

Legal Education in a Changing World

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**Legal Education
in a Changing World**

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Report of the Committee on Legal Education
in the Developing Countries

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Preface

In 1972 the International Legal Center (ILC) asked an international group of legal scholars, distinguished in part for their contributions to legal education in one or more countries in Asia, Africa or Latin America, to study the progress and problems of legal education in those regions of the world. The assumption was that there were widely shared problems of deep significance which might be profitably reviewed from an international, comparative perspective.

The Committee held three plenary meetings and reviewed a considerable body of material. A number of working papers were especially prepared for it (and some will be published with this report, in book form, at a later date by the ILC). The Committee delegated to a five-man task force the preparation of this report, which has been through several drafts and circulations to the full group.

The report is published under ILC auspices, but not, of course, as an ILC authored document. It is surely one of the few scholarly, *international* documents on legal education. It emphasizes the importance of pursuing *both* a general, comparative and a local contextual approach to the study of legal education in any setting.

Many commentators on legal education in developing countries have noted the obvious need to plan and relate it more to the local social and developmental environment. But few have deeply probed the implications of this prescription. The report takes this principle as a point of departure and suggests a wide variety of perspectives and issues to be considered in analyzing factors in the local context which might influence the shaping of goals and the determination of appropriate strategies to achieve them.

The report may disturb some because its portrayal of "the present situation"—the existing characteristics of legal education in many countries—is cast in critical terms, and because it seems to call for a rather drastic re-thinking of objectives and methods. The report may disappoint some because it offers few concrete prescriptions. It provides tools for analysis but few specific answers to many problems raised. The report may seem frustrating to others because some of its principal arguments (e.g., the local context of legal education ought to be studied from a variety of perspectives; its development ought to be planned through the concerted efforts of a wide variety of decision-makers and constituencies; its strengthening may require a "new breed" of law teachers who will bring new perspectives and skills to the discipline) are obviously difficult to achieve in the very quarters to which the report is primarily addressed.

The report emphasizes the fact that legal development—and therefore education concerned with it—must be, in many ways, a culture specific phenomenon. There are many very different environments for legal education in the Third World today. Just as there are political and economic differences so there are differences in the use of formal laws and legal processes and differences in perception of their value. In some fast changing societies—at some points in time at least—the trend may be to "de-legalize" parts of the existing legal system, to develop non-formal processes and unofficial institutions for much dispute settlement at the "grass roots" level, to expand the range of executive power and administrative discretion (e.g., in the state's management of the economy) and reduce the scope of **judicial** jurisdiction and the autonomy of the law. Under this approach the traditional role of lawyers in society may diminish in importance and the case for legal education may differ from its position in a country which emphasizes the importance of specialization.

The report recognizes these possibilities. It suggests, however, that while a country may eschew legal ways in order to force revolutionary changes, at a later time political leaders and social forces may re-establish and rehabilitate the legal system when the need for consolidation, stability, and the protection of other values is perceived. In any event the report is premised on the assumption that the development of increasingly complex laws and greater differentiation and specialization among law trained people is a likely long term feature of many societies in our changing world. In spelling out "the case for legal education" the report argues the importance of conceiving and developing law as a sophisticated discipline with strong links to others, and as a vehicle for examining many problems of social change as well as new ideals of justice.

The report stresses the importance of multi-disciplinary research to facilitate better understanding of legal cultures, law and the actual workings of the legal system, and it faults legal education for the limited scope of most legal research undertaken by law teachers today. In this respect its message parallels that of another report recently published under ILC auspices entitled *Law and Development* and prepared by an international advisory committee on research on that subject. Both reports suggest the importance of comparative studies and international collaborative efforts to create more useful, informed bodies of literature concerned with the roles and uses of law to address problems of social change. Both reports suggest that we will need a new breed of legal scholars with interdisciplinary interests and competences, and better international networks of communication between them to achieve these goals.

Finally it is worth noting that while these reports are addressed to the situation of "developing" countries, the messages conveyed are really relevant to a worldwide audience. The committee on legal education has properly titled its study "Legal Education in a Changing World" because the

problems it addresses may well be shared to a great extent, everywhere.

We are deeply grateful to the members of the Committee on Legal Education, particularly to its Chairman, Professor **Avendaño**, and to professors Cdneo, Ghai, and Twining who worked with James Paul through several special meetings and for many additional hours on their own to prepare parts of the text and review the whole. We are also deeply grateful to Richard de Friend of the University of Kent for undertaking the herculean task of preparing bibliographies and other material which will appear in the book edition. We are grateful to other persons who read and criticised portions of the document for the drafting task force. Special thanks must go to **Susan Aluffi** and **Rita Burns** of the ILC who typed so many drafts and bits and pieces of the report and kept faith that a final text would some day emerge. We are grateful to the Scandinavian Institute of African Studies for assistance with the publication of this report. We hope the efforts of the Committee and all who helped it will be rewarded by a wide and varied readership—who will see this report as a stimulus, rather than a benediction.

International Legal Center
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Introduction

1. Since its inception, the International Legal Center (hereafter ILC) has devoted attention and resources to problems of legal education in developing countries. Among other things, the ILC has worked in cooperation with law schools in Asia, Africa and Latin America on such projects as visiting professorships, graduate or advanced education for law teachers, workshops, improvement of law libraries, development of teaching materials and sponsorship of research. While there have been significant efforts over the past decade to initiate, expand or reform legal education, and to relate it to processes of development and other needs, there has been growing awareness that these tasks are complex, and that some prescriptions of the past may have been too simplistic. ILC believed that it would be useful to study systems of legal education in developing countries: to survey their characteristics, to consider problems of general significance and to analyze possible objectives and strategies for improvement.

Organization and Work of The Committee

2. Accordingly, in 1972, ILC established an international committee to pursue this inquiry. The background of Committee members is set out in Appendix 1. The Committee held three separate, three-day meetings in New York during 1972 and 1973. Various members prepared working papers for discussion and other papers were solicited from and contributed by outside experts. A full list of these papers appears in Appendix II, and a number are to be published separately. The existing literature on legal education in developing countries has been canvassed, and ILC collected other more readily available data, but it did not prove possible for the Committee to undertake original research. This report represents the outcome of the Committee's deliberations.

3. The main purposes of the report are:

a. to bring together information about legal education, describe various systems which provide it and analyze significant characteristics which may affect it;

b. to identify different, possible social and educational functions of legal education, notably university legal education, and suggest ways of planning and strengthening it as a system of activity affecting development;

c. generally to suggest new perspectives and new issues for research in this subject.

4. The report is addressed not only to colleagues in legal education, but to all who have responsibility for decisions which may significantly affect it in a particular jurisdiction. This is a broad audience. Yet the quality of legal education and the contribution it makes to a given society is determined as much by the perceptions and decisions of vice-chancellors, planners, politicians, and other leaders of opinion as by law teachers and lawyers. We shall argue that a sound system of legal education, properly perceived and utilized, has important, positive contributions to make to national development. Conversely, a bad system of legal education may have serious, negative consequences.

Some Limitations and Other Considerations Which Affect the Character of the Report

5. The report has limitations. We do not claim that it is without a bias. The Committee is composed entirely of lawyers and law teachers who believe that law is important. We support the view that it is best studied in context. We are critical of a great deal of what passes for legal education and professional training. We represent a variety of political backgrounds, experiences and beliefs, but we do not cover the full spectrum of political and philosophical opinion. We have tried to compensate for these biases by seeking the help and advice of outsiders with views or expertise different from our own.

6. A second limitation is the paucity of data. There is an extensive literature on legal education, but most of it is based on either rhetoric, myth or aspiration. There are few empirical or historical studies of legal education in particular countries, and in many even the most elementary information is not readily available. It has not been possible for the Committee to undertake or sponsor extensive research of its own. Thus, the report inevitably reflects the generally elementary level of information and analysis about legal education in most countries.

7. A third limitation is the complexity of the subject. A major reason for our disenchantment with much of the existing literature is the tendency to underestimate these complexities and to ignore important dimensions of the subject. Concepts commonly used are often insufficiently refined to deal adequately with some of the difficulties of the problems. We have not set out to be comprehensive nor to analyze all topics in equal detail and depth. Rather, we have tried to emphasize matters which we consider to be particularly important, especially topics which have been neglected in the past, such as the effects (if any) of large scale legal education on the quality and character of the training offered, problems of choosing and developing a language of instruction in multilingual societies, and the implications for legal education of development planning, educational planning and the like.

8. A fourth limitation is that in many respects provisions for legal education must be country-specific. One must be skeptical about broad generalizations concerning developing countries and view with caution prescriptions for transferring approaches which have been developed in another setting.

9. There are, of course, discernible some general trends which are discussed in this report and the various regional reports provided for our deliberations. We have analyzed some institutions and ideas which may be suitable for adaptation in a number of countries. But we have not set out a specific blueprint of recommendations. Rather, we have concentrated on describing some perspectives and tools of analysis which may be applied in a variety of social contexts to plan ongoing development of legal education and evaluate particular proposals.

10. Thus, this document is more of a critique and a "think paper" than a report of systematic research. We are aware of dangers of generalization, of the perennially controversial nature of many aspects of legal education, of the practical and difficult problems of bringing about significant desired changes, and of the dangers of over-sophistication. Our primary concern is to set out a range of possibilities and to identify frontier challenges and new issues for study rather than to make specific prescriptions for immediate implementation. We suspect that fundamental changes may characterize the social context for law and the legal systems of much of the developing world, and we have tried to address problems and tasks which may soon come rapidly into more prominence.

Problems of Terminology: What are We Studying?

11. Our assignment requires us to discuss "legal education" in "less developed countries" and relate it to "development" as well as other contexts. To do this we need to say a good deal about "lawyers", "legal systems", "law roles" and "legal culture". For the sake of clarity, and because it will help to indicate an overview of the subject under study, we first discuss those terms and introduce our themes.

12. Much controversy has surrounded the term *development*. The distinction between less developed and more developed countries (LDCs and MDCs), implied in our terms of reference, draws attention to the great disparities in the conditions of life for human beings around the world. Countries—or significant regions within countries—are said to be less developed because there are in these places, in acute form and on a large scale, combinations of conditions such as poverty (sometimes combined with great differences in distribution of land or wealth), illiteracy, disease, malnutrition and shortages of many resources, physical and human. For our purpose,

development refers to conscious, organized efforts in the LDCs to confront these challenges and change society in fundamental ways.¹ Law, of course, may be one of the means to bring change, one of the sectors of society to be changed.

13. It is not necessary for us to enter the perennial debates on the definitions of *law* and *legal system*: here the term *law* is used in a broad sense to include not only rules which have been officially promulgated but also the norms and processes commonly included under the notion of "customary law". *Legal system* refers to the institutions and processes used to create, interpret and administer law.

14. The term *law-trained person* is used generally to refer to all persons who have undergone a substantial course of formal legal education, whereas *lawyer* is used more narrowly to refer to those who have been formally certified as being entitled to practice law in at least one jurisdiction. The distinction seems important because, in many settings, many law-trained persons, perhaps a majority, do not ever become lawyers. Further, many very important functions in the legal system—many diverse *law roles*—*may* be performed by persons with little or no formal training or certification of competence. Policemen, magistrates of lower level courts, and other officials, and, of course, persons without official position such as traditional scribes, elders, lay legal agents and pleaders, may perform functions which directly affect the legal rights of that great majority of people who seldom, *if ever*, are served by lawyers. Increasingly these law roles are being recognized as very important to the working of a legal system, and some of them may be characterized as *paraprofessional* in recognition of the fact that the functions performed, in theory at least, call for special knowledge and skills, and formal recognition within the legal system (e.g., through licensing or required special training).

15. While it is not feasible to identify and classify all possible law roles in society, it is important to recognize that in many countries they are multiplying in number and significance as the volume of law becomes bigger, more complex and pervasive, and the activities of the legal systems expand. While there are, in some countries, important trends towards "*deprofessionalization*" of tasks formerly undertaken—or monopolized—by lawyers, other kinds of law roles may become more specialized as developmental strategies produce new rules, processes and institutions to deal with such phenomena as taxation, land reform, urbanization, trade unions, state enterprise and so forth. In thinking about needs for legal education, it is important to recognize the changing character of law roles in changing societies.

¹ It is sometimes suggested in the literature of development that specific "countries" want to develop in specific ways. This, of course, is often far from the case. In some LDCs, perhaps many, the directions and scope of changes envisioned may be unclear. The developmental aspirations of a despotic regime can hardly be attributed *ipsos facto* to the voiceless people ruled. There may be no consensus, but rather, a wide, deep disagreement, about ideologies and policies in many societies.

16. **Legal development** is used to refer to efforts to create or adapt laws and the legal system to a country's changing social environment and its various development objectives. Legal development is, in part, simply a component of development; but it may also be seen, in part, as a particular sector of development entailing particular goals such as the clarification of law; reform of criminal law administration; expansion of delivery of legal assistance and other steps to create access to use of the legal system. Obviously the problems and content of goals of legal development—like those of development—may reflect many variables peculiar to a country.

17. **Legal culture** is one set of variables; the term, as used here, refers to ideas held about law in society—ideas which grow out of historical experience, upbringing, religion, prevailing ideologies, education and so forth. Most countries probably have a plural legal culture, but some more so, and the legal culture of particular groups may be affected by different kinds of influences, such as religion, ethnic history and the like. The legal culture of lawyers may be different, in some societies strikingly different, from the perceptions and attitudes about law held by most other people in society. A lack of homogeneity in a country's legal culture—and the hiatus between the official culture and others—may create significant problems for legal development which are frequently overlooked or underestimated in systems of legal education.

18. **Legal education**, as used here, refers to experiences and training which help different kinds of people to understand and use law in society. Our primary focus is upon university institutions which provide intensive, structured education in law, but we think a report on legal education addressed to development should adopt a much broader perspective of needs for legal education. A citizen, to be effective in enjoyment of his civic capacities, needs a basic knowledge of at least some aspects of law. Officials and others who perform important law roles—e.g., as policemen, businessmen or politicians—need an understanding of parts of the law and its underlying policies and values. The proliferation and specialization of various new activities may call for particularized kinds of legal education.

19. There are many different ways of addressing this spectrum of needs: **formal education**, i.e., structured educational experience through the classroom, is only one method. Children may learn much about law from their elders, and both young and old may learn from the media and through other **non-formal** processes. Moreover, there are many different ways to educate persons for particular law roles (including special kinds of lawyer roles, e.g., in **labor** relations) apart from formal instruction leading to a degree or diploma. Learning by experience is obviously a very important means for legal education. Increasingly today **continuing education** is provided to supplement and reinforce other kinds of learning; while often neglected in discussions by academics, it may in the future become a most significant element of the system of legal education.

The Approach

20. This report looks at legal education as a system of many different activities directed towards many different kinds of law roles and different needs for knowledge about law in society. We focus on legal education in universities because we believe universities are potentially critical resource centers; they can—in theory—influence other activities in the system. We think a central problem in many settings is to examine ways by which university law schools can address problems of legal development more effectively.

21. Part I is a summary of the report. Part II describes ways in which university legal education has evolved in various parts of the developing world, analyzes widely prevalent characteristics and concludes that many university law schools may be failing to make contributions which they could make to development. Part III of the report outlines the positive side—the case for legal education, the kinds of objectives towards which it can aspire. Realization of these objectives, in many countries, will require efforts to develop far more explicit, realistic planning—based on the needs (and limitations) of actual environments. Part IV sets out various possible goals, and Part V examines strategies which may be used to implement different kinds of objectives—curricula, teaching methods, staffing and so forth. The report is not a comprehensive discussion of these matters; we have tried mainly to emphasize themes which are less commonly treated in discussions about "reforms", and we have tried to relate discussion of particular program strategies to more basic objectives. Part VI suggests topics which deserve further research, stressing the point that legal education deserves to be studied in its own right as a significant sector of development.

22. The report devotes much attention to planning. This approach will disappoint readers looking for authoritative prescriptions, and it may frustrate those who feel little can be done to organize planning and more sophisticated policy-making for legal education in their particular countries. These criticisms, and others related, seem inescapable if the report is to address the more profound, underlying problems of organizing legal education—and to think about it in a future, more rapidly changing society. We think that planning is the most important task for those who influence decisions, even if it is the most difficult.

23. Many universities, in all parts of the world, may come under increasing pressure to engage in the kind of planning discussed here. In both the LDCs and the MDCs there appears to be a growing crisis in higher education, generated by such factors as rising populations, demand, volume, costs, wastage and unemployment or under-utilization of university leavers. In some settings the crisis may be aggravated by student unrest and growing criticism of the culture, structures and methods of universities, and the alleged complacency of academic leaders to these conditions.

24. Within universities, priorities may come sharply into question, and, in this context, it has been alleged that legal education bears little relation to manpower needs, or that it is dysfunctional to development or a captive of conservative, myopic professional groups and insensitive to the needs of the poor and oppressed. Such criticisms may sometimes be overstated, but in many settings sober assessment may be needed of the role of a university in the national system of legal education. While it is possible to discuss legal education by focusing on many kinds of particular needs and on particular innovations in detail (e.g., new kinds of "clinical methods" or new courses) we think such strategies should be seen as instrumental towards realization of more basic reform objectives — goals which, all too often, are not adequately developed in discussions about reform.

I. Summary

25. While there are obvious differences between university law schools in Latin America, Asia and Africa, there are also important shared characteristics. Many systems of legal education can be described by a cluster of propositions drawn from the observations below.

26. Thus, many university schools:

a. have been patterned after a foreign model which has limited the outlook, content, methods, research and continuing development of the institution;

b. are significantly controlled by elites of the legal profession (acting as teachers or certifiers of professional qualifications or as important employers of graduates, or by exerting other pressures);

c. are significantly influenced by a private-practice oriented approach to the study of law: 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;

d. are very "academic" in their approach to the study of law: the content of courses often does not reflect important, current problems confronting the legal system, nor the actual work of lawyers in everyday practice, nor the capacity of law trained people to participate in the processes of change and development;

e. tend to treat law as an independent, self-contained, established discipline and tend to ignore the study of socio-economic contexts, policy assumptions and actual effects of legal rules;

f. rely heavily on the magisterial lecture and teaching methods which emphasize imparting information about the content of legal doctrine more than its application; fail to develop other teaching methods which stress student participation in the learning experience and development of professional skills, and feelings about the potential uses of law and the legal system as vehicles of social changes;

g. tend to recruit students from more affluent families and orient them towards urban, elite white-collar positions;

h. are largely staffed by teachers whose commitment to legal education and scholarship is part time and whose preparation for legal education in today's world may be limited;

i. lack a well developed indigenous body of legal literature which examines fields of law in a developmental and socio-economic context;

j. lack institutional resources and encouragement for empirical research; do not produce much faculty research, particularly research which critically

examines the social context, policy assumptions, actual administration and behavioral impact of laws;

k. have failed to undertake a more profound review of the institution's roles and objectives in relation to problems of social change and development and to human resource needs of the legal system.

