgated during the Marcos administration which have yet to be repealed under the Aquino government, the urban poor sector has become one of the more oppressed sectors. One statute not only makes the members of the urban poor "squatters" but classifies them as criminals[40] merely by virtue of their being poor. Because of this law, the members of the urban poor have virtually no rights under the law. Their shanties, which are about the only thing they can call their own, are deemed to be "illegal constructions" and are to be dismantled and demolished, either voluntarily or by the government but at the expense of the settlers.[41] A young lawyer, fresh from passing the bar and imbued with traditional values such as technical competence and academic excellence, when faced with clients who are "squatters" and who are about to have their homes demolished would immediately treat such problem as a purely legal problem, wherein conflicting rights and interests have to be balanced and protected. The immediate remedy that comes to mind would be the writ of Preliminary Injunction under the Rules of Court[42] – judicial redress for a perceived legal problem. From a purely legal perspective, the action would be beyond reproach. However, owing to the nature of the problem, which is basically social in nature and is

---

39 Statistics would show that the number of urban poor settlers within Metro Manila has increased dramatically under the Aquino government. The number of "squatter" families in Quezon City increased by 33,000 between 1986 to 1988. Manila is said to have 395,752 "squatters", an increase of 18,000 from 1986-1987. Makati saw an increase of 5,000 urban poor families from 1986. Marikina saw an increase of over 80,000 slum dwellers, from 34,431 "squatter" residents to 115,155 between 1986 and 1989. For a more detailed discussion of the urban poor problem, *see* Paredes-Japa, *A Measure of Failure: The Urban Poor Crisis Continues*, The Philippine Daily Globe, January 29, 1989, at 11.

40 Pres. Dec. No. 772 (1975).

41 L.O.I. Nos. 19 and 19-A (1973).

42 RULES OF COURT, Rule 58, sec. 1.

derived from the inequitable distribution of wealth and resources in the country, the remedy might not be responsive to the problem.

The problem of "squatting" and its consequences can not be stopped totally by means of an injunction secured from the courts. The root problems that cause incidents such as demolition must be addressed if ever a solution to the problem of "squatting" is to be found. By "de-politicizing" legal education, the law student is too far removed from the mainstream of society and does not realize, or realizes too late, that not all problems of a client, even if they come packaged as legal issues, are capable of effective solution by means of legal and judicial processes. By divorcing legal education from the realities expected to confront the lawyer and insisting on a purely technical and academic perspective, future lawyers are rendered virtually inutile and the law and lawyers are found totally unresponsive in the face of pressing problems that plague the larger portion of society.

The importance of technical competence and academic excellence in systems of legal education is not sought to be downgraded or totally disregarded. In fact, their importance to the effective practice of law must be recognized. For without technical competence and academic excellence -- the very "bread and butter" of lawyers -- to draw upon, the lawyer will be faced with no means by which to butter his bread. It is the absolute insistence on technical skills and academic competence that is found in prevailing systems of legal education that must be changed, for at best, such an insistence would merely provide the lawyer with a "band aid" remedy that may stop the bleeding but never probes deeply into the true etiology of the hemorrhage. Technical skills and academic competence will not be sufficient to assure that a lawyer may effectively solve the problems of his client.

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 counselling and education would have resolved and prevented. Legal education must stress that victory in courts is not, and must not be, the primary objective of lawyers. For defeat or victory in courts is not the end of his work. The lawyer must realize that actions brought in court constitute only a part of a process of education for him, his clients and others similarly situated. 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 under which people can more readily function, organize and carry forward their struggles.

The judicial process is long, uncertain and expensive. It involves tremendous sacrifices and exacts costs which the members of the basic sectors will frequently find difficult to meet. To burden an already overburdened people further by an insistence on litigation at every turn would be the height of injustice. The solution lies not in the sole reliance on the law and upon the judicial processes but rather in the collective struggle of a people made aware of their efficacy and capacity to effect change. This can be done by means of systematic educational campaigns on the law and its effects. These can be undertaken by members of the bar, the bench , the academe and even the studentry. By means of education in the law, the members of the basic sectors may be better able to organize and carry forward their struggles for change. Also by means of campaigns of this sort, the law will, to a certain extent, cease to be an abstract and pervasive reality -- unresponsive and irrelevant -- but will become a more concrete and tangible instrument for change.

V. Confronting the Issues...

A. Clinical Legal Education and Traditional Legal Aid.

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

---

[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

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.

The benefits accruing from the program, in the words of its Director, include a "heightening of awareness and interest, greater motivation to learn and increased retention of knowledge."[45] While these achievements are indeed laudable and worthy of every support, such a program would still not be totally responsive to the problems of responsiveness and relevance.

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 counselling 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. It is a system that is fraught with intricate and unusually technical processes and an arcane, prolix and often contradictory language of the very law itself. Thus, there is the need for some person who, after specialized training, is presumably but not assuredly capable of understanding the law and practice it expertly.[47] 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]

> (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

---

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.

45 Tadiar, *supra* note 38, at 14.

46 CONST. art. III, sec. 11.

47 *Developmental Legal Aid Tasks and Prospects Under the Aquino Regime:* Address by Atty. Arno V. Sanidad, Symposium on Developmental Legal Aid, Quezon City, August 6, 1986.

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

> 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 responsible 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.