27. In some countries the enrolment in programs of university legal education is very large in proportion to the need for professional lawyers and law-trained persons. Law schools in this setting may:

a. have developed as institutions which absorb much of the general demand for non-science, higher education, and many of the academically less qualified or less motivated students entering universities;

b. operate at low unit costs, with limited, fixed budgets and limited facilities under very high student-faculty ratios—conditions which inhibit possibilities for changing the content, methods, intensity and quality of the education offered;

c. produce large numbers of graduates who are not suitably educated for employment outside the legal system and are not readily employable within the legal system, nor in any event professionally well trained as lawyers.

28. Legal education in some LDCs may also be affected by:

a. a dramatic increase in the scale of higher education and demand for more opportunity to study law—including demand from groups who previously have had little access to universities or the legal profession;

b. an increase in the sophistication and diversity of law roles (and other specialized roles into which graduates may be recruited), a need for more multidisciplinary education for at least some law-trained persons;

c. a growing discontent with legal education among students, younger teachers, and educational policy makers;

d. a general increase in the international diffusion of ideas about legal education and law and social change which may also stimulate disaffection with the existing system and produce more serious tensions within it—particularly if needs for review and reform are neglected.

29. More radical critics of legal education may argue that law schools which share many of the characteristics described above serve as obstacles to development because, e.g., they tend to maintain—and perhaps nurture—a profession and legal culture which are fundamentally arrayed against progressive reforms in society. It may be argued that legal education fails to expose contradictions between avowed development policies and the reality of the laws in action; that legal education has failed to concern itself with fundamental reforms in society. These arguments may gain credence to the extent it appears that university legal educators are incapable of changing the character of law schools, or are unwilling to do so.

30. In contrast to the situation sketched above, we may pose an alternative concept of legal education admittedly idealized. We do not suggest a dogmatic, detailed plan—rather an approach, a range of

possibilities to be considered in thinking about the future.

31. This approach assumes that law can be studied as a dynamic discipline which draws intellectual strength and vision from many sources—philosophy, history, the social sciences—and from its own experience. This view assumes that law serves many diverse purposes in society; it envisions a wide variety of possible, useful roles for law-trained people. It calls for a multi-functional university law school which is a vital center of education and research within the legal system, not an institution detached from it. The objectives and programs of this institution are continuously planned in relation to needs perceived for legal development and for new kinds of law-trained people.

32. Of course, this hypothetical approach may be difficult. The reform of legal education may lag because power to make decisions (including financial decisions) about the goals and programs of institutions may be diffused. The legal profession may exercise a significant conservative influence over legal education. A law faculty may lack broadly-trained, full-time teachers who are able to envision, plan and carry out reforms; or, in any event, the pressures of teaching loads, high student ratios and other work may severely restrict opportunities for reform. The character of the institution may be determined by dynamics of the system of higher education, by conditions and pressures which are not under the control of legal educators and which can only be changed by the initiation of new policies in high government circles. Thus, if long term reforms are to be undertaken, the first task, perhaps the most difficult one, may be to organize new processes and institutions to plan the future of legal education. It should be recognized, too, that the reform of legal education is not the exclusive province of elite professional leaders and academic lawyers; the process should include political leaders, interested citizen groups, educational planners and other experts.

33. The reform of legal education may depend on the orientation of persons who are capable of making authoritative decisions concerning the formulation of basic goals of legal education, initiation of strategies to implement those goals and the allocation of resources to bring them about. But informed decisions may also depend upon considerable study, including empirical research, to learn more about the existing situation.

34. Ideally the process of formulating goals for legal education should be influenced by many variables; for example: development policies and the way law is perceived and used in the political and economic system; policies and human resource needs of the legal system itself; the character of the legal profession and the kinds of future needs for law-trained persons; national educational planning and manpower policies; the career patterns and mobility of university law-trained people, e.g., the extent to which they move into positions in politics, public service and business; the socialization functions of university education; conditions within the national educational system which affect the quality and quantity of legal education. By

approaching the problem from many perspectives, one may obtain a more realistic profile of what exists and what may be sought.

35. However formulated, some goals may be addressed to improving standards: the abilities expected of graduates of law schools, e.g., to analyze the legal implications of problem situations, counsel, draft legal documents, advocate positions, negotiate, mediate, and adjudicate.

36. The growing diversity and complexity of law may call for greater specialization within the legal profession and for advanced or continuing education for many lawyers whose work is concerned with increasingly complex transactions in such fields as taxation, employment relations, land reform or transnational negotiations.

37. It may also be a goal that the graduates of university law schools be more capable of performing roles in development processes: more sensitive to and informed about development issues; more proficient in policy analysis, rule-making, administration and related tasks. Some graduates of law schools may need to know more about discrete fields, e.g., agricultural and rural development, state regulation and participation in the economy, taxation and public finance. In a more general sense it may be that the law-trained person should be more informed about potential relationships between law and social change.

38. In some countries it may be a goal of legal development to make the benefits and rights ostensibly secured by law more visible, relevant and available to the mass of people and to make the legal system more accessible to them. Realization of these goals may call for reforms of the court system, new procedures to "de-formalize" the administration of law in some tribunals and the introduction of new kinds of law-trained people and institutions to expand delivery of legal services. It may call for the popularization of knowledge about law among the mass of people and for changes in the language of legal administration. All of these policies may affect formulation of goals for legal education—goals which envision multi-purpose university centers for legal development.

39. It may also be a goal to develop more sophisticated research about the history and social context of law, the policy assumptions underlying various laws and choices available for legal implementation of development policies, the impact of various kinds of laws on behavior and on achievement of desired social changes.

40. These formulations are only suggestive, but once goals—in performance terms—are developed, it may be possible to think more meaningfully about particular strategies for reform.

41. In some countries it may be difficult to initiate desired reforms because of the massive scale of legal education and other factors (noted above) which inhibit change in the existing system. It may be necessary to establish new centers for reform which provide the opportunity to develop new models—e.g., new law schools with lower student-faculty ratios, better

selected students, new teaching methods and other innovations, and resources for multidisciplinary teaching and research. These institutions might establish new patterns which can be gradually followed by others. On the other hand, there are various problems with the strategy of centers of excellence as models to be imitated: the resources, financial as well as human, to replicate them are seldom available, and they introduce a new kind of elitism when elitism is already an object of criticism of the present system. In countries where the scale of legal education is large and exceeds the manpower needs of the legal system, it may also be necessary to plan a series of steps to reduce the numbers of students entering law school by providing alternative programs or institutions more capable of providing a more useful general higher education for university leavers who do not expect to undertake law roles.

42. To improve quality, consideration may be given to strategies to improve student capacities in problem analysis, counselling, litigating and the like. New educational methods may include: "clinical" approaches; intensive individualized research and writing, "workshop" programs and problem centered methods of teaching which entail more active student participation in the learning process. Similarly it may be desirable to introduce new courses into the curriculum, including multi-disciplinary projects, which will focus more attention on development problems.

43. The achievement of some goals noted above may call for changes in the character of university law schools so that they can serve as centers of support for programs to train paraprofessionals or programs of continuing or specialized, advanced legal education. Similarly the law schools may need to participate more actively in the programs of other professional institutions, such as schools of administration, agriculture and public health—and in the work of multi-disciplinary institutions for development research.

44. New strategies will call for new resources, and one crucial need may be for new kinds of teachers. As legal education is perceived to be a panoply of programs and educational efforts calling for diverse expertise, so traditional narrow perceptions of law teaching and legal scholarship may give way to appreciation of the spectrum of different teaching resources needed for a multi-purpose complex law school. Some teachers will need extended multi-disciplinary training and research experience in social sciences. Some must be experienced litigators or public administrators (as well as capable instructors). Some will need other kinds of special technical expertise. Many should receive some kind of training in learning theory and educational methods and administration. It becomes increasingly important to see the "law teacher" not as a single prototype, nor his career as following a single *cursum honorum*. The faculty of a law school might better be perceived as a team of specialists working in a complex system of education.

45. The full-time scholar-teacher of law may need to be better equipped

as a professional in three respects: as a lawyer, as a researcher and as an educator. At present, preparation for the latter two roles is often neglected. The contribution of practitioners as part-time teachers of law has been much criticized, often with justification. But practitioners, whether in private practice or the public service, may have important skills and expertise to contribute to legal education. Careful thought, imagination and planning are required to insure that this potential is fully exploited.

46. Attention will need to be given to ways of developing and financing forms of legal literature which promote rather than frustrate worthwhile objectives and strategies in legal education. There is likely to be an increasing need in the next decade for subsidization of publication of needed scholarly work and certain types of literature for law students. Legal literature is an important investment which governments and universities should be prepared to make as a part of the costs of legal education and legal development.

47. The development of "clinics", libraries, research assistance, secretarial and other facilities may deserve support as a means of achieving various objectives in formal legal education. If costs of these elements need to be recognized, new funding formulas must be created. Those who administer law schools may need new skills in program budgeting, cost benefit analysis, fiscal management and educational planning.

48. The reform of legal education calls for more research. High priority needs to be given to studies of:

a. large-scale education (where it exists, especially in relatively poor countries);

b. the full-time teacher-scholar of law, with particular reference to recruitment, training, career patterns, mobility, "turn-over" in law faculties, incentives and the social role of university law teachers;

c. formulation of precise learning objectives at all levels of formal legal education;

d. the problem of developing and spreading awareness of methods of testing and assessment which promote rather than frustrate worthwhile objectives in legal education;

e. ways to insure that post-graduate legal studies are geared more directly and efficiently to clear and worthwhile educational objectives;

f. the impact of national language problems and policies on legal education in multi-lingual societies;

g. the subsequent careers and utilization of law graduates and other "products" of formal legal education.

49. Research into legal education could be stimulated or aided by international comparative projects focusing on widely shared problems. There is a need to build a better body of useful general literature directed towards common concerns. If this report can aid development of this kind of activity it will have succeeded in one of its major purposes.

II. The Situation

50. Through specially commissioned reports, study of other literature and contributions from members of the Committee, we have learned about legal education phenomena—especially university law schools—in many parts of the developing world. A separately published volume will produce descriptions of some of the systems and phenomena we have studied. The following paragraphs are based on these materials as supplemented by the personal experience of members of the Committee. We attempt to summarize and synthesize much of the information before us and to evaluate some recent efforts to develop or reform legal education in various parts of the world.

51. There are dangers in generalizing. Legal education varies from one country to another, even within a region where the same laws prevail. Various factors account for this diversity: legal traditions and culture, the educational and university system, the legal profession, politics and official ideology, demand for legal education and the deployment of law-trained persons in society. The quality of institutions—as measured by various criteria—also varies; so do the commitments of faculties, teacher-student ratios, curricula, and the length and intensity of the basic degree program. These factors may produce even more marked diversity in the future.

52. However, these differences notwithstanding, there have also been some similar, fundamental features which have characterized the development of university legal education in many developing nations. We try here to identify some. The observations which follow are neither universally true, nor are they meant to provide a complete picture of any university law school. We believe that they do portray significant characteristics of many university law schools in Latin America, Asia, Africa, and to a lesser extent, the Middle East. They are sketched in stark terms to emphasize problems which, in our view, are widespread and serious. Our criticism of legal education in the LDCs is in no way meant to imply that education in the MDCs is necessarily better. As we point out below, many of the shortcomings in legal education in LDCs stem from the influence on it of the European and MDC models. Moreover, many of the basic problems confronting LDCs are just as serious in more affluent parts of the world.

Some General Descriptive Propositions about Law Schools and the System of Legal Education Found in Many Countries

53. In many LDCs much of the official law of the country is a brand of English law, or of continental civil law or socialist law plus (in many cases) legislation (e.g. on labor relations, taxation, public corporations, the civil service, etc.) which has been patterned on various foreign models. Similarly, the legal system and legal profession are, to a significant extent, the reflection of an attempted transfer of legal culture. Of course, transfers of laws and legal cultures from one society to another have occurred throughout much of man's history. They have resulted from conquest, colonization, migration of peoples or deliberate borrowing. But within the receiving country the ultimate development of a legal order, which is perceived by people to be just, depends on processes of adaptation, not replication. In many LDCs the creation of a more indigenous, appropriate legal order is only beginning. Similarly with legal education: one critical problem is to create a more indigenous system, for what exists may still be too "foreign".

54. *The Educational Environment.* University law schools in Asia, Africa and Latin America have been developed as parts of universities which were significantly patterned after English, French or other European models, and they have been greatly influenced by the "received" culture of education. In many parts of the world the programs have been significantly shaped— at a formative point—by expatriate staff, and they have, in any event, been controlled by persons who have sought to replicate foreign models rather than build an essentially indigenous institution.

55. The university environment stands in sharp contrast to the environment of poverty and education provided elsewhere in the country. The university (and its faculty of law) enjoys significant autonomy; the administrative structure and concepts of curricula and examinations are, in theory at least, markedly similar to those of the foreign model. Its values have often been elitist, emphasizing the attainment of the university's diploma as a basis of status and opportunity. The university has seldom been perceived as an institution for—and investment in—development; it has not often engaged, directly, in the actual problems of the social system. Students are not often made to study, firsthand, the actual working of the system and its weaknesses as a basic part of their education.

56. *The Influence of the Legal Profession.* The orientation of the law school has also been greatly influenced by the notion of a model drawn from England or Continental Europe of a professional community of lawyers. The model assumes a legal system staffed by independent, largely self-regulating groups of judges and lawyers, committed to the values of the received legal culture. The profession, naturally, has had an interest in the recruitment of its

membership and, therefore, an interest in its educational preparation. Leaders of the legal community have influenced the development of law schools by extensive participation as teachers, through indirect control of the content of curriculum by their power to fix requirements for certification and by other means. Thus, the profession's leadership has set much of the tone for university legal education. The law schools of many countries have reflected the prevailing outlook of the profession, and this has often meant an orientation towards law practice which centers around urban clients and higher level urban courts, towards the affairs of more affluent members of society or towards more elite law jobs in the civil service.

57. *The Intellectual Orientation.* University legal education flowered in England and Europe, in the 19th century, under the influence of theorists and great treatise-writers who emphasized the intellectual wealth of the common law and the codes, celebrated their intrinsic value and assumed their autonomy. The model for academic legal literature became the classic treatise which carefully organized and analyzed the doctrinal content of a field of law. The approach was normative. It tended to treat law as a closed discipline (despite occasional recognition of its symbiotic relationship with the political, economic and social order). The basis for teaching was the magisterial lecture which carefully explained a body of rules and concepts. This intellectual heritage has persisted. It is part of the cultural framework for studying law all over the world. Its relevance and value to the development of law in fast changing societies is only now being seriously questioned.

58. *The Student Body.* Until recently it would appear that most universities, and, therefore, most law schools, drew their students from urban areas. They hailed from middle income or more affluent families. They were those who were fortunate enough to enjoy the educational opportunities afforded by better urban secondary schools. Until recently the degree in law and membership of the legal profession has had great attraction. These attributes were thought to bestow prestige and provide a basis for access into government, commerce and politics as well as law roles. In many countries, the capacity of the market to absorb law graduates is now declining. In some, the profession is under fire as a group with a vested interest in the existing social system, arrayed against many efforts to change society and confront conditions of poverty and maldistribution of opportunity and the benefits of economic growth. (Law schools have become particular targets for critics of the social system, educational theorists and planners). In some countries the attraction of law and the quality and motivation of student bodies is said to be declining, though in others the attraction persists notwithstanding criticisms of the profession and the system of legal education.

59. *Law Teachers.* In many settings, at least until recently, the faculties of law schools have been comprised, mostly, of active members of the profession—part-time teachers whose primary career lay outside the university. In other settings—notably in Africa—law schools have been

staffed by short term expatriate teachers who have often lacked the experience or long term interest or resources to plan and to institutionalize programs. More recently, full and part-time teachers—or full-time expatriates—have been replaced by new, untried, full-time teachers. Most of them are young. Many of them lack practical legal experience. Indeed, the career of the full-time law teacher is new and untested in many countries. The model projected is often one which envisions a professional life devoted primarily to teaching, scholarship and university service. But the salaries of full-time teachers are usually tied to a university scale which often does not reflect the earning potential of the ablest young lawyers. And sometimes the system does not accord enough challenge, guidance, opportunity and encouragement to utilize effectively their talents. One result appears to be considerable attrition in the ranks of talented young teachers. Another result appears to be that full-time teachers become *de facto*, part-time teachers, who find outside work to supplement their income and gratify their ambitions. Thus, some law schools may lack an adequate cadre of teachers with adequate commitment, experience and continuity to build an innovative, indigenous institution.

60. Until recently most law teachers—whether expatriate or local—were inadequately trained for the challenging task of teaching law in a developing changing society. Programs offered to educate, or supplement the education of, prospective teachers by universities in Europe or England have emphasized mastery of doctrinal knowledge of the content of traditional fields of law, the ability to analyze and explain the applicability of legal doctrine in accordance with the tenets of traditional scholarship. Few have focused on problems of development, particularly from multi-disciplinary perspectives. Programs in North America are perhaps less tradition-bound; but they are not well planned or staffed for purposes of meeting the needs of graduate students from LDCs; who are often offered an exotic “smörgåsbord” of seminars which examine, often superficially, a number of interesting topics—but without regard to the relevance of the undertaking for developing legal education in a very different society.

61. In many LDCs a concept of a full-time teacher-scholar who enjoys a working familiarity with other disciplines, and incentives and outlets for research and publishing are often lacking: the possibility of a legal career which will make an impact on the legal system through some appropriate *combination* of teaching, research and service (with appropriate incentives) has not yet been adequately explored.

62. *The Content of Legal Education* has been a reflection—much of it almost a carbon copy—of legal education in the country from which the law and legal system were derived. Curricula have emphasized the traditional core fields of the common law or the codes—the law which is applied in higher courts, particularly the law of civil obligations, property, business organization, commercial dealings, and penal law. Law graduates may have

learned more about how law is supposed to work in the private sector of a developed economy than the laws which affect economic development and change, and the mass of people, in their own countries. Thus, little attention has been paid to government's regulation of the economy, to taxation and finance, to state enterprise, to rural and agricultural development, to urban planning or to the problems of delivering law in a plural and very poor society. Legal education has paid scant attention to these problems because they lie outside the realm of official urban courts and the realm of traditional law teachers and most of the profession and the realm of the common law and civil codes—and because there has been no literature dealing with these problems in an appropriate context for legal education.

63. *Literature for Legal Education.* In countries with longer national histories and traditions, local scholarship may have produced doctrinal treatises of the classic type. Thus, in Asia and Africa there have been valuable, descriptive works on customary and religious law. However, the literature for legal education is often lean because it is legalistic. There has been no tradition of writing about the use of law to confront problems of development by analyzing these problems from a multi-disciplinary perspective. The resources (and market) and other stimulants for publishing these kinds of legal materials locally may be lacking, or so it is perceived. Indeed in some countries it may be that governments are, or appear to be, hostile or ambivalent about this kind of socio-legal scholarship if they feel it will result in criticism. The absence of a relevant broadly oriented socio-legal literature has probably handicapped efforts to break out of the received model.

64. *The Methods of Law Teaching* have been patterned after the received model. The magisterial lecture, supplemented by notes explaining it, has been the main device to impart information—with few books to offer alternative perspectives. The student has not been challenged to think out, offer and defend his own solutions to legal problems. Nor has he been provided with information which may form the basis for a systematic and critical appraisal of the legal system. The law schools have not assumed sufficient responsibility, if any, for professional skills training and for exercises requiring the application of knowledge to concrete situations. It has been assumed that this kind of training would be provided through post graduate instruction at a different, "non-academic" institution or through professional working experiences.¹

¹ In some Commonwealth countries, a special, formal, national (or regional) educational institution has been created to provide post academic professional training. The institution is staffed by private lawyers. The training is almost entirely oriented towards the private practice of law, and it is compulsory for certification. The existence of such institutions may reinforce the notion that "academic" law is to be sharply distinguished from "practical" law.

65. *The Academic Program of University Law Schools* has not, in many ways, kept pace with the development of other, law-related disciplines. Quality can be measured, in some respects, by examinations — by what they test and the kinds of skills demanded to show ability. Quality can be measured by the intensity and diversity of educational experience; by the kinds of motivations and feelings engendered in students towards the enterprise in which they are engaged; by the kind of research and thinking which emanates from an institution. It can be measured by the degree of continuous innovation and ferment within the discipline. Assessed by these criteria, the quality of many institutions has been low, though, in many settings, efforts are under way to change the picture.

66. *The Resource Base for the Development of University Legal Education* has been limited. Public institutions have been financed through a budget which is not so much geared to innovative plans, new objectives and assessed program performance as to automatic provision on a very modest basis, for fixed recurrent items. Plans and formulae for improving teacher-student ratios have seldom been developed — though these should be seen as a crucial factor for innovation, and for the development of new programs.

67. The physical facilities of many law schools have been limited, sometimes to a few administrative offices (at best) and classrooms. Libraries have been deficient, and often they have not been planned and used as integral parts of the educational program. Infrastructure for research — clerical staff, assistants, interdisciplinary resources, data processing centers — have been nonexistent or inadequate. Provision to develop locally relevant literature has been lacking. And most important, full-time teachers, adequately paid and motivated to move institutions out of the existing mold, have been lacking.

68. *"Large Scale" Legal Education*. In some countries the demand for legal education and the scale on which it is offered are very large, and the number of students enrolled far exceeds any reasonable assessment of employment possibilities in law roles. "Large scale" legal education may be caused by a number of factors. It may be an historic feature of the national system of education: in earlier times, entry standards may have been set low, and today they may still be at a level providing the easiest access to higher education for most students. The law degree may be an historic source of social prestige, and law study perceived as a useful kind of general education not otherwise available within the system of higher education. Large scale law schools may also be used to help satisfy irresistible demands for higher education opportunity — as "dumping grounds" for surplus students.

69. Most large scale law schools operate under very high student-faculty ratios; they offer instruction to masses of students solely through the medium of formal lectures and provide few, if any, other programs for students or resources for research. Thus, they are inexpensive (sometimes "profit-making") institutions. Once such high-volume, low-cost programs become

established, there may be strong pressures to maintain them and to continue to use law schools as "dumping grounds".

70. Of course, large scale law schools may serve some important social objectives. But it is questionable whether law should be selected as the discipline offered to masses of students who seek a general kind of higher education, particularly if the content and method of the education offered are doctrinal and didactic. Indeed, it has been suggested that in some countries the use of large scale legal education as the primary avenue into the civil service has produced administrators who have tended to be too rigid, rule conscious and insensitive to critical needs and problems of development.

71. In the absence of authoritative national educational planning, decisive leadership and an increase in resources, one cannot easily undertake reforms to change the content, methods and intensity of large scale systems. Thus the problem of scale is a serious aspect of the existing situation in many countries.

72. *International Influences.* In the decades since World War II there has been increasing mobility among legal scholars and a greater international flow of ideas and literature about legal education. Significant numbers of graduates from law schools in the developing world have pursued advanced study in Europe, North America and the U.S.S.R. Many have been exposed to different kinds of legal education and to new perspectives.

73. Particularly during the 1960's governments and private foundations in the MDCs provided assistance to initiate or strengthen university law schools in developing countries. Law teachers from the United Kingdom, Europe and North America participated in many of these projects, and some became deeply interested in problems of legal education in the developing world. There were, during this period, a number of international conferences and working groups, and there was a good deal of optimistic writing about the potential contribution of legal education to processes of development.

74. It is familiar history that, during the late 1960's, universities and governments all over the world were confronted by manifestations of dissatisfaction with higher education. One recurrent theme was directed at the very nature of higher education: allegedly universities were too uncritical of existing social orders and too elitist, and these characteristics were seen to be faithfully reflected in the decision-making structures. Some law students, in many different parts of the world, demanded radical changes in the scope and direction of legal education. They argued that law schools were helping to perpetuate a legal system essentially geared to protect the interests of the propertied rather than the needs of the poor. Grievances of this sort led to efforts within some law schools to address problems arising from the inequitable distribution of "lawyer-services," and more recently, to an increasingly sophisticated literature about problems of mobilizing resources so that the legal system can be used in new ways to assert rights of disadvantaged or historically under-represented groups. The growing

involvement of legal education in some MDCs in these activities and in "public interest" law projects may have some international impact in the future.

75. Some university law schools, in countries which are avowedly socialist, have moved towards Soviet and eastern European models of legal education. One feature of this model is the emphasis placed on economic and socialist theory and the history of state and law as indispensable contexts for the study of legal doctrine. The socialist model emphasizes the role of law as an instrument of social change and the pervasive role of state organs in economic development. Law, it is contended, should not be seen as a neutral arbiter; it is inevitably value oriented, inevitably a factor in the processes of development. Since the state must make wide use of law-trained people, it must develop different streams or programs of legal education which, cumulatively, provide graduates who are equipped in different ways to move into the diverse roles in government and the legal system.

76. ***Reforms in Legal Education During the 1960's.*** Various bilateral and multilateral assistance projects were initiated in the 1960's to help some law schools in LDCs develop faculty resources; create a more relevant local legal literature; build libraries; initiate programs and institutions for legal research; establish regional associations of law teachers; secure graduate education for prospective law teachers and other matters. In some law schools efforts were made to introduce "active" (student participation) teaching methods, e.g., the "case" or "problem" method of instruction, "moot courts," "workshop" enterprises and, more recently, "clinics".

77. In some large countries where there are many law schools and problems of scale, efforts were initiated to build centers of excellence. One, or several, institutions were selected for concentrated efforts to secure qualitative improvements, in the hope of establishing demonstration effects and a "critical mass" of leadership within the system of legal education.

78. ***Lessons From Experience.*** Evaluation of experience with efforts to initiate or reform legal education during the 1960's is difficult. Many of these efforts are of recent origin and their impact can only be gauged over longer periods of time. Further, the impact of projects cannot easily be evaluated where the rationale and objectives of the programs have not been explicit. The difficulty in some instances has been that new programs have been initiated without careful articulation of the ends in mind.

79. Ethnocentrism, conscious or otherwise, has probably too often characterized externally assisted efforts to initiate new law schools in Africa or to attempt reforms in older ones in other parts of the world. On the one hand legal educators from North America or Europe, and agencies which have funded assistance to legal education in third world countries, have often assumed, usually implicitly, the validity and transferability of an MDC model or elements of it. They have failed to study differences in environments. And because, after a few years, results fall short of

expectations, there may be dissatisfaction which leads development "experts", in both MDCs and LDCs, to dismiss legal education as a hopeless area without more careful analysis of the problems.

80. Experience also teaches that important reforms require not only adequate finance, but over the long run, human resources. The attempted introduction of "active" teaching methods or clinical work or new sophisticated courses dealing with aspects of law and development may require teacher-experts not always readily available nor easy to train. Many projects have failed to reckon with the need to develop permanent faculty resources as a basis for enduring success. Funding sources have sometimes failed to perceive these needs.

81. On the other hand, leaders of the bar, professors and often students, in developing countries, have sometimes been narrow and legalistic in debating reforms. There have not been enough efforts to examine the existing system critically and comprehensively. Teachers have sometimes objected to changes which they neither understood nor felt competent to undertake, and students may have resisted them for the unarticulated reasons that the reforms would entail more work, introduce unfamiliar methods and threaten the security derived from the status quo. Reforms have also been opposed on political grounds. "Conservatives" may fear a loosening of their hold on the system and the introduction of ideas about law and criticisms of the legal system which appear to threaten their positions. It is also probable that governmental authorities would resist aspects of reforms when they might be seen to be leading to questioning of policy or exposing the inefficiency or corruption in administration. "Radicals" may object to pragmatic or incremental—as opposed to fundamental—changes. In some settings where the debate over reforms has become a political matter there has been strikingly little hard analysis of the basic problems to be addressed. Furthermore, in many LDCs universities have not always been very stable institutions, and their frequent closure has rendered it difficult, if not impossible, to carry out a systematic plan of institutional development.

82. It is noteworthy that there has been little international, collaborative effort to try to study the objectives and problems of legal education in developing countries. Bilateral and multilateral agencies concerned with helping higher educational development in LDCs have generally been uncertain or myopic about assistance to legal education. While much attention has been focused on health, agriculture, public administration and other kinds of professional training, comparatively little has been focused on training in law and its relation to development. This Committee is probably the first serious concerted effort to ask persons with diverse, international experience to plumb the subject from a general, comparative perspective.

83. Legal education is, of course, in many ways, a far more difficult sphere than technical or scientific education. Laymen may see legal training as a limited kind of education concerned with learning official rules and the

intricacies of procedures. But, properly conceived, law is not simply a discipline concerned with the content of rules and the techniques of litigating; law is a facet of culture, economics and politics, a manifestation of power and a device for channeling and restraining it; law is one means for organizing society; it is a complex sociological phenomenon, a pervasive feature of organized society, and destined to grow in diverseness and complexity as societies change and as knowledge about human behavior grows. Viewed in these terms law is both important and difficult.

84. In changing plural societies the various functions of legal education need to be studied and stated with more care before one can begin to talk about appropriate models and adaptations. The major reforms must surely be developed from within. International appraisals and some kinds of comparative research on widely shared problems can certainly help this process, by transmitting ideas and experience and tools for more useful analysis. But real reforms of legal education call for a very basic kind of planning: an attempt to look at legal education both as a part of a broader, better planned educational system and as a part of the process of developing the legal system—and society itself.

III. The Case for Allocating Resources for Legal Education

85. Although there is much that is seriously wrong with university legal education in many countries, there is a powerful case for giving it a high priority in educational development. In view of the strong claims of such fields as agriculture, the health sciences and technology and in view of widespread skepticism about the social value—and often the quality—of law, it is necessary that this case be articulated.

86. *Legal Education as an Avenue to the World of Affairs.* Historically, in many different societies, law has been one of the pre-eminent fields of higher learning and a route to positions of importance. The tendency of law-trained persons to gravitate to significant centers of decision-making exists in many different societies today. It is, of course, not inevitable, but where it exists, it is a fact to be taken into account in evaluating the importance of legal education.

87. Even in countries with formalistic and narrowly conceived systems of university legal education, a significant proportion of those who reach high positions in public life are graduates of law schools. There may, of course, be historical explanations for this phenomenon: in earlier times universities which followed European traditions offered only a limited range of subjects from which to choose—law, theology or medicine. In later times other factors may have contributed to making legal education a very important route to public life, e.g., a lawyer's work is often diversified; he may be involved in advising about and structuring transactions, in decision-making and in brokering changes in society. The more capably he performs, the more his work may involve him in centers of power in society.

88. *Legal Education as a Vehicle to Study of Affairs in Society.* The study of law can be a particularly useful way to gain a broad understanding of one's society. The discipline focuses attention, as few others do, on a wide variety of activities and institutions, e.g., the family, land, commerce, government and a growing body of international transactions. It deals with a wide diversity of relationships and activities. It is concerned with normative prescriptions, with dispute settlement and the avoidance of future misunderstandings, with controlling behavior, with planning the affairs of ordinary persons and complex enterprises. The study of law can be a particularly useful discipline to enable its students to relate general theory to particular, sometimes intractable, concrete problems.

89. Of course, the discipline is often badly taught, with excessive

pedantry and dogma, with little regard for the assumptions, policies and implications of its rules and with little effort to engage the students in actual law tasks or in imaginative scholarly thinking. But the present, widespread sterility of the content and pedagogy of legal education must not be confused with the challenge of the discipline.

90. *Legal Education as a Multi-Dimensional Activity: The Educational Values of Studying Law.* Typically, the discipline of law is regarded as part of the humanities. This is so because: (a) law covers so many human activities and relationships; but (b) it also deals with much of the same phenomena as the social sciences, and is increasingly informed by them; and (c) it is intellectually demanding—requiring abilities to draw from a variety of sources in analyzing problems, evidence and arguments to make careful distinctions and to handle abstract concepts; and (d) it is directly related to the world of concrete practical problems; and (e) it is concerned, as perhaps no other subject is concerned, with the practical operation of processes and procedures; and (f) it has a rich heritage of literature, philosophy and historical experience.

91. While none of these elements is, on its own, peculiar to law, perhaps no other discipline combines them in quite the same way or to the same degree. The study of law can be (a) as intellectually exacting as philosophy, but more down to earth; (b) as concerned with contemporary, real-life problems as medicine or engineering, but with a greater diversity of concerns and with closer links to the humanities; (c) as concerned with power and decision-making as political science, but more concerned with the processes and practicalities of wielding power and, indeed, often more concerned with the limits and abuses of power and the importance of accountability to processes which are seen to be fair.

92. The strength of law as a discipline lies in the fact that it is so multi-dimensional. The teacher is called upon (a) to strike a balance between the elements which make up law; (b) to be informed about, and deal adequately in today's world, with the closely related subjects from which law must draw much of its wisdom; (c) to provide both "academic" and "practical" insights; and (d) to use methods which motivate, stimulate and engage students in issues of theory, doctrinal learning, skill-development and engagement with concrete problems.

93. *Legal Education as a Vehicle to Study Problems of Development.* The study of law should entail a study of crucial issues and policies of development and the values which may give development a deeper, ultimate meaning. This seems particularly true if we view development realistically, as a process of directed change over a longer sweep of history than the span of a five-year plan, and if we view it as a multi-dimensional process and emphasize problems of social justice and material and cultural change.

94. Whether one tends to the view that law is an independent factor influencing human development, or that it is more an outcome of other forces

in society and is more "superstructure" than "foundation", it is clear that the law and the legal system provide interesting perspectives on development. For those who adhere to the former view, the study of law should be concerned with building political institutions and the system of governance, with the study of ways and means to organise 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, 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. Both perspectives are important and are likely to provide legal scholarship with one of its main arenas of debate during the next few years. The perspectives should help legal scholarship to highlight some of the general problems of development as well as the specific role of legal institutions in development.

95. The law and the legal system of a country can be a major resource for development. There are countries that may, of course, adopt techniques of development that rely only marginally on law. The reasons for such a choice have varied, but two deserve mention. The decision to rely only marginally on law has been in some instances inspired by ideological considerations, an attempt to avoid heavy bureaucratization of society, to avoid the hardening of the superstructure, and to maintain flexibility for the operation of political institutions. In other instances, the choice has been through necessity, impelled by the constraints and the inadequacies of legal competence. It is of interest to note, however, that there is no sharp dichotomy between countries with the legal and the non-legal ways, the difference being one of degree. Even in countries which de-emphasize legalism, there has been a periodic return to "law" when the need for order and discipline became important. Nor are we unaware that, in many instances, the legal system has itself been part of the structure of privilege and exploitation, and its dismantling may be regarded as a first step towards the establishment of a fairer society. In countries where this is true (and they are no small number), profoundly difficult moral and pedagogical questions arise for legal education. These have to be faced and need to be placed in the national context. It is the task of legal scholarship to expose the realities behind the legal system.

96. In the majority of the countries within our review, law has been chosen as an instrument of change and development. In such countries a heavy burden is laid on the legal system. It is required to discharge a variety of different tasks, to innovate and facilitate complex transactions, to define the rights of the citizens *inter se*, and between them and the institutions of government, to establish incentives for desirable activities and disincentives for undesirable ones, to provide procedures for participation in the affairs of the nation, to provide access to justice, to persuade, to cajole, to coerce. While the choice of law as an instrument of development and its specific uses are political matters, we consider that institutions of legal education and

research have an important role to play in ensuring an effective use of law, once that choice has been made.

97. Important human values—of justice, fairness, and equity—should underlie the basic principles of the law, although particular laws and indeed whole legal systems have been and are unjust. In the situation in many developing countries where technocratic and growth oriented considerations tend to dominate, sometimes at the cost of a just and fair society, an emphasis on legal principles can do much to redress the balance, and help to give development a more complete orientation. It is the task of legal education to lead in this movement.

98. *Legal Education and the Generation of Human Skills Which Contribute to Processes of Development.* People in law roles are often active participants in transactions which may be very significant to development. They may define and analyze problems; counsel and plan a course of action; negotiate and settle disputes; define and advocate a position; frame and implement rules. Good professionals exercise these skills — indeed, such skills are part of the essence of "lawyering"; good legal education can encourage (in the view of some, it should demand) the use and development of these skills through various methods of legal education. Precisely because legal education can be developed in ways which engage students in hypothetical problem solving and other forms of simulated participation in transactions, it has much potential as a kind of education useful to development, for much of the literature on educational planning and manpower emphasizes needs for skills in policy analysis, communication and structuring. The fact that legal education may fail to emphasize and help develop these kinds of skills is a reason for concern, but surely not a reason to dismiss it.