Traditional legal aid programs view their functions as primarily and principally that of providing legal solutions to legal problems of the poor by vindicating their rights. This function should not be denigrated for it is of value in itself. "Every triumph of justice is a cause for celebration."[49] However, legal education programs built around the concept of traditional legal aid are of limited importance to development. This is not because these programs operate within the existing legal order -- legal assistance and legal education programs of all types must necessarily remain within the existing legal order to remain legal. The reason is that clinical legal education programs built around traditional legal aid accept uncritically the basic rightness of the legal order and the social, political and economic systems and institutions within which it functions. Its basic premise is that injustice is caused by the frailties of the men who make or enforce the law and not by the inequity and inequality of the structures of power operating within the society. This is also its greatest flaw. Programs of this nature and orientation maintain the thrust of upholding the law at all costs, not the transformation of society in order to make it more just. They are divorced entirely from issues of policy and do not place any emphasis on heightening awareness in the people of their capacity to change society. These programs present no real alternative solutions to the problems of relevance and responsiveness because the very programs fail to even address the problems.

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. The client is a human being with problems that may be rooted not in human avarice which results in a violation of law but in the law itself that may be unjust as a result of the social

---

49 *Id.*

structures that enacted it. Legal education must endeavor to politicize its traditional function. It should transcend the narrow and constricting confines of the classroom and take root in the *terra firma* of the actual realities prevailing in our legal system. 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. It is not sufficient that he understands the legal problems confronting his client. He must be made to realize that the problem is but a reflection of an unjust and oppressive social and legal order to which they both belong. He must be one with the people in seeking to solve not only the specific legal problems or issues before him but also in finding a solution to the root of the problem which manifests itself in forms other than legal.[50]

These venues or channels are not to be found in the classrooms nor are they likely to be found within the confines of any law library. They may come in the form of integration programs and externship agreements with various peoples' organizations working with the basic sectors of society. Only in the form of these integration programs will a student of the law be able to see for himself the actual effects of the law that he studies. Only through such programs will he come to realize the pervasiveness of the law and its multifarious effects on the members of the basic sectors of society.

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 lawyer, as a legal educator, can urge an interpretation of existing law different from the official interpretation in order to favor the rights of his client as well as challenge policies by citing constitutional provisions as well as statutes that are beneficial to the cause of his client. He must also encourage his client to work with others similarly

---

50 Sanidad, *supra* note 47.

situated and organize themselves, to act collectively on certain common issues and to invent and use metalegal tactics.[51]

> The legal educator must impart to students of the law that they must be cautious of the fact that it is not they who are to make the decisions for the client. One must always be conscious that his role is purely supportive -- that of giving education and frequently traditional legal aid -- and that the direction of any form of struggle that his clients choose to undertake must always be dictated by those directly affected, i.e., the people themselves.[52]

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. Under the system of legal education existing at present, there is a marked dearth of such opportunities. Colleges of law, with their pre-occupation with "training for trade" and over-emphasis on technical polish and academic glitter, rarely think of such opportunities for conscientization for their students. And students, with a single-minded pre-occupation for good grades in order to assure them of lofty positions in high rise law offices along big financial districts, rarely take the initiative to look for such opportunities or when faced with such, casually wave them away as irrelevant.

It is worthy to note however the opportunities presented by the Office of Legal Aid of the University of the Philippines, the first clinical legal education program in the Philippines, for interaction by law students with the members of the basic sectors of society. The Office of Legal Aid and other clinical legal education programs constitute a tremendous first step towards this conscientization. Because the law interns enrolled in the program are asked to undergo the whole range of activities that a practitioner does, he is given the chance to undergo as well all the feelings, emotions and frustrations of the practitioner when dealing with the powerlessness of his indigent clients when faced with the stentorian majesty of the law. He is given the chance to sympathize and empathize with his clients' plight. Moreover and more importantly, the seeds of awareness and conscientization are planted

---

51 By "Metalegal tactics" are meant mass actions that transcend ordinary legal procedures without openly defying existing law. The primary purpose of such tactics is to exert pressure for change in law and society. These tactics are based on the constitutionally-guaranteed rights of expression, assembly and free speech but are more creative manifestations of such rights. *See generally* Diokno, *supra* note 48, at 41.

52 *Id.* at 42.

deep within the heart of the law intern who, maybe for the first time, is made aware that there is life outside the walls of the college of law and that these lives are being oppressed by the very law that he seeks to uphold. This is a step in the right direction. However, it is not enough.

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 a 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 legal education become truly relevant and responsive.

The law is not a panacea to all the social ills that befall us. In fact, it is often the law, which is the result of an unjust legal and social system, that breeds such social ills. Dependence must not be had, then, upon the law as the primary and sole mode for effecting social change. Instead, the legal educator must stress that it is only through concerted action by students of the law, lawyers and other professionals with and upon the initiative of the members of the basic sectors made aware of their rights as well as their capacity to affect change that any meaningful changes, may be effected.

C. *A Developmental Approach to Legal Education*

This approach is nothing more than an 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 problemss 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 that they are being oppressed but allows the people themselves to realize that they are being oppressed.

Ultimately, it is the people themselves who must decide what the law is to be, based on their needs and aspirations. Such a decision can be arrived upon only through the process of conscientization of both lawyer and client. But it is not the role of the lawyer to initiate the move for legal reforms because for reforms to be truly relevant and meaningful, such must come from the intiative of the people directly affected by the law, in this case, the larger portion of society. Again, it must be stressed that lawyers and legal educators must avoid the danger of directing the initiatives for change on the part of the basic sectors. The lawyer must always take the supporting role and allow the people they are helping to make the decisions on what changes are needed, how these changes are to be made and the pace at which these are to be made.

For law to be an aid to development, it must not be one that feeds, clothes, cures, teaches and houses people. For as Senator Diokno once remarked, "most prisons do as much." To use his words in close paraphrase, 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 the law. An educational system that does otherwise retards development and only engenders the germ of dependency. It must therefore be within this context that legal education must be undertaken in order that it may be developmental and that it may address the issues of relevance and responsiveness.

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 established centres of power. The movement for change in 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.

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