99. *Law Schools as Centers for Research.* Historically, university law schools have been centers for the generation and diffusion of ideas about law reform as well as technical legal knowledge. In Europe, universities nurtured the ideals and organizing concepts of Roman law through periods of social chaos; the work of legal scholars provided the intellectual inspiration and foundations for the great period of adaptation and modernization of law which flourished in the nineteenth century as societies changed rapidly.

100. In more recent periods, university scholars have contributed in fundamental ways to the reformulation of philosophies of law and the elaboration of new ideals and more scientific, rational legal doctrine. Legal scholarship has influenced the evolution of national cultures. Of course the historical experience of the Western world is surely not the model for the fast-changing twentieth century world. The requirements for creative legal scholarship today are very different. Indeed, that is a major thesis of our report. Our discussion of the nature of law as a discipline shows that creative scholarship has been critical to the growth, adaptation and vitality of the law over periods of change. The importance of establishing strong intellectual centers and traditions for research should not be neglected in places where

law is valued—even if this is an immensely difficult task. There exist urgent needs for research concerned with understanding the context of law and with the adaptation and reformulation of legal philosophies, policies and with doctrine which will serve developmental goals and ideals of social justice. University law schools can again become vital centers for research, particularly as we begin to see how crucial research can be to legal development.

101. ***Law Schools as Multipurpose Centers for Legal Development.*** Legal education (like agricultural or health education) can be seen as a system of activities. The activities include: training (formal and non-formal) for different law roles; diffusion of education about law in society; education to enable a particularly important kind of participation in the world of affairs; research to produce better understanding of the content, underlying assumptions, social context and effects of laws and to stimulate reforms in the legal system and processes of implementing development policies. Despite the existing situation, legal education *can* in theory be planned and developed to serve a wide range of goals—just as agricultural education can be planned as a means for agricultural development.

102. The university law school is only one element in this system, but it probably is a crucial one. Law schools, perceived as multipurpose centers, can develop human resources and idealism needed to strengthen legal systems; they can develop research and intellectual direction; they can address problems in fields ranging from land reform to criminal justice; they can foster the development of indigenous languages as vehicles for the administration of law; they can assist institutions engaged in training paraprofessionals; they can help to provide materials and encouragement for civic education about law in schools and more intelligent treatment of law in the media; they can organize, or help organize, advanced specialized legal education for professionals who must acquire particular kinds of skills and expertise.

IV. Planning Legal Education

103. The task in many countries is to organize in a systematic way a set of activities which will enable the potential of legal education to be realized. In many situations, this means law schools must break away from anachronistic traditions and the uncritical acceptance of received foreign models. The starting point may be to redefine goals and to determine the resources needed and realistically available to develop programs geared towards those goals. Reform should be perceived as a long term process, certainly not something which can be achieved simply by issuing new curricula and new pronouncements.

104. The approach outlined here calls for establishment of new processes and institutions to enable systematic planning. It calls for collaboration between legal educators, leaders of the profession, educational planners, government officials and articulate spokesmen from groups in society. Some may conclude that the kind of planning proposed here is not feasible. However, whether or not this approach is immediately possible, we believe thinking and talking about it will help to generate a new climate for reforms — which may be indispensable if lasting work is to be done.

105. In this part of our report we discuss different perspectives from which to look at the environment for legal education and study its problems and reformulate its goals. We suggest that legal education should be viewed from the perspectives of developmental policies and needs (the national context); we suggest that it should also be examined in the context of educational planning. While these propositions may seem trite, the fact is that they were seldom considered by those who brought European law, legal systems, schools, universities and faculties of law to the developing countries, and they have seldom been considered since those times.

Legal Education in the National Context

106. There are at least two basic contrasts between contexts for legal education in the LDCs and the MDC contexts from which the models of education have been taken. The first contrast is found in differences between national legal profiles: the nature of the legal systems, legal cultures, the visibility and utility of official law to most people and the accessibility of the system. The second distinction lies in the overwhelming poverty and the emphasis on some kind of state planning, intervention and participation in the social system in many LDCs.

107. *The Legal System.* In comparison to many MDCs, the legal systems of many LDCs are highly pluralistic. *De jure* or *de facto*, the "modern" system lives side by side with "traditional" ones which have their own values, substance, methods and functionaries. The official system only imperfectly penetrates the country, but the "modernization" of law may be pursued as avowed policy in order to establish a new, uniform, "rational", written, pervasive, state-created and state-administrated body of principles and rules. Behavior patterns which have been under the purview of custom or religion—such as marrying, rearing children, employment, acquiring rights to farm land, borrowing money, selling crops, organizing groups to promote financial security, practicing one's religion, transmitting property at death, and so on—are now supposed to be governed by state law. Official policies may also call for new, specialized systems of administration dealing with taxation, price controls, agricultural co-operatives, investment, employment conditions—and many other activities which increasingly affect the interests of ordinary people. The administration of the legal system, more and more, may come under the jurisdiction of government tribunals and various officials. In a sense, law may be removed more and more from the local community and from popular control and traditional figures, and placed in the hands of impersonal professionals and technicians.

108. In various settings, some (perhaps many) of the aspirations of various official, "modern" laws may be inchoate or dysfunctional. "Modern" law may seem to be "foreign" law in origin, language, concept and, perhaps, in its fundamental assumptions about justice. The effectiveness and utility of a modern law may depend on a wide variety of other factors affecting legal culture: literacy, communications, language barriers, cultural diversity, ignorance, suspicion, the unavailability (or incompetence) of official tribunals, lack of trained human resources, the unforeseen effects of enforcing particular rules, the care with which legislation has been researched and written.

109. Thus, effective legal development may call for much study and innovation to achieve a system which appropriately blends basic traditions and concepts with new legal measures which are thought necessary to achieve new social policies. Institutions and processes must be worked out so that both the results and the manifestation of the administration of modern "official" law will accord with notions of justice of those affected. Many traditional systems, for example, place a high premium on compromise, equity and reconciliation, rather than "winner-take-all" as an end of justice; many allow a high degree of participation in the processes of dispute settlement. Legal development must be concerned with the structure and dispersal of basic level dispute settlement organs so that they are accessible as well as usable.

110. Problems of this kind, cumulatively, may be of great, though often underestimated, importance. The widespread failure of the legal system to

produce results which accord with felt principles of justice can, surely, undermine both a government's legitimacy and faith in society in the most serious way.

111. The implications of legal development direct our attention towards use of legal education to secure more effective delivery of legal assistance for people who are increasingly drawn into the official system. This, too, is an area which may often be ignored. Little is known about the specific nature of (and explanation for) the legal problems of masses of rural people and their interaction with the legal system. The legal problems of rural people may differ from those in urban areas, and the problems of supplying effective legal assistance in the criminal courts may also be qualitatively quite different. Obviously economic ways must be found to provide services on the scale required. It may be important to train and use new kinds of **para**-professionals for some law jobs. It may be important to sensitize judges, prosecutors and others to the needs of illiterate, disadvantaged defendants in the criminal process.

112. In some countries there may be traditional figures such as scribes, legal agents, pleaders, mediators and so forth, who may still perform **law**-roles of great significance to large elements of the population. These functionaries may lack formal training; their relationship to the legal profession may be an estranged, uneasy one; some may prey upon the population they purport to serve. But these traditional functionaries may be a potential resource for legal development. It can be valuable to study what they do. Through the provision of new kinds of training programs—formal or non-formal—it may be possible to redefine, regulate, adapt, expand these functions and improve the capacities of those who undertake them. At least that is one hypothesis to be examined along with other alternatives.

113. There are also many educational tasks which university law schools might undertake in pursuit of the goals of broadening access to the legal system and making law more available. We have already stressed the importance of diffusing a basic knowledge about law as a part of civic education. The development of language policies and resources so that law can be administered in terms understood by ordinary people is another. The development of sophisticated, systematic research which will provide more understanding of legal cultures and ultimately better policies for legal development is another. These are only examples. It may seem shocking that these problems have been so neglected by many universities and "development research" institutions in so many countries. The neglect may be explained in part by the inadequacy of resources, as well as the rather myopic, private practitioner image which has dominated the vision and delivery of legal education in the past.

114. **Rural Development.** Other sectors of development may also be so important a part of the national context as to deserve particular emphasis in the formulation of goals for legal education. For example, it is commonplace

that in many countries most rural people have not experienced much, if any, of the benefits of the green revolution and other changes; comparatively few farmers and landlords may benefit from new technologies and government agricultural assistance programs. Efforts to develop rural areas may suffer in other ways. The result may be stagnation and the continuous migration of people to the towns and cities—a phenomenon which creates other problems. Economists, agriculturalists and other experts have often neglected law and the legal system as an element of rural development. So have academic lawyers. The "social engineering" of development in rural areas may require a combination of measures concerned with changes in: local governance and administration; land use planning; land tenure; taxation; family obligations and devolution of property; the status of women; access to credit; markets; cooperatives; agro-industries; the organization of basic-level courts. Rural development may require the systematic review, revision and synthesis of various bodies of law which have been separately developed at different points in time. Rural development may call for the training of special cadres of judges, lawyers and paraprofessionals to implement land reforms and help farmers to secure new rights declared in other new laws. Rural development may mean that more law-trained people must know more about agricultural economics, rural sociology and ways to organize new structures to secure the benefits of commercial agriculture to the mass of farmers.

115. *State Enterprise.* Increasing state participation in the economy may constitute another very important new field of law and generate new kinds of law jobs and deserve special emphasis in the planning of legal education. Governmental, corporate-type organizations have assumed major roles in many developing countries as banks, traders, providers of public services, manufacturers and agro-industries. Legal education and scholarship has largely neglected the immense significance of state enterprise: the theory, organization, management and accountability of these "corporations"; the character of their employment relations and their external transactions with other agencies, private and public; the relationship of legal forms and doctrine to the particular social purposes of the enterprise.

116. State enterprise may be a significant employer of law-trained people. The need to provide an administrative or managerial component to legal education—a knowledge of budgeting, accounting, auditing, information systems and decision theory, as well as a general knowledge of the economic system—may be very important. So is the need for empirical research which will shed new light on the actual working of public corporations in contrast to the legal image projected by legislation.

117. *A General Developmental Context.* While new fields like rural development and state enterprise may be peculiarly significant to legal education in many developing countries, it is important to emphasize a *general*, pervasive developmental approach as well as specific subject matter approaches. Nearly all of the traditional subjects in the curriculum can be

related to developmental problems confronting society. When students learn about legal rules governing contracts, land, employment, sales of goods, taxation, and administrative procedures, they should be learning about transactions which, cumulatively, may have great effect on the character of society. The study of law can be seen as the study of the rules and processes governing economic, political and social behavior. Yet, all too often, as we have seen, the discipline is not presented as the suitable vehicle it is for policy analysis. The potential relationships and actual effects of law on behavior are not explored in depth. The inadequacies of legal institutions and occupants of law roles are not subject to scrutiny. Legal education is not informed by other disciplines. Rather, law is presented as a body of complex, well-established, autonomous rules which exist as an independent governing force in society.

118. Conversely, other disciplines have too often ignored the importance of law in the process of development. The same simplistic view of law appears in the relevant literature—a view which ignores both the innovative and instrumental qualities which can be used to develop law and the difficulties of legal implementation of change; a view which deals inadequately with the values which may be derived from the development of law in society. Of course the reform of law and its use as an instrument to change institutions in a fundamental way depends on many forces lying outside the domain of law and legal education. But it is difficult to see how changes can take place effectively over the long haul, without making law a development discipline and legal education a resource for that purpose.

119. Much of what is written above may suggest a sanguine view of the ability of countries to fashion and use laws and legal processes as instruments to achieve fundamental social change. To varying degrees some may doubt this view (as some members of this Committee do). In some countries law may be seen, at least by political leaders and some elites, as an inhibiting factor in the effort to bring profound changes in the social structure and the outlook of people. The use of laws and legal processes may (it is argued) produce rigidity in administration, entrench vested interests, frustrate popular participation and the development of political processes (e.g., party institutions) to effect essential changes, make impossible many social experiments and flexible approaches to very difficult problems. Law may unwisely restrict persons in government who may need to exercise wide discretion to carry out stated policies. In some countries in coming years there may be increasing reliance on broad grants of administrative discretion, or on political parties or other institutions to operate as instruments of change. Nor was the Committee unaware that a major cause of problems of access to justice or delays in obtaining it was the over-legalization of institution and processes. But a "negative" view of the role of law as a vehicle for change does not necessarily negate the importance of legal education. On the contrary it is all the more important to examine deviations from law and

the legal system and to understand why these departures may become a profound feature of societies, at least in times of great social change. It is surely the function of legal scholarship everywhere to attempt an evaluation of the costs and benefits of relying on law for development objectives, and compare legal approaches with alternative modes. Well trained lawyers can help find ways out of the straitjacket of a rigid system, and indeed help to institutionalize new relationships and processes, something which may be important in order to consolidate the gains of necessary and important social change. It would appear that in some instances at least the deviation from the law results from a dissonance or lag between law and ideology or policy, especially in countries with an anachronistic legal system. Such dissonance or lag often results from the absence of skilled and imaginative lawyers who can take a broad view of the legal system, and yet have the requisite technical skills. In such situations, it is especially important for legal education to move away from formalism.

Educational Planning and Legal Education

120. There has been a growing, international movement concerned with creating better ways to plan educational systems, relate them to environments and deliver education more effectively at less cost. A combination of factors is said to be producing "crisis" conditions requiring this kind of planning: rising population; increased demand for education at all levels; higher costs; growing numbers of urban unemployed—and **unemployable**—school and university leavers (even where there may also be shortages of particular kinds of technical skills); misallocated uses of educated human resources; the failure of education (as presently organized and delivered) to stimulate development in rural areas; the apparent inability of education to generate skills, outlooks and motivations thought to be necessary to promote developmental objectives. Formal educational attainments are still regarded, too automatically in many societies, as an entitlement to higher salaries. Earnings of university-leavers may reflect neither market forces nor other social values realized by their employment.

121. It is said by commentators that many poor countries are spending proportionately more on education than the richer countries, but getting less in the way of benefits from the heavy sacrifices imposed. There are increasing pressures to clarify the purposes for which particular programs of education are provided; to match claims with performance; to identify kinds of reforms needed; to revise standards of accountability and procedures for budgeting programs in order to evaluate their benefits against their costs; to reform employment policies within the educational system.

122. Educational planning is, supposedly, a more scientific approach to this massive array of problems. Of course, the nature of educational plans

(which may be a component of development plans) will vary considerably. The elements of such planning, like development planning, may be an admixture of politics and ideology, economics and manpower studies, educational philosophies and traditions, urgent technological and **sectoral** needs—and the accommodation of the system to irresistible popular expectations, and perhaps also to student pressures. It may be difficult in countries where systems and traditions are deeply entrenched to make fundamental changes suggested by educational planning. Nevertheless, one can discern trends towards more planning.

123. While it may be amorphous, educational planning is generally directed at concerns such as the following:

1. *Socialization Objectives*: the use of education to develop perceptions and understanding of the environment, local and global; to understand the problems of one's society; to influence values and attitudes.

2. *Manpower Objectives*: the use of the *total* educational system to generate the kinds of skills and knowledge needed for tasks in society.

3. *Opportunity Objectives*: the use of education to broaden opportunity and mobility in society—notably among groups who may have been historically deprived or repressed.

4. *Research Objectives*: the use of educational facilities to develop research of value to education and society.

5. *Administrative Objectives*: the use of planning in the governance of institutions; the use of more sophisticated methods in budgeting, managing and evaluating programs.

124. Educational planners may emphasize a "systems approach", the importance of perceiving education as a multi-dimensional activity, one which uses formal and non-formal methods, self-education, and of course, learning through various practical experiences. Education is seen as a continuing process which should not overemphasize attainment of diplomas as the ultimate objective. Educational planning may emphasize adaptation of goals and of strategies to economic realities. For example, it may be a misallocation of resources to plan to educate law school graduates for law roles where a less expensive program could supply technicians capable of producing the services required; it may be possible to use continuing education or part time education to develop specialized skills—rather than make the heavy investment in full time advanced degree programs.

125. Educational planning may emphasize the need to invest first in new kinds of resources as a prerequisite to other educational reforms; thus implementation of language policies may require build-up of particular kinds of resources as a first step; administrative reforms may call for training in more sophisticated techniques of budget analysis, research, statistics, data processing and management; new programs may call for new kinds of faculty expertise and new kinds of teaching material. Educational planning may emphasize the importance of educating teachers about the learning process

and the problems of educational development.

126. *Socialization Objectives.* Most university law schools are undergraduate institutions, and, as such, may provide very important experience in the genera: socialization and maturation of full-time students. University programs of legal education in many countries are, avowedly or not, **multi-functional**. They are not solely concerned with law. The extent to which this is so—or should be—must be determined in the context of the total system of education and other environments.

127. It may be useful for those who plan university law schools to ask what kinds of contributions can the institution make in helping its students prepare for many roles in future life—professional roles, family roles, civic roles. Institutions which take too narrow a view of socialization objectives may miss important educational opportunities, and they may fail in other respects to generate the kind of climate which helps students come to grips with the world around them and which makes the educational process rewarding. The planning of the basic degree program should, ideally, include planning a curriculum which may help students become better educated citizens as well as lawyers and provide opportunities for *many* kinds of educational experience, e.g., participation in legal aid and community service programs, internships, moot courts, research, publication of scholarly journals, forums, task forces, workshops and other enterprises devoted to current issues of significance.

128. Law schools should concern themselves with such teaching of law as goes on outside the law school. They should also concern themselves with the wider dissemination of legal education and information about the legal system to the general community.

129. In some universities **some** law teachers play important roles in offering courses in other branches of the university—for economists, educators, and of course in schools of public affairs and administration. We have also stressed the importance of "law" as a dimension of general civic education. Little may be known about the various legal cultures which exist in the country, about the "legal" problems and concerns of the people, about the way in which people learn about and regard courts, the profession, the police and other critical organs of the legal system, about values associated with law and justice, and how these are formed. Through the media, university extension programs and other activities, law schools—some at least—may do much to provide a civic education. It may well be that legal socialization is a very important dimension of educational development which has been seriously neglected.

130. *Manpower Objectives.* We have noted the extraordinary hiatus between manpower planning and legal education. There are no doubt many reasons for this: the comparative newness of such planning; the amorphousness of "law-trained people" as a manpower type; the dominance of the private practitioner image of the profession in the minds of the planners

(coupled with a view that the education of private practitioners should be at private expense and regulated by supply and demand principles); the belief that countries "over-produce" law-trained people; the failure to study law roles in the processes of development.

131. Manpower planning may begin—but certainly it no longer ends—with attempts to estimate quantitatively particular kinds of occupational skills which may be needed as development takes place. There is now more concern with the fundamental qualities of education: does it generate the kinds of attitudes and capacities which bring about creative change in society—such as the use of imagination, initiative and entrepreneurial ability in solving problems and creating new structures and processes to get jobs done? This approach to defining manpower goals in educational planning offers challenging opportunities to legal education.

132. The thinking of lawyers, legal educators and manpower "experts" in too many countries has tended to stereotype law roles—to perceive legal education as a feeder for a more or less monolithic, homogeneous, rather static profession. Attention should be given to analysis of both the economic and social activities of university law graduates in society; their mobility; the ways in which they engage in public service, entrepreneurial transactions, representation of different groups, brokering political or economic projects, and defense of human rights. Comparative research directed at such questions might help to explain why apparent differences in the social usefulness of law graduates exist and the extent to which these may be attributable to legal education, and if so, what might be done about it. More attention must be given to analyzing the skills content of legal education and the extent that it helps create abilities increasingly emphasized in manpower planning. Indeed, the "manpower case" for law emphasizes the great importance of skills training in the educational process.

133. A "manpower approach" to law will also point up the need for diversified programs of training to supplement the basic degree program. In most systems the latter may be seen as a program in higher education designed to develop a general knowledge of law and the application of it and a number of basic skills. This program cannot be perceived as a means to train persons in the details of practice or to train professional specialists or law graduates to be experts in development administration or interdisciplinary scholars. These needs should probably be separately addressed through continuing education and other advanced programs. A manpower approach may help legal educational planners to sort out these various needs and develop legal education as a system of activities addressed to them.

134. In one way or another this system should also address needs for sub-professional training. The way in which the university can provide—or relate to—programs in these sectors of human resource development will obviously depend on local variables. But relationships can be developed if the university is perceived as a resource within the total educational system and the law

school as a multi-functional institution.

135. *Manpower Objectives and the Problems of Scale.* We have previously suggested that some large scale systems of legal education may be dysfunctional both in respect to the legal system and to more basic manpower objectives.

136. In the deliberations of our committee and in reports presented to us, this point has been strongly argued, and we sketch here a model of a large scale system which may produce these bad effects. The description may be overdrawn, but it is set forth to offer a critical perspective, often lacking in thinking about legal education. Thus it is argued that in some systems the university law school is required—or under heavy pressure—to admit and educate masses of students; the law school is run "on the cheap"; **student-teacher** ratios are high, and teaching demands are heavy; there are **long-established**, "received", venerated beliefs about law as an academic discipline and how to teach it; and these orthodoxies are reinforced by the way law teachers are recruited, prepared and used in the system; the dynamics of higher education work to maintain the law school as a "dumping ground" institution for students who are not law-oriented and are, in fact, seeking a general, broad education as preparation for useful lives in their society and for work in any non-specialist employment currently available. But the institution does not help its graduates to become easily employable. **Law** is taught to masses of students in a formal, traditional, didactic way; neither the discipline nor the curricula are adapted to the environment; the methods used do not emphasize active student participation in problem-solving and the development of other skills (e.g., communication)—rather they emphasize the retention of information, much of which may be of marginal relevance to their future careers or intellectual interests; student apathy towards the education offered, and discontent with the system which provides it, run high.

137. The system may affect the quality of the legal profession, the social value of the legal system and legal ideology. Lawyers trained by rote methods may tend to follow rote methods in their practice. Lawyers who received little training in the very range of skills which may make them valuable as professionals may tend to be less useful as professionals. Further, the legal system must find some sort of apprentice method to fill gaps in legal education. But these apprentice or post degree, formal programs, too, may become formalistic and lacking in developmental perspectives. The profession becomes saturated with lawyers who tend to bring a formal, **rule-oriented**, rigid perspective to their work. The university law school pays also too little attention to needs of the legal system at the basic levels of operation. It does not function as a vital research **center**. Conversely, elites within the profession and legal education identify with and emulate excessively the foreign system on which their own has been patterned. They tend to be conservative, hostile to change, in part perhaps because there is not enough

effective intellectual challenge and ferment within the legal order.

138. The university law school described above may also be an inappropriate vehicle to provide general higher education, particularly for the people of poorer countries where problems of rural development and deconcentration of urban centers of economic growth loom large. While, of course, law can be used as a disciplinary base for a broad education, too little thought may have been given about its adaptation for that purpose. The result will be that there is not a wide enough range of useful subject matter offerings to provide adequate options for student choice and more opportunity for different kinds of training (e.g., in accounting, data analysis, management techniques) to the student whose interest in law *qua* law is not great. The value of the university law school as a form of general higher education to develop "high-level" human resources is slighted; the educators (and others) whose decisions tend to shape the enterprise are neither oriented nor equipped to plan and make the necessary decisions. At the same time the value of the institution for legal development is adversely affected.

139. We emphasize again that the propositions above are only opinions—hypotheses about situations in some settings. Large scale legal education needs to be *carefully* studied, perhaps through comparative approaches, with a view towards analyzing these hypotheses about its effects on the social system generally and the legal system especially. Part of the process of planning legal education should be to fix new policies governing the quantitative aspects of legal education. The problem can only be addressed well if one starts by considering goals of legal development, human resource development and other basic needs. Beyond studies of the existing situation, strategies may be needed to convert systems of large scale legal education into systems of more general, multidisciplinary, multipurpose education which are more directed to human resource needs of the environment, which will better help graduates adapt to a wider variety of **job** situations. Along with these strategies others might be used to develop a more particular stream of professional training for students who demonstrate the appropriate motivation and qualifications to study law for the purpose of entering the legal system and qualifying for professional law roles. In some settings it may be desirable to develop new, smaller, more **professionally-oriented** law schools which are conceived as centers of excellence, whose programs are more specifically directed towards the needs of the legal system. In some it may be important to develop centers of advanced training. Of course these problems are difficult, and serious. It is therefore all the more striking that they have received so little sophisticated attention not only in the literature of legal education, but in development studies and the literature of educational planning.

140. *Opportunity Objectives.* The very nature of law may make it important that the professionals who operate the legal system be, as a group, broadly representative of all elements in society. This seems particularly so

where society is plural, diverse or historically stratified. In some countries the elites within the legal system, as a group, do not reflect the actual composition of society. Women or various ethnic or socio-economic groups may be excluded disproportionately from law schools, not to mention the opportunity to become judges, or exercise other important law roles. The reasons for such discriminations may be historic and complex; to some extent remedial solutions may lie outside legal education.

141. However, legal educators may feel a particular responsibility to broaden the bases for recruitment into law schools. Arguably, the elimination of sex, ethnic or socio-economic barriers to law study and professional employment cannot wait upon other reforms in society; if so, affirmative efforts may be needed to open new streams of **entrants**—including particular recruitment programs and entry criteria which make it more possible to admit persons from groups which, historically, have been disadvantaged.

142. *Research Objectives.* The importance of research, and the problems of developing it, have been treated superficially in much of the literature on legal education. It may be useful to ask whether and why law schools should be planned as research institutions as well as places for training. We have suggested that law schools can provide critical intellectual guidance to the study of law, to the making of legal culture, to understanding issues of legal development and other important problems in society as well.

143. In too many LDCs the literature used for legal education is largely foreign. Alien books may be unhelpful—or worse—because they assume the existence of a different legal culture and different conditions in society. Effective teaching which emphasizes the needs of local society and the national context depends on the production of new, "localized" teaching materials, which in turn require research into the local environment for law. Moreover, a faculty which pursues research seriously and diligently inculcates in the students—partly by teaching, partly by demonstration—a sense of the importance of critical enquiry into problems of the legal order. Additionally, the creation of the right conditions and opportunities for research (in terms of availability of time, money, and the recognition of its importance in career structures) may be seen as an essential element in any strategy to recruit and use good teachers in the law school world. Further, some kinds of research, e.g., studies of the legal profession, studies of law roles and the uses of law graduates, studies of ways to develop access to the legal system, studies of the effects of large scale systems—are important to the planning of legal education.

144. But there are additional goals for legal research. The ILC recently asked an international group of legal scholars, distinguished for their research contributions to the study of law and social change, to consider the role of research in law in LDCs. The ILC Research Advisory Committee suggested several important perspectives worth noting here:

“... If development is seen as a self-conscious effort to transform society, law has a multiple relationship to this process. Law may be seen as an instrument by which man in society consciously tries to change environment ...

“Some may also see law as a value, or as a process so fundamental to the realization of certain values that it becomes closely tied to the values themselves. For example, many believe that law is important in the protection of individuality ... and that the development of effective legal institutions and processes can contribute to the strengthening of individual rights and the pursuit of equality ...

“Law may also be seen as a useful ‘prism’ through which to view societies and understand the nature of social processes [within them]. Societies differ fundamentally in their attitudes towards law, and in the extent and nature of their use of legal processes. ... Legal studies may, therefore, be essential to any comprehensive study of state, society, and economy in developing societies.

“Finally, ‘law’ may also be part of the world that is to be transformed if development is to be achieved. We know that modern states employ statutory and other forms of law as part of an effort to reach the goals they define as ‘development’. But law may also be an obstacle to developmental aspirations. Legal rules or institutions may reflect the very ideas, values or institutions which nations wish to transform. And law may serve to delay or distort development efforts rather than to realize them. Thus there is also a widespread recognition that the law, and legal processes of individual nations, must frequently be changed—often in drastic ways—if the social, economic, cultural and political goals contained within the idea of development are to be attained.

“Research must be sensitive to all these dimensions of or perspectives on law and development ... Decision-makers designing and implementing development plans, programs and projects rely on development studies for guidance. Accordingly, in LDCs and MDCs, universities, research institutes, governments and international agencies have devoted substantial resources to development studies ... [D]espite the scope of this research, relatively little attention has been paid to ‘law’ in the normative, instrumental and substantive senses of the word.

“... This gap, the Committee felt, was acutely one. In ignoring law, development studies have overlooked a major dimension of the very process they are charged with examining. ... [D]evelopment researchers have shown a surprising lack of interest in the nature of one of the tools that policy-makers daily employ to reach development goals ... the research effort has provided decision-makers with an inadequate map of the world that must be altered if they wish to realize their goals.

“Finally, the failure to clarify the relationship between ‘development’ and ideas like due process of law and the rule of law constituted a failure to clarify the values that are involved in the idea of development itself. ... Careful attention to the relationship, if any, of law to such values, and of these values to development, would have forced attention on such issues as whether economic growth without enhancement of liberty and equality constitute ‘development’, as well as whether legal institutions are either necessary or sufficient techniques to foster or protect liberty and equality.”]

145. The report of the ILC Research Advisory Committee has described a variety of possible approaches to study relationships between law and development, from efforts to define the field more adequately and build general theories, to more pragmatic studies directed at immediate, concrete, developmental problems and programs. The conclusion reached is that many kinds of research, on diverse subjects, using different approaches are necessary if legal scholarship is to enhance understanding of problems of development and provide more help to the processes of policy-making and

¹ See *Law and Development: The Future of Law and Development Research* (Report of the Research Advisory Committee on Law and Development of the International Legal Center) (1974), pp. 15–17, published jointly by the ILC and the Scandinavian Institute of African Studies.

more guidance to persons in law roles. The tasks range from insightful analyses of the content of contemporary legal doctrine to studies of the actual impact of particular laws on particular activities in society; from normative prescriptions providing moral principles underlying the legal order to scientific descriptions of the social context of laws and legal institutions; from research designed to aid policy judgment to research directed at general theories about social change. The report urges a special emphasis on efforts to use social science perspectives and methods.

146. These are ambitious goals. It is easy to pay lip service to them, but as experience everywhere proves, it is difficult to realize them. If these goals are in fact assumed to be important, then the plan for developing legal education will have to spell out steps to create the resources and strategies to enable law schools to become, in part, research institutions.

147. *Administrative Objectives — Developing Vehicles for Planning and Authoritative Decisions.* Much of the literature of educational planning is directed at the problem of organizing structures and methods to administer educational systems more efficiently. Public universities are seen as fiduciaries entrusted with large sums of public money and responsibility to society. Changes are being urged to produce more accountability in their governance and management, to establish processes which enable continuous planning and regular evaluation of programs. Program budgeting methods, cost-benefit analyses of different programs and studies of the utilization of various kinds of graduates may be instituted.

148. The need for these kinds of controls may vary with the setting — and be variously perceived. Some of us may share misgivings about attempts to alter university autonomy in the name of "accountability". There may be other dangers. Professional educational planners and administrators may lack the competence to perform tasks which proposals for planning ascribe to them; or they may be influenced by prejudices and fashions of today which may be discredited tomorrow. Nevertheless, it may be important for legal educators to understand the concerns which motivate these proposals, to adopt a more sophisticated approach towards planning. They may place too much value on the aspirations of new programs, too little on improving processes of teaching and learning.

149. It is not easy to identify all of the objectives of legal education. Policies of development, including legal development, may be matters of political controversy or uncertainty in any event. In some countries the culture of an inherited colonial legal system may be deeply entrenched; the bar, judiciary and other interests may be opposed to radical changes. In other quarters, there may be hostility to lawyers and the profession; the case for law may not be understood, and this will make planning difficult.

150. Another serious set of problems derives from the dispersal of power or ability to influence the various elements of legal education and the processes of recruitment of persons to law roles. Many different organs

exercise different kinds of controls or influences over these activities, and this may make it difficult to discuss, plan and implement significant changes for the system as a whole. At the level of higher education there may be a complex network of controls: ministries of justice, education and finance; civil service and other government agencies which recruit for law roles; professional associations such as bar councils; external accrediting agencies; university grants commissions; higher university officials (vice chancellors, presidents and rectors) and university senates or councils; deans, teachers, students—all of these—may make or influence decisions about what programs may be offered and their content, methods, standards and so forth. In many countries a pattern of influence or control over university education in law may be seen to be as follows: professional control over admission to membership of the profession; theoretical, *de jure* university autonomy over the content, length and other matters relating to law degrees—but *de facto* influences from both the authorities which certify and those which provide finance; a sharing of some power in respect of the way in which formal instruction and examinations are carried out for those who wish to proceed to a professional qualification; a diffusion of power with regard to numbers entering the system of legal education; an absence of any center for effective planning for the future or for the system as a whole.

151. The reasons for this kind of diffusion of power may warrant review. For example: the justifications for allocating powers to the private bar to set entry standards into the legal profession proceed from assumptions about the character, independent role and capacity of the bar—assumptions which may need to be modified in view of local conditions where the bar is neither the only point of entry into important law work nor an aggregation of all the interests to be evaluated. Again we may recognize the values which are to be derived from allocating academic autonomy to law faculties; but law teachers who enjoy these benefits should recognize that autonomy entails obligations to rationalize use of the powers conferred.

152. In some countries it may be possible to organize advisory planning bodies or special commissions, with membership drawn from many relevant agencies—and the public. In some it may be possible for a university law faculty to be the catalyst to develop systematic deliberations about legal education through research and a body of literature which analyzes the problems in a systematic way. In some, it may be possible to develop more effective international, regional organizations to advise on systems for higher legal education and bring pressure to bear that way. The task of organizing structures for more effective planning may be seen as one of the most important steps towards long range reform. It is an activity which calls for the attention of many participants. Perhaps the way to begin is to recognize more clearly the very magnitude of the problems and start by creating a climate of opinion which recognizes the need for more concerted national action to remedy them.

153. Planning should be seen as a process. The most important object is not *a* plan, but the continuing generation of a flow of information and ideas and decisions. Especially needed may be the generation of new human resources—a new breed of law teachers and jurists who can bring new perspectives and new leadership to the profession of legal education. They are both the catalysts and the deliverers of reform. It is fortunate, as we have noted, that this kind of leadership is now emerging in many parts of the world.

V. Strengthening Legal Education: From General Goals to Particular Strategies

154. Formulation of objectives for an educational institution is a difficult exercise. Too often, they are stated in terms too general to be of practical value. Professors and law deans may tell us that the "goals" of an institution are, e.g., to improve the faculty and student body, develop better physical facilities and more research and so forth; they may speak in abstract terms of academic quality and scholarship. Such statements often fail to tell us what the faculty will do—what results will occur—if its "quality" is improved. In describing the training objectives of an institution as a plan of action, it is important to speak in exact and exacting terms of the *capacities* and *performance levels* actually expected of graduates. In describing research and related objectives, it may be necessary, too, to think in terms of some priorities and the potential uses of the work. Then one is in a better position to evaluate the effectiveness and utility of the institution's program.

155. Once such objectives are formulated, a number of specific strategies may be undertaken. Thus, the utility of some particular technique for reforming legal education really should depend on its relation to the goals it may achieve. For example, some of the contemporary literature urges the use of clinical methods. But clinical methods, like other curricular innovations (interdisciplinary instruction, research-oriented small group modules), can be directed towards diverse kinds of benefits. They might be used to orient students towards different kinds of social problems or professional fields. They might be used to develop particular kinds of skills: counseling, advocacy, etc. Clinics might be used to supply materials or *insights* for research. The decision to develop clinical approaches becomes a far more significant and, in the long run, effective decision when it is put in the context of a carefully articulated set of policies and objectives.

156. In this section we focus on a number of methods to advance more basic goals of legal education. Here is an outline of the points developed:

1. The program required to obtain a first degree in law.
 - a) Recruitment, entry standards and "acculturation" of students to law;
 - b) Content and curriculum;
 - c) Teaching methods;
 - d) Clinical education;
 - e) Examinations and assessment.
2. Special programs: advanced education for specialists; training of paraprofessionals, and the dissemination of legal information.

3. Other strategies to strengthen legal education (which are applicable to all training programs), i.e., the development of:
 - a) Legal literature and law publishing;
 - b) Research;
 - c) Law teachers;
 - d) Libraries;
 - e) The national language as a vehicle for law;
 - f) Finance, budgeting and law school governance and administration.

The Program for a First Degree in Law

157. The law school programs which lead to a law **degree** are quite varied, and, of course, it is impossible to make universal recommendations regarding admissions, the duration of the program, yearly promotions, graduation and certification requirements. We discuss here five themes which, hopefully, may induce reflection over important strategies to achieve objectives previously discussed.

a. Recruitment, Entry Standards and "Acculturation" of Students to Law

158. The size of a law school, the methods used to recruit and select among applicants and the procedures used to counsel students as they proceed, and to retain and promote them, are all difficult questions. The way in which they are answered will obviously influence the orientation and quality of the institution. Policies to resolve these problems can be heavily influenced by economic factors (the desire to use legal education as a cheap vehicle for providing higher education to masses of young people). Or, policies on these issues can be seen to be a function and resultant of other human resource planning, educational goals and performance objectives.

159. In this report we have emphasized an approach which sees the law school as a resource for legal development. We see law as a difficult, challenging, multi-faceted subject drawing on a wide range of other disciplines, related to a wide range of developmental issues. We have suggested the importance of skills training which helps the student see himself as—and learn to think and act as—a participant in many different kinds of transactions in the planning and structuring of activities. We have emphasized the importance of developing more sophisticated advance programs—formal and non-formal—of legal education, and we have suggested the importance of other functions for a university law school which is working to develop the legal system.

160. These policies require mobilization of new resources, planned and controlled ratios of students to teachers and more intensive kinds of educational methods. They envision law teachers whose tasks require them to do far more than lecture large classes of students. They may require a different institutional spirit. Realization of these policies may be frustrated if the law school is used indiscriminately as a dumping ground for students, as a place for "general" education which takes the form of simplistic expository legal education.

161. We have suggested that where, for historical, economic and other reasons a system of large-scale legal education is established, it may be necessary to study the rationale and effects of this system (on legal development and on the social system) and to study means to develop institutional centers, or program-streams within institutions, whereby better professional training and other objectives can be realized through imposition of quantitative limits. It seems clear that many of the basic goals and strategies discussed in our report are dependent on decisions to limit the scale of legal education in accordance with carefully articulated goals of legal development, human resource needs, qualitative educational and research objectives and the effective use of available teaching and other resources for those purposes.

162. Even where problems of scale can be controlled there may be need for more systematic attention to the problem of recruitment and admission, since absence of admissions policies and promotion standards often affects the quality of student performances, wastage, elitism, motivation and access of the disadvantaged to legal education. Study might be directed at such questions as:

1. Why do entering students choose to study law? How well informed are their decisions? Can prospective entrants be better counselled?

2. Are there ways of assessing the aptitudes and skills thought to be necessary for effective participation in the programs of professional law study?

3. In those instances where some prior university training is required, what should be the character of that prior training? Should it emphasize development of basic skills (communication, reasoning, etc.); should it (also) emphasize some broad foundation of knowledge (history, economics, etc.)? Should promotion of students from "pre-law" to law require display of some carefully defined abilities which can be tested in the course of pre-law work? The answer to such questions may be difficult, and will obviously depend on variables within the educational system and careful study of common deficiencies in the education of entering students.

4. Are there ways of developing recruitment and/or entrance criteria which will provide opportunity within disadvantaged or historically excluded groups? and opportunity to older persons whose experience may warrant opportunity for university study in order to encourage mobility

within the legal and social system?

5. Are there ways of structuring legal education so that students are not "locked" into it once they choose law as a field of study? Can those less motivated or equipped be encouraged (or at least enabled) to move to other fields?

6. Are there ways of counselling students as they progress through law school? This may be particularly important in systems of legal education which afford the opportunity to opt out (without wasting education already completed) or opportunities for choice in emphasis and career orientation within the system.

7. Is it possible to limit the number of entrants according to the rough estimates of the needs for law trained people of each country? Is it possible to project the kinds of employment avenues which will be open to law graduates at particular periods?

8. Have educational objectives and strategies—and optimum student-faculty ratios—been taken into account when determining the number of students who will be admitted each year?

b. Content and Curriculum

163. Many projects to reform legal education have simply concentrated on the restructuring of the curriculum of the law schools. Magical effects are sometimes attributed to proposed changes in curriculum: if the existing curriculum can only be replaced by a more "modern" one (or one more similar to that found in some law school in an MDC), it has been assumed that the result will be better educated graduates and lawyers—and perhaps great reforms in the law. However, the curriculum is only one part of the varied and complex process of education. Curriculum discussion can be a much overrated pastime: a curriculum is an aspirational statement which should form only one phase of educational planning, and a rather general one at that. There are many other phases of educational planning within law schools which deserve equal attention but which do not always receive it. Moreover, many of the most intractable problems of improving legal education relate more to implementation than planning curriculum. Very little can be achieved 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 are practicing lawyers who only teach part-time; and, what is most important, if the final objectives sought are not reviewed in the perspective of the local environment.

164. Curriculum and content are used here as two different concepts. The term "curriculum" refers to the general design of the school's program: it is the aggregation of experiences which affect the student and which are

determined by the school to be a means to achieve its goals or objectives. Certainly a list of formal courses is part of a curriculum, but the term can also include other academic experiences such as practice courses, internships in government or law offices, legal clinics, workshops, field research projects, participation in the editing of a law review, or other work of that sort.

165. Both the curriculum and the content should depend upon the objectives of each law school; and these, at the same time, depend upon the concept of law and the general goals which predominate in that law school.

166. We have seen that in many law schools of Africa, Asia, and Latin America, the predominant concept identifies the law as simply a system of prevailing legal norms (created by legislatures or courts). Consequently, the lawyer is conceived as a specialist in laws and the law school curriculum reflects this image by teaching the content of legal doctrine while ignoring the social context in which it operates or its impact on behavior.

167. More recently, there has developed a different view which conceives of law and the legal system and legal education as instruments to achieve various social objectives. Law and society are, therefore, intimately interrelated, not only because the law is a social product, but because law has as a goal the making of a more developed and just society. This concept of law emphasizes not only knowledge of the law as a set of normative rules and the capacity to interpret it, but the acquisition of other skills and insights, e.g., ability to analyze and evaluate the policy assumptions behind the law; awareness that there are problems of social development which may be affected by the law; appreciation of relationships between the legal system and political and economic system and of the social sciences as tools to enable informed development of law as an instrument of social change; concern for justice, and, thus, a sense of injustice.

168. Of course the extent to which this view of law may be followed will vary, but to the extent it is shared as a concept to be followed, the following guidelines might be considered:

(i) The curriculum should reflect not simply traditional fields of law, but problems and activities which have social significance in the society to be served. We have already discussed the possible importance of some areas, for example, emphasis on public enterprises (even though there is no traditional course or body of organic law on that subject) where publicenterprise looms large in the economic system—and an approach to this subject which studies enterprises as social as well as legal phenomena.

(ii) The curriculum should not be limited to an examination of legislation and court decisions. There should be contextual material from the social sciences. Thus, for example, courses in criminal law should study the actual operations of the penal system and the social consequences of sanctions, the role and behavior of the police, the access enjoyed by accused persons to adequate legal services—and perhaps possibilities for "delegalizing" some parts of the criminal justice system; a course in tax law should consider the

burdens of taxpaying and the manner in which taxes redistribute income, in favor of whom. This approach does not mean that the main emphasis will not be legal; the important thing is that the legal aspect be integrated into the wider context of society as a whole.

169. Of course one should be aware of difficulties involved in the implementation of these ideas: (i) the lack of preparation of law professors, who generally are only familiar with legal perspectives (a problem dealt with more fully below); (ii) the reaction of the students, who may be conditioned to courses with an exclusively legal content, (iii) the lack of adequate contextual materials. Critics may say that the contextual, interdisciplinary approach will detract from rigorously professional purposes. This view is, however, a narrow one if we desire lawyers who draw constantly upon a wider knowledge of man and society to participate more effectively in social issues.

(iii) The curriculum should contain some activities which take place outside the classroom. In this way the student will be exposed to direct contact with social and professional reality. Legal clinics are a means to achieve this end; active participation in simulated cases is another (in other paragraphs in this section we deal in more detail with the development of "skills").

(iv) The curriculum should probably be structured so that the student can dedicate himself simultaneously to a limited number of courses **and/or** activities. The division of courses into semesters and even shorter periods is one means to achieve this.

(v) The curriculum should be flexible in order that the student be able to select a series of courses or activities according to his own preferences. This does not mean emphasis on training specialists. The first degree in law can probably only attempt to train generalists: specialization comes later as a result of more advanced studies, either formal or informal. The option of a student to select his own courses reflects the fact that lawyers do, often, perform a variety of different activities, that the student should be able to shape his own professional training without ignoring those subjects which must be considered basic, and that this will enhance motivation.

(vi) The curriculum can not attempt to include all legal subjects. Nor can the content of each course attempt to do that. The teaching-learning process, when it is formative, should concentrate on the important issues, those which are capable of providing basic information and which can be developed in ways which help the student to master the type of reasoning used in the discipline. A good part of the acquisition of knowledge can be done by the student on his own. Indeed, the university should be seen as an environment in which knowledge is created and discovered in a collective fashion between professors and students. If it is only an information bank, the university loses its reason for existing.

170. Consciously or unconsciously every educational system plans a range of possible learning objectives. The teaching-learning relationship

needs to be seen in the context of such objectives. Whatever the selected objectives will be, one function is always to produce a change and effect on the student at the end of a teaching-learning relationship. The desired change can occur in the cognitive, psychomotor or affective domain of the subject. The cognitive area refers to the habits and intellectual skills of the learner; the psychomotor area to his skills of performance; and the affective area to his judgments of values. Legal education has traditionally been centered mainly on objectives involving knowledge, giving little attention to such skills as application, analysis and synthesis. Typically affective goals and functions have not been articulated or emphasized.

171. "Skills" development is becoming a subject of increasing interest in legal education. While labels and classification—and needs—may differ, depending on the structure of the profession and other matters, there is increased general agreement that a well trained professional lawyer needs skill in such areas as: problem analysis;¹ oral and written communication; counselling, advocacy and negotiation; the methodologies of legal reasoning and legal research.

172. We believe that in respect to some settings and some roles other skills may be particularly important, e.g., in language, in mediation, in administration. The teaching of many skills may be a difficult process. In some societies the skills required of a "modern" lawyer may constitute subtle but significant departures from traditional behavior norms.

173. Much discussion about training for law focuses on what we perceive to be a false dichotomy — the distinction between "practical" and "academic" instruction. In some countries, there has been a deliberate effort to draw this distinction by creating entirely separate programs and stages for legal education. While we recognize that the distinction must be made for some purposes, we believe too much emphasis and division reflects bad educational theory and planning. It is one thing to recognize that a law graduate can choose between becoming a general practitioner or a specialist, and another to suggest that his training should be determined by either of these options. It is desirable to plan the education (of those who aspire to active professional roles) as a continuum of experience. Much evidence seems to indicate that students who are given opportunity to engage in applied legal work (even when it is simulated) *while* they are engaged in "academic" studies become better motivated and often better oriented towards law study. In

¹ It is felt by some that this activity, particularly important for lawyers, assumes the following steps: (a) identification of the relevant facts and exclusion of those facts which are not relevant; (b) identification of the legal "problem" created by these facts; (c) application of law to the "solution" of the problem; (d) analysis of other possible approaches to the legal problem (generally there is more than one) and evaluation of each one from the point of view of the interpreter (lawyer counsellor, litigant, mediator, judge, public official, law professor, etc.). Others might add that problem analysis may include analysis of the social context as well as the legal context or that the concept of problem analysis is itself problematic.

many settings it may be both possible and desirable to build components of practical experience into a degree program, e.g., through "clinical" work or "internships", summer programs and useful part-time work programs. "Clinical" or adjunct teachers, drawn from government offices and the practicing bar, may be valuable resources for these purposes.

c. Teaching Methods

174. The range of possible teaching methods is quite wide and is not limited to formal instruction. There are many ways of acquiring legal knowledge and skills which do not take place in the classroom, such as clinical education. However, in this section we limit ourselves to classroom methods; clinical methods are dealt with thereafter.

175. Methodology of teaching will probably depend on the objectives of the course, the teacher's personality and capacities, the aptitude of the students, peer group pressures, the existence or lack of teaching materials, the availability of time for class preparation, evaluation systems, etc. It is not, then, an isolated factor, nor can it be analyzed as such.

176. Teaching methods may also be affected consciously or unconsciously by the concept of law held by the professor. One who believes that law is entirely contained within the positive norms (e.g., codes) or in immutable principles which should govern human conduct as law at all times and in all places, may emphasize expository lecture methods. On the other hand one who believes that law is used to resolve concrete situations, and is continually being fashioned to relate to developmental goals may emphasize methods which open the issues to discussion and invite consideration of various, sometimes conflicting perspectives which transcend a strictly legal framework. Of course these "types" (described above) do not reflect the full spectrum of approaches—they simply suggest that a methodology chosen may in part reflect intellectual values.

177. In recent years in Africa, Asia and Latin America, there has been experimentation with regard to teaching methods in the law schools.¹ In general, one can discern these trends: increased use of small group sections, often coupled with the use of research and writing on problems as a vehicle for instruction; increased use of classroom methods which engage participation of students, e.g., through discussion to define problems and analyze issues and competing theories to resolve them; increased use of

¹ In some cases, methodological change has been regarded as a reform sufficient in itself, forgetting that, just as in the case of the curriculum, there are many other elements which play an important role in the strengthening of legal education — and that methodology is simply a means to address objectives.

learning aids (such as audio-visual materials); redesigning of courses of instruction and materials so that more of a subject—particularly the basic information—can be self-taught without wastage of teacher-student contact hours; use of simulated practice exercises, such as “moot courts” as vehicles for substantive learning as well as skill training; increased use of individual student research and writing rather than formal classroom exercises. In many countries there have also been workshops concerned with problems of teaching methods and the application of learning theory to legal education. There are trends towards methods which encourage students to take an active part in the learning process. For example, it is increasingly felt that the “magisterial lecture” should give way to allow “problem oriented” approaches, which demand that students piece together at least part of the “puzzle” for themselves—that this is an important way to develop critical skills.

178. However, some recent literature has indicated that “active learning” approaches, such as the so-called “Socratic method”, require that a high degree of anxiety be created in students in order to provide the necessary goading to force participation or thinking for oneself. This may result in some students becoming alienated from the enterprise; thus, in some settings active methods may, in fact, be dysfunctional unless students are prepared and motivated for the change.

179. Variation in teaching methods is bound to occur, but we do note one almost uniform striking fact. In few countries is much attention paid to the problem of teaching law teachers about teaching and relating learning theory and other knowledge to educational objectives. We believe this is an omission which most law schools might review. There is a growing body of useful knowledge about the dynamics of learning, and we think the time is at hand when more university teachers should be aware of it. The problem may be particularly important as needs grow to cover more ground more effectively and as law teachers may be required to master new disciplines in order to teach not only legal doctrine but law in context.

d. “Clinical” Legal Education

180. A relatively new method which appears to be getting more attention in many regions of the world is “clinical” legal education. The concept of “clinical” education has not been precisely defined, but it usually entails both formal and non-formal methods to help students work on actual cases or problems arising in the legal system. The student, under supervision, may be cast in roles such as decision-maker, counsellor, pleader, draftsman or advocate. Cases for clinical work are often derived through law offices (public or private) which provide legal assistance to the poor, and the service

aspects of this form — and the concept of the legal profession's service **roles**— have sometimes been stressed as an independent rationale for its development. But, in theory (and in fact, in some law schools) clinical education may focus on many different kinds of clients, settings and subjects — and many different kinds of legal work. Thus students may engage in "clinical" enterprises which draft new rules and forms for a public agency, or in the provision of legal services to participants in the legislative process or in corporate transactions or in constitutional litigation. The advantages and problems of clinical education have been widely reviewed. We briefly summarize some of the literature here.

181. Clinical education is said to provide: stimulation and motivation; "practical" and technical skills; more realistic perspectives about law; incentives for research and extrapolation of theory from actual experience; a heightened sense of professional responsibility and standards. If resources are available such as money and teachers, clinical type education can be imaginatively combined with empirical research and interdisciplinary work. For example a clinic designed to provide legal services for a particular group in society (e.g., the urban poor) may provide much interesting data about the nature of the typical legal problems and concerns of that group, its attitudes towards law, the possibilities for expanded use of paraprofessionals, etc.

182. Clinical education presents advantages not only for the law school and its members; it is also a means of projecting the university into society. In some countries in Africa, Asia and Latin America, a real involvement with society is said to be an ideal of the national university. Clinical legal education makes possible this kind of relationship. **An** effort should be made, however, to assure that this service does not result in a form of "charity" to help individuals with their problems. Clinical education may attempt to deal with problems related to the transformation of society, so that services performed acquire meaning because they contribute in some way to the improvement of theories and knowledge about the legal system.

183. We will witness a growing sophistication in the literature on "clinical" approaches in coming years, including new kinds of materials applying behavioral science concepts to understanding the diverse kinds of "lawyer-client" relationships which arise in clinical settings, e.g., psychological relationships which affect the lawyer's performance of his "role". Technology may provide the means, soon, to achieve some of the values and purposes of clinical education more efficiently, e.g., through the use of audio-visual aids. "Clinical" methods can be used for a wide variety of projects, or computer arranged problems, e.g., as a vehicle to study administrative and legislative processes.

184. The constraints and pitfalls of clinical education must also be considered. Such methods are usually costly, requiring intensive teacher or other supervisory ratios and other resources as well. Clinical education uses clients and live disputes as its material; it requires special kinds of teaching

resources; the traditional academic is often neither technically nor temperamentally equipped for it. Further, the work of a "clinic" cannot easily be tied to traditional academic calendars nor to other demands on student time. A serious clinic may impose very exacting demands on teacher and students—for real clients and pressing interests must be served with the highest degree of competence. In some kinds of clinics (e.g., criminal or civil "legal aid" types) the cases and clients may redundantly pose the same issues and experience over and over. The goals of clinical education need to be carefully formulated, and in countries with limited resources and different legal systems and priorities, it may be useful to explore new models to derive some of the benefits of clinical approaches at less cost.

185. It is worthwhile mentioning here the idea of "National Legal Service" which is taking place in some parts of Africa and is in the planning stage in at least one Latin American country. What is involved is a form of internship, similar to that required of medical students. Under this system, the law student, once he has finished his studies (or much of the program) but before he is admitted to the bar, is required to practice his profession for a specific period of time, for example, one year, in some form of public service. He may be assigned to assist some group in the community which ordinarily has no access to legal assistance. The purpose is twofold: first, to acquaint the student, through direct contact, with cases and clients; and second, to offer sectors of the society, organized or unorganized, legal services which ordinarily would not be available to them. He may be assigned to some public agency to provide legal services—e.g., to a prosecutor's office, a rural government. If it is to provide effective educational benefits, National Legal Service should be carefully structured and professionally supervised including some element of involvement by law professors. The cost of the educational aspects will have to be calculated and met.

e. Examinations and Assessment

186. From the point of view of individual students some of the most important decisions taken within the system of legal education are made by examiners. Examinations are one of the focal points of influence over the expectations, motives and behavior of students in education generally. Their potential influence for good or evil is difficult to exaggerate. If the form of examination is well suited to testing desirable learning objectives, it is a vital stimulus to the student to attain those objectives. If it is unsuitable in one way or another, or myths about what is in fact being tested diverge significantly from the reality, examinations are a potent force for frustrating or distorting such objectives. Legal education is not exceptional in these respects. Examinations in law often influence the behavior not only of students, but

also of teachers, of law publishers, and of writers of educational works, among others. Those who are in charge of examining and of assessment for entry into the profession, for law degrees and in other sectors of legal education have a fundamental responsibility to insure that the forms and methods of assessment are well suited to the objectives of legal education and that the system of assessment is skillfully and conscientiously administered. This is par excellence an area where there is a need for genuine educational professionalism in professional legal education.

187. In recent years traditional methods of examining have come under attack. There is abundant evidence to suggest that prevalent methods of assessment in legal education have been characterized more by rigidity, educational amateurism and undue emphasis on memory work than by sensitive and sophisticated methods of measuring the attainment of carefully formulated learning objectives. Research on education has repeatedly underlined the unreliability of some traditional methods of assessment and the divergence between stated objectives and what is in fact tested. Legal examinations have not been exempt from such criticisms, especially when a high proportion of power over the examination system has been located in professional bodies whose educational competence has not matched their responsibility. In some countries where a great deal is at stake for individual candidates, widespread cheating, direct and indirect pressures on examiners and political interference in the examination process are real problems — yet these are often glossed over in discussion of legal education.

188. Many law professors do not pay enough attention to the problem of evaluating their students. They may worry much about issues such as the curriculum, methodology, and the content of the courses. They forget, however, that the system of evaluating students forms an important part of the educational process. An examination is not only a means of measuring the level of knowledge achieved by the student, it also can be a learning experience and sometimes an opportunity for the student to exercise skills similar to those he may use in his profession in the future.

189. There ought to be a close relationship between examinations and a teacher's stated objectives. If the avowed purpose is to transmit a large body of legal information, examinations may be designed to verify the levels of knowledge obtained, e.g., by asking about definitions, classifications and theories put forth by various authorities. If on the other hand the avowed purpose is to help students acquire and exhibit skills in the analysis and application of law to a novel situation, examinations may present real or simulated problems which are suitable vehicles for demonstrating the skills emphasized in the course.

190. A good example of criticism of traditional modes of examination in an LDC (India) is to be found in the Report of the Poona (India) Conference on Legal Education (1972):

"Major defects and problems of the existing system:

1. Because of undue emphasis on the examination, the entire teaching and the attention of the student is oriented towards the examination.

2. In many universities teachers teaching the subject are not paper setters or the examiners. This may be due to the statutes of universities providing for external examiners. In some of the universities a certain percentage of paper setters or examiners have to be outsiders. In some cases, the teacher teaching the subject is not allowed to examine the paper or set the paper.

3. The external examiners are not always specialists in the field in which they are required to set or evaluate the scripts.¹

4. Since most of the examinations are held in March/ April, the bulk of the scripts are examined within a period of 4/6 weeks, and the examiner cannot do full justice to the scripts in such a short period.

5. The machinery for selecting the examiners is defective and proper selection is not made.

6. There is often a serious gap between the objectives of the course and what is in fact tested.

7. There is a general distrust of teacher-examiner both by the authorities and the students.

8. There is unnecessarily a large number of failures in law examinations entailing wastage, because in certain cases there is insistence on the securing of aggregate marks or clearance of all subjects in one attempt.

9. It is widely recognized that the examination system as prevailing today is not a reliable tool for measuring attainment and also encourages cheating at examinations.

10. The existing numerical marking system and categorization into divisions are defective.

11. There are stereotyped question papers, repeated year after year, showing lack of imagination."

191. Such criticisms are not unique to India. In recent years modest progress has been made in developing more sophisticated and more appropriate methods of testing the attainments of law students. Such methods include more use of problem questions, multiple choice questions, open book examinations and various forms of course work assessment. But, by and large, it appears to be the case that legal educators have failed to inform themselves about or to use developments in educational thinking and technology with regard to methods of testing and assessment. Nor have they

¹ There are external examiners not only in India, but also in several countries of English-speaking Africa. There are many criticisms made of this system of evaluation. The main criticism is that since the examiner is associated with a law school other than that which he is examining, he is unaware of, or knows very little about the content, the methodology, and the objectives of the course in which he is evaluating the student. On the other hand the system offers advantages—e.g., it gives students confidence in the fairness of the examination system, is a means of disseminating ideas and innovations in legal education, imposes discipline on a process which can tend towards sloppiness.

always observed procedures and accepted safeguards which should be considered appropriate, by lawyers in particular, for a form of decision-making which has far-reaching consequences for the future careers of most individual students.

192. The whole subject of educational testing and examination procedures is an immensely complex one which is developing at a rapid pace. It is beyond the scope of this report to examine all the issues in detail, but we do believe that law teachers should, at the very least, become acquainted with modern developments in examination theory and practice and equipped with the skills and responsibility of a true professional in the exercise of his duties as an examiner in law. Further, when a law school evaluates its total program critically, special attention should be paid to the system of examinations and assessment, both in regard to what is required to pass a particular course, and to the requirements for becoming a lawyer.

Special Programs: Training of Paraprofessionals and Specialists, and Dissemination of Legal Information

193. As previously noted, most university law schools are basically concerned with providing instruction for an undergraduate degree in law. We have suggested, however, that it may be important for some university law faculties, in cooperation with other bodies, to assess the university role in other kinds of legal education.

194. **Paraprofessionals.** There now exists some interesting literature regarding paraprofessionals: the character of various roles; how people are recruited to them; the problems of providing legal education; where it should be offered and who should deliver it; what should be the content.

195. We do not suggest that the law schools should necessarily organize programs of their own for the training for paraprofessionals. This will depend on many factors. But study of the roles and potential roles of paraprofessionals may be an important part of the legal system to be examined in the university law school, and they may be useful centers for organizing programs of legal education or for aiding development of this kind of training (e.g., through preparation of teaching material, instruction of teaching staff, research on needs for and effects of training). The study and planning of paraprofessional development is a field which should command scholarly attention in countries undertaking significant changes in the legal system.

196. **Specialists.** Ordinarily the primary goal of law schools should be to train generalists who can utilize their skills in a variety of responsible positions. Nevertheless, social and economic changes may create increasing demands for knowledge about complex affairs and specialized bodies of rules

and demands for new kinds of counselling and representational skills. For example, lawyers working with groups of employees or farmers may need to know something about how to form organizations and group representation. Many other fields such as taxation, corporate finance, and banking may require specialized lawyers. Lawyers in government may need to know more about economics, research methods, information systems and decision theory. In some countries judicial tasks are becoming more specialized. Efforts to expand access to the legal system may result in the creation of new tribunals which exercise jurisdiction over specific fields of law, such as land reform, labor arbitration or taxation. New roles required of some judges within these courts may require some abandonment of formalism and a need to apply new skills and perspectives to adjudicatory tasks.

197. The problem of specialization is aggravated in countries where the development of the legal profession is a relatively new phenomenon. There may be few experts to provide appropriate guidance and training. A recent study and series of international seminars sponsored by the ILC have illustrated both the importance and complexity of problems of training specialists to deliver legal services in transnational economic transactions. Experts from international organizations noted that the absence of effective legal service to LDC parties to these transactions has been a serious handicap. Capable lawyers working in this field may need to be able to master the technology, structure and finance of various kinds of complex business and industry; they may need to know a good deal about banking, tax systems and so forth; they may need specialized skills in negotiation and drafting complex agreements. In many countries it appears to be extremely difficult to create these skills—which may be attained only through some combination of formal and experiential learning. Needs for this kind of lawyer probably cannot be met by attempting to train a few narrow specialists. The solution may be to develop cadres of government lawyers who combine more extensive formal knowledge, requisite aptitudes and the best experiential training available from those agencies, public or private, which impose high performance standards and diverse tasks on novice lawyers.

198. An increasing number of law schools have programs to deal with some of the problems. Some offer special training institutes. Some provide critical resources such as literature and consultative services to other training institutions. Some may establish programs which enable students to study law simultaneously with other disciplines, e.g., "joint degree" programs in law and public administration or law and economics. But experience indicates that interdisciplinary programs, to be fully effective, require careful planning and continuing collaboration of a specialized (multidisciplinary) faculty who share a joint concern for the success of the project. Another important response has been to establish graduate-level programs which deal in an interdisciplinary manner with important sectors of the development process. The study of specialization, like the study of paraprofessionaliza-

tion, is becoming an important component of the more general, but sophisticated field of delivery of legal services. It may deserve more attention than it has so far received.

199. *Dissemination of legal knowledge.* Our report has suggested the importance of developing education about law in society. The needs may range from rudimentary, non-formal education to teaching about law in schools at the pre-university level. In some countries some law schools in association with other groups have created special centers (sometimes as a component of other legal assistance operations) concerned with dissemination of law in society through community education. The task may call for specialized knowledge regarding the use of the mass media to convey information which is both elementary and technical for an audience which is not always motivated by a direct interest. It may call again for the collaboration of law trained people with other kinds of experts. The whole field of "legal socialization" is relatively unexplored.

Strategies for Developing Basic Resources for Legal Education

a. Legal Literature and Law Publishing

200. It is difficult to exaggerate the importance of legal literature as an instrument for upgrading legal education and also for transforming the whole legal culture of a nation. The development of a local legal literature, both with respect to publication of primary sources such as legislation, court decisions, etc., and with respect to secondary literature may be a large, difficult enterprise of great strategic importance. At the university and professional level, at least, the quality of education offered to students depends to a very large extent on the quality of the legal literature available to them. If students have to rely, or are encouraged to rely, largely on mimeographed notes, "nutshells" or simplistic learning aids which emphasize memory work as against other learning objectives, it is very unlikely that the quality of legal education that is being offered to them is very high. If, because of language difficulties, they are cut off from a rich and highly developed body of literature their education suffers accordingly. Yet, if there is not a rich and highly developed body of indigenous legal literature, their education may suffer in a different way in that they will have to rely on literature developed in a foreign context which, however qualitatively good, may bear little or no relation to local problems and conditions and sometimes may be seriously misleading. Frequently, universities have subsidized these publica-

tions, either with their own funds or with funds of other institutions attempting to improve legal education in a way which has allowed students to purchase the materials at less than their actual cost.

201. Until very recently legal literature has tended to be dominated by a number of stereotypes. In the United States the model of the **casebook** has tended to dominate legal education to the exclusion of other literary forms, and this has also been a standard American export model. There is now a growing body of opinion that too much emphasis on this form may have produced some undesirable effects on American legal education or on American legal scholarship. Unthinking imitation of this model could be unfortunate in countries where the preconditions for the type of teaching which the **casebook** assumes do not, in fact, exist. Similarly in many countries, the dominant form has been the student's textbook or treatise supported by elementary learning aids such as the manual or "nutshell". Much of this material is of dubious value because it is simplistic and because it projects false or inaccurate perceptions of the hard but important problems.

202. It is all too easy to assume that the English textbook, the American anthology of cases and materials, and the European and Latin American treatises constitute the only possible models. In fact, in recent years in a number of countries, there have been important developments in the variety of forms of student legal literature. Examples include the development of programmed learning and other self-instructional works, the materials produced for the Open University in England (which operates through television, radio and by correspondence), and the development of modules which deal with particular topics rather than attempting to cover a whole field, thereby giving greater flexibility to the teacher and allowing for a variety of approaches in the treatment of a particular subject. In some countries there have been interesting experiments with the preparation of combinations of diverse kinds of source materials for legal education. These sourcebooks have included not only compilations of legislation, court decisions and doctrinal texts, but also statements of hypothetical cases, opinions of lawyers drawn from real counselling situations, businessmen's memoranda and drafts of contracts, extralegal contextual materials obtained from different sources ranging from reports from the mass media to empirical studies. The advantage of this type of sourcebook is that it enables the student to obtain a heavy dose of basic information and at the same time confronts him with problems and issues which he must solve through analysis and application of the data provided. The disadvantage is that frequently the student restricts himself too much to reading this material and excuses himself from using the library or consulting other sources of information.

203. Another significant development has been a move away from the assumption that the preparation of learning aids and teaching materials must necessarily be a highly individualistic and often idiosyncratic exercise and

towards team preparation of educational literature. We are not suggesting that such innovations should replace the more traditional forms, such as the scholarly treatise and introductory textbook, but we do suggest that greater imagination and variety should be introduced into the production of legal literature, especially legal literature intended exclusively or primarily for law students.

204. Another problem which deserves attention is the relationship between commercial law publishing and scholarly legal literature. A high proportion of the outlets for publication of educational works and scholarly writings are subject to ordinary market forces because many legal works, especially books, are published by commercial publishers. Yet, it is abundantly clear that much legal scholarship, including some of the most creative and profound, is not commercially profitable. This is particularly true in smaller jurisdictions with correspondingly small local markets for legal publications. There are grounds for believing that market pressures have had a seriously distorting influence, not only on the selection of what in fact gets published, but also more generally on the way in which law teachers and legal scholars direct their energies. In England, for example, it is extremely difficult to find a publisher for scholarly monographs; the law publishers are becoming more and more reluctant to publish casebooks; and the great pressure on the scholar who wishes to get into print is to produce orthodox textbooks which combine a reference function with an educational function. These are an unsuitable form for the development of original ideas. Others devote their talents to preparing low grade learning aids which often defeat more than further the educational objectives of the courses to which they are related. Similar pressures may have been at work, to a lesser extent, in Anglophonic Africa: for instance, commercial concerns which publish legal materials may have felt obligated to ration the number of pages for each annual volume—the result being that market factors have been a primary element in determining the number of cases which got reported. The problem has sometimes been mitigated by various forms of subsidy—the ILC support for the African *Law Reports* is an important example—but such subsidies have been spasmodic and have often only served more as palliatives than as solutions to the basic problem of ensuring that worthwhile educational and scholarly works are prepared and published without being too much influenced by considerations of their commercial profitability. During the coming decade, the problem is likely to be greatly exacerbated by the spiraling rise in publishing costs.

205. It is critically important to recognize the need to provide financial subsidies for the development of local literature, especially in small jurisdictions where the market is insufficient to meet the costs of preparing and publishing substantial scholarly and practitioners' works. Subsidization of a national legal literature is a good investment because enormous benefits are likely to be reaped from relatively small sums of money.

206. The objective should be to establish a climate of opinion in which it is recognized that subsidization of publication of educational and scholarly works is one of the normal costs of financing law schools and legal education and the development of the legal system. Such a climate of opinion is noticeable, at least to some degree, in some countries with which we are concerned, but in many others law publishing is left almost entirely to commercial law publishers and to the often crippling influence of market forces.

b. Research

207. We have stressed the importance of research goals for University law schools. The ILC's international Research Advisory Committee reports that there is a small but growing group of legal scholars who are advancing the frontiers and techniques of research concerned with problems of law and development. While the traditional work of elaborating legal doctrine and the normative purposes of law remains important, the new scholarship has sought to investigate the social contexts of law, the variables which may affect the working of institutions and the behavior of persons in law roles, or the impact of particular laws on society or similar issues. This kind of development-oriented socio-legal research calls for new perceptions about law, new methods to formulate questions for investigation and to acquire and evaluate data, and interdisciplinary collaboration—a new approach to research, which looks at social problems from many perspectives, not simply a legal one.

208. The infusion of these ideas and skills in legal education—if it is to happen—will of course take time. Nor will such research produce spectacular results. But, hopefully, over time, it will help people to study the use and development of law in a more informed way. Already we are seeing, in various parts of the world, a growing number of empirical studies of a wide variety of subjects of potential importance to understanding problems of legal development. Studies undertaken in one country may provide a model or a stimulus for similar work in another—especially if scholars recognize the value of comparability in designing research.

209. Thus there is a growing new literature on judicial behavior and judicial administration, the work and character of the legal profession in various countries, the economic consequences of motor vehicle accidents and the way existing systems of accident reparation operate in practice, the working of various elements of the criminal justice system (e.g., police and prosecutor discretions, provision of bail; counsel; sentencing); the impact of various kinds of "public interest" law activities; "de-legalization" of parts of the legal system; and many other studies which add new dimensions to

understanding of law and the legal system in various countries. There is also a growing body of socio-legal literature which is contributing bits and pieces to the establishment of better general theories about the working of law in society; e.g., studies of different patterns and models of dispute settlement, deterrence, and various propositions about the evolution of legal institutions.

210. We believe that in many settings a series of steps could be planned to strengthen faculty awareness and use of socio-legal research, to broaden and deepen the familiarity of law teachers—and law students—with some of the illustrative socio-legal literature on law and the potential of this kind of work as a means to study problems of development. Such steps might entail the following (by way of example):

- planned, multidisciplinary graduate programs which may help law teachers develop both a subject-matter expertise and a better general knowledge of the use of the social sciences and research methodologies and actual research expertise;
- intensive short-term workshop programs which familiarize law teachers with illustrative socio-legal literature, and research methods;
- workshops which focus closely on particular subject areas such as rural development or taxation and examine some of the important literature in these fields and formulate issues and particular designs for research.

211. It may be useful to undertake such workshops on a regional basis; perhaps these opportunities can be used to establish collaboration between law teachers who share interests in common developmental problems. It may be very useful to encourage teams of legal scholars in countries to engage in parallel study and analysis of common problems so that the results can be analyzed on a comparative basis. Comparative approaches help to develop better general theories and a wider range of **insights** to guide local studies.

212. Another approach is to develop interdisciplinary educational programs within the law schools which emphasize research. An example might be an interdisciplinary law-social science course or seminar on the operation of state corporations which encourages students to gather empirical data. Another might explore the legal problems of the urban poor, and how they fare in the courts. Experience suggests that interdisciplinary courses or seminars which are particularly aimed at developmental problems should be planned and taught jointly—not as segmented parts where the "economic" part is separated from the "law". These **projects** require a preparatory period to marshal and produce appropriate materials and formulate feasible objectives.

213. The ILC Research Advisory Committee' presented an interesting

¹ In its report, *Law and Development* (1974), op. cit.

discussion of obstacles in the way of the future of law and development research. The shortage of finance and other resources (e.g., books, expert assistance, data processing centers) was, of course, lamented. But there are other obstacles as well. Calls for more use of social science perspectives and research methods are not new to legal education: these themes have been articulated in various jurisprudential writings over many years. In the MDCs where resources have been available productive collaboration between lawyers and social scientists has come very slowly, painfully. Despite lip service to research goals institutions for legal education have seldom produced hospitable environments for this kind of research; the legal profession has seldom recognized its importance; political decision-makers have not yet been greatly influenced by it. Socio-legal research entails great commitments of the time and energy of teachers to produce meaningful results. In few settings are there yet adequate incentives for this kind of commitment. The ablest legal scholars often find greater satisfaction in more direct participation in the work of the legal system and in work more directly concerned with the articulation and advocacy of concrete reforms.

214. Institutions which link researchers to policy-makers in a systematic way may be lacking. The relationship between scholars and the political community may often be an uneasy one. Collaboration may be frustrated by technical language and conceptual barriers, differing expectations, suspicions and misunderstanding.

215. The organization of research and communication between disciplines and between researchers and decision-makers and providers of funds can also be difficult and controversial. The agenda of law and development is hard enough to define meaningfully, and one's concept of the field may inevitably be affected by one's ideology and culture, one's perceptions of what are the most serious problems of an existing socio-legal order. Some may stress the value of developing a better sociology of law relevant for developing countries. Some may argue for research concerned with particular projects to promote economic growth and productivity, or with new forms of organization to achieve greater access to the legal system.

216. It seems important to worry about these problems if the goal desired is the development of more fruitful research on law and development. In any setting it may be useful to identify the constraints and the explanations for them in order to develop strategies and opportunities to promote research and its use in legal development.

c. The Law Teacher

217. At the heart of legal education and research is the law teacher. A figure of awe (and legend) in many settings is still the brilliant lecturer, scholar, writer. Many of the recommendations implicit in our report depend on the

ability and effectiveness of the law teacher. If we want vital law schools we must recruit talented people into a teaching profession and use them effectively. And yet, central though the law teacher is, we know relatively little about him. The development of a separate career of full-time law teaching is a relatively recent phenomenon in MDCs and a very new one in many LDCs. Isolated individuals as full-time law teachers have of course existed for a long time. But the effort to recruit cadres of full-time teachers to develop institutions is something new. Indeed, in some countries (e.g., in Latin America) the norm is still the part-time teacher. In some others (e.g., much of tropical Africa) there has been rapid turnover of teaching staff, although with the building up of an indigenous staff, there are better prospects of stability. In still others (such as India) there is a tradition of full-time teachers but their prestige is not high in professional legal circles.

218. There is a trend towards recruiting more full-time law teachers in Latin America, which some authorities have regarded as the *sine qua non* of the improvement of legal education in that continent. But it is not enough to create university posts for full-time teachers. Many allegedly full-time teachers in Africa are tending to spend more and more time in practice in order to realize economic and other benefits which the university post may not provide. In places like India, many senior teachers spend a disproportionately large part of their time examining in other universities.

219. A careful and balanced analysis of the law teacher "phenomenon" requires an examination of the problems of identifying, recruiting, training and retaining the kinds of faculty resources needed to plan and implement changes over a period of time. We believe that no real or lasting improvements in legal education can come about unless there is a "critical mass"—a core group—engaged full time over significant periods of time in that occupation.

220. We do not imply by that that there is no place for the part time teacher, especially if he is an experienced practitioner or expert in some field of importance. Complaints that are frequently made against part time teachers include the following: that successful practitioners rarely make good teachers; that there is an inevitable conflict between the demands of practice and the demands of good teaching and, where such conflicts arise, part time teachers typically put the interests of their clients above the interests of their students; that many part time teachers interpret the function of teaching narrowly, limited to what happens in the classroom, whereas the function of the teacher should be much wider than that and should, typically, include access to students on an informal basis outside teaching hours and some general contribution to the intellectual life of the institution. It has also been frequently noted that part time teachers, for one reason or another, are often as formalistic, or even more formalistic, than their full time counterparts. It is said the main justification for use of part timers—that they can draw on their experience of practice in their teaching—is not in fact satisfied.

221. While there may be some truth in these criticisms, we believe they are often overgeneralized and, for some countries at least, overstated. Nor do they describe a situation which is inevitable. Too little attention has been given to analysis of the problems of making effective use of part time teachers and there is plenty of room for imaginative thinking in this area. Practitioners and other part time teachers have a great deal to contribute to legal education but their roles should be carefully defined and safeguards against abuse of their position should exist and conditions fostered which encourage rather than discourage the exploitation of their special expertise and orientation derived from their practical experience. It is far from universally true that part time teachers have not been a success and we do not think that it is desirable that a trend be encouraged whereby use of part time teachers should be completely ended as a corollary of the development of a full time faculty. Rather the problem needs to be studied and analyzed carefully in the particular circumstances of each country and solutions worked out which ensure that some of the pitfalls of the past may be avoided. In particular, team-teaching involving cooperation between part time and full time teachers, the use of practitioners in short sharp bursts, the teaching of highly specialized courses, practical work in legal clinics, and numerous other variations from the standard model of the regular magisterial lecture need to be explored.

222. Full time teachers are said to guarantee a higher level of professionalism and a greater degree of dedication to the academic life of the law school. But there are risks of isolation and lack of contact with changing legal problems. In some situations, this fact may result in a loss of authority of the teacher in the eyes of his students or a loss of reality in teaching. Law schools and legal professions may wish to develop procedures whereby full time faculty can maintain contact with the world of professional practice.

1. *The Size of the Faculty*

223. Legal education has been inexpensive, and one reason for this is the high student-faculty ratio. This has not been universal; law schools in Anglophonic Africa, patterning themselves on the British system, have striven towards low faculty-student ratios (e.g., 1:10). On the other hand, in India and in some Latin American countries like Argentina and Mexico, there are large scale law schools in which the faculty-student ratio sometimes reaches 1:100.

224. The optimum size of a full time faculty—the appropriate ratio of teachers to students cannot, of course, be prescribed in universal terms. Indeed it is interesting that little attention has been given to this subject in any setting, even for example in North America where so much is written about

legal education. But once a law school's objectives are more precisely identified it becomes possible (though it is always difficult) to quantify, in a more rational way, the teaching (and other supporting) resources needed to deliver the kinds of programs desired. Obviously the estimate must take account of the varieties of different expertise and professional backgrounds desired from teachers; it must reflect the commitments of faculty time needed to prepare and deliver the kind of teaching desired for various different kinds of courses and projects in the curriculum (some may require greater expenditure of time to gather material or to work individually with students); it must reflect needs for small group instruction and the time required for other kinds of faculty supervision of student work (e.g., the time required to teach and supervise moot courts or "clinical" work).

225. In arriving at a formula it seems also necessary to take into account other institutional demands on the time of the teacher. In a dynamic institution the actual time spent teaching in a classroom or clinical setting plus time required for grading of examinations and other work with students will constitute only a part of a teacher's obligations. Teachers may be encouraged to devote greater time than hitherto on research, perhaps being granted blocs of free time on a rotating basis. Institutional need may include teacher time to be spent on developing new curricula and new kinds of teaching methodologies. Finally teachers should be available to carry out institutional planning and other tasks within the law school and university which may take up much time. This is especially important where significant efforts are required for study and planning of the future of legal education in a changing situation.

226. Many of the strategies for reform discussed in this report assume an increase in full-time faculty. Obviously the costs of developing an optimal ratio need to be calculated carefully — and held down. American law schools achieve savings by varying the teacher-student ratio in the classroom depending on the type of course and method used to teach it. Thus some courses are taught in very large sections while others are broken into small ones. The assistance of part time teachers, as well as the appointment of graduates as teaching fellows, can help to fill some instructional needs but with obvious caveats against excessive use of this assistance. In any event many innovations in legal education will have little chance of success unless there is general acceptance of the principle of a full-time law faculty, whose size is carefully planned.

2. *The Training of Law Teachers*

227. The full-time scholar-teacher of law needs to be equipped as a professional in three respects: as a professional lawyer, as a professional

researcher and as a professional educator. The basic qualification for a first degree in law seeks to fulfill several purposes, within which training in the tasks (and skills) of education has a low priority. While certain changes in the preparation for the basic qualification can be made to cater to the needs of the future teacher, there is a limit to this, and it is to postgraduate programs that we have to look for the training of the teacher. We have noted the trends towards the requirement of postgraduate qualifications for appointments in law schools.

228. It is doubtful whether many of the graduate programs for prospective teachers which purport to help prepare persons for law teaching add enough to the range of skills which the student has previously acquired. Research techniques are often inadequately taught, usually no major piece of non-doctrinal research is undertaken, and there is little required exposure to social science; there is no study of the methods of teaching law. In many instances the programs are too short and segmented, and there is little opportunity for contact with disciplines where there is an emphasis on methods and perspectives which differ from law. There is a need to review graduate programs in law with the purpose of reforming them. An adequate graduate program for law teachers might often include (hypothetically) the following elements among others: familiarization with some of the social sciences and with research methodology; legal education, including general pedagogical theory; the multidisciplinary study of some significant sector of social problems; a significant research project.

229. The Committee noted that the vast majority of teachers in the LDCs have had graduate studies abroad—North America, Europe, and Australia. In a few of these regions, especially in North America and England, graduate programs are offered by some law schools, but the major energies of faculty in some of these institutions are often devoted to undergraduate programs. As a general rule, there is little systematic planning and supervision of graduate students from abroad. Valuable opportunities for interdisciplinary study are often lost. Much time may be wasted on writing papers on rather standard topics, and in other ways students are not as well served as they might be.

230. If too much time is spent on study abroad, valuable opportunity for a substantial piece of research on the legal system of the student's home country may be lost. In light of this experience and the development of legal education throughout the world, it is now very important to consider the case for the establishment of facilities for graduate students in the LDCs. The better occasion for intellectual work abroad may well be after a person has spent some years of teaching in his own country and has a broad feel for law as a discipline.

231. In the past few years a number of remedial steps have been taken in the continents of our concern, addressed to those who are already in the teaching profession. These include short-term or continuing seminars on

teaching methodologies, preparation of teaching materials, socio-legal research, etc. These courses are of considerable value, but a review of them might be undertaken, and the help of both experts in various development fields and professional educators sought in the planning and revision of such seminars.

3. Recruitment and Retention

232. A number of problems arise in these two areas, some of which are common to all professional schools. We do not believe, a priori, that law teachers should only be recruited from the ranks of practitioners or recent law graduates. The sources of recruitment should be more diverse. Depending on basic objectives and curriculum the faculty might also include social scientists and other non-lawyers who can contribute special perspectives not only to students, but to their fellow teachers, and to research and institutional development.

233. We are able to discern patterns of qualifications required for faculty appointments in various regions of the world: in the Anglo-American systems a first degree in law is still the norm although in places like Nigeria postgraduate qualifications, particularly the doctorate, are increasingly becoming essential for promotion; in India no one can expect to become a Reader or Professor, unless he has a doctorate; in Latin America, the practice is varied, although some places require a doctorate before appointment to senior positions. Only in some countries is there a requirement that the appointee have practical experience; in many countries teachers have had little, if any, practical experience. Too exclusive an emphasis on academic achievements may produce a certain “sameness” and limitations within a faculty. If programs of clinical education are to be instituted, a combination of academic and practical experience is required; if greater attention is to be paid to a social science perspective, law schools should appoint persons with competence in the relevant disciplines and interest in studying the context of law.

234. As a general rule, law schools are unable to pay salaries which can compete with incomes that can be earned in private practice and (as in the case of Latin America) public service. A young recruit may initially earn as much in a university as he would outside, but very soon his contemporaries outside will receive far more income. In some countries (especially in Africa and Latin America), many talented graduates become teachers out of a sincere desire to serve and they reject professional practice as too traditional. This is usually due, in a majority of cases, to a genuine desire to teach. However, after a few years of academic work, many of these young professionals are forced by economic pressures to leave full-time teaching and become involved in other more lucrative professional tasks.

235. Moreover, the relatively low level of university salaries makes it particularly difficult to recruit successful practitioners on other than a part-time basis. This highlights a dilemma of law teacher recruitment: ideally an appointee should have some years of practice but the longer one waits to appoint such a person, the more difficult it becomes to attract him. In some countries, this has resulted in a situation where fresh graduates are snatched up, without even the benefit of graduate study. A similar situation arose in some parts of Africa, because of the primary motivation to promote a rapid Africanization of staff.

236. There is no general prescription to deal with the salary problem. It is easier to identify the desired characteristics of a teaching staff than it is to specify a model that is economically viable in all developing countries. Alternative approaches need to be experimented with, beyond the supplementation of a teaching salary with income from part-time practice or from multiple teaching jobs. Some schools pay a special bonus to law teachers along with teachers in other professions such as medicine. In some countries, there is enough prestige in law teaching to overcome to an extent the lack of financial incentives. This is particularly true of young and middle-aged practitioners who are attracted to teach part-time courses. Another device is to make law teaching a more attractive career by insuring that there is both time and opportunity for research, and encouragement of scholarship.

237. Somewhat similar problems arise in keeping the good teacher once he has been recruited. It is questionable whether full-time law teaching offers, on its own, sufficient attractions to satisfy many of the most able for a lifetime. In a discipline which has strong affinities with the world of affairs and which subscribes to beliefs in the importance of interaction between the academic and the practical, it is difficult to retain the academic cloistered in schools until normal retirement. It is necessary to give consideration to restructuring the opportunities for persons willing to commit themselves to a life-long career of teaching; to establish devices whereby the teacher, within the framework of a basic commitment to teaching and research, has opportunities for participation in other forms of professional work from time to time. Devices for the greater interchange of personnel between the university and the outside world (e.g., the government) also need to be explored.

d. Libraries

238. All reports on legal education emphasize the importance of the law library. Some compare it to the "laboratory" in schools of science. Yet despite frequent rhetoric of the library as a training place, it is clear that in many law

schools too little use is made of the facilities available. The causes of this may be attributable to the kinds of methods and literature used in legal education, to the fact that law studies are often not as demanding as they should be, and that the professors are only working on a part-time basis and preparing their courses at their homes and offices.

239. A library is an important resource for the reform of legal education. A poor library may act as a constraint on the continuous development of new materials, of problem-methods and other teaching methods concerned with skills. A poor library may isolate teachers from vital knowledge of developments in the law. At the same time, libraries are expensive. It is therefore necessary to make a realistic evaluation of the library needs. What should constitute the collection will vary from country to country. These decisions should carefully reflect the objectives of the institution. Moreover much may be gained by collaboration between the various institutions (universities and governmental) which have law libraries and perhaps by collaboration between law schools in a region and through systems for exchanges. The university library in many developing countries is the only source of legal literature for the government and private practitioners. In any event the government and the private profession should work with university libraries to develop resources for legal development over the long haul. Neglect of the problem today may add to the expense of repairing neglect in the future.

240. It is important that attention be given to procedures for maintaining the quality of the library. While lack of finance may be a serious constraint, in many instances a major problem is that inadequate machinery exists to spend wisely the resources which are available. It has sometimes been the case that law schools in Africa and Latin America do not spend their limited budgets for libraries because the faculty has developed inadequate acquisitions procedures. It is often recommended that a solution to this problem lies in the appointment of a librarian with legal qualifications, but the members of a law faculty should also have the continuing obligation to keep aware of recent publications, peruse reviews of books, and maintain a system of placing orders for new books.

241. Consideration should be given to the establishment of select centers for documentation which would serve a region or a series of countries. Over the past few years there has been a great deal of advancement in the technology of libraries in the recording and storing of literature. Such regional centers would well benefit from an examination of these developments. Similarly special bibliographies might be commissioned to deal with specialized literature on particular topics of development, legal education, etc. These should be distributed to other law schools and thus help to guide the building of library collections. It is also important to ensure that unpublished materials about the legal system of a country should find their way into the libraries of that country.

242. There has been perennial debate about whether the law library should be separated from the general university library. The case for a large degree of autonomy rests on two points: the importance of control over policies of acquisition, cataloguing, and use of law books by the faculty, and the more intensive use of the law library than of the general library. Both policies can of course be achieved without having a separate law library. A separate law library may cost more, and the expenditure may be difficult to justify where there are limited resources for library development. A separate library may also tend to keep law students from social science literature and to promote the sense that law is an esoteric discipline distinct from the mainstream of humanities and social sciences. The case for a separate library is strongest when it is shown that this may be the only way to achieve a systematic planned build-up of the collection.

c. Language

243. The Committee recognized the crucial importance of language as a factor in legal education. In many respects the issues posed by the language problem are part of the wider national policy on language. In some respects the issues are internal to the university and the initiative lies with the educationists.

244. The latter situation often occurs when there is a long established language policy and practice, especially as regards the medium of instruction at institutions of higher education. In most countries in Asia and Africa, the medium of instruction is the former metropolitan language, predominantly English or French. For all students, these would be the second if not the third languages learned. In several instances, the medium of instruction at primary and secondary schools would be a national language or a vernacular. The result often is a critical problem of comprehension on the part of students at the university level. The learning process is considerably slowed down and class discussions are difficult to conduct. These problems are of course not peculiar to legal education, but they are especially aggravated in relation to it since language is the basic tool of the law, and a proper understanding of concepts and appreciation of the richness of linguistic nuances is a foundation of good legal training. A poor command of the language of instruction leads all too readily to an excessive reliance on memory and rote learning and does little to stimulate critical faculties.

245. Little is known, at least within the context of legal education, about the effects of studying law in an indigenous language on the learning processes. It may well be that students learn more quickly and more efficiently by studying in their own first language and are able to grasp some matters much more easily by this means. On the other hand, it may also be, particularly in relation to conceptual problems, that it is harder for them to

grasp and understand the implications of what they are learning without recourse to a foreign language.

246. An even more important factor is the language of the legal system, for the function of education is to equip a lawyer to operate in the legal system. A first rate education in one language may not be of much utility if the language of the courts is another. The law schools can do little to change the language of the legal system, for such decisions are profoundly political and controversial. Institutions of legal education can, however, do something to deal with the problems of comprehension. While any fundamental improvements in this regard can only be effected through reforms in primary and secondary education, some remedial action can be provided in the law schools. There are few studies which have looked at the problem, and it would be useful to undertake assessments of the dimensions of the problem in a selected number of countries with a view to identifying possible strategies for remedial action.

247. The greater challenge to legal educators comes through the adoption of a local language as the medium of instruction. This has been happening in a number of countries recently. Some Indian law schools now teach in Hindi; in Sri Lanka there are now three streams, Sinhala, Tamil and English; in the Sudan much of the teaching is in Arabic, and it is intended that instruction in Ethiopia and Tanzania will eventually be in the Amharic and Swahili languages, respectively. In Indonesia the law schools have for a number of years now taught in Bahasa Indonesia. The switch in the language of instruction is generally part of a wider national policy to change the language of the legal system and of education. There can be various reasons for such policy—the local language may be intended to be used as a vehicle for national unity (Tanzania, Indonesia); it may be a manifestation of nationalism (Sudan); it may be used in effect to reallocate resources or to undermine the dominant position of one ethnic group (especially in plural societies). But in each case there is a further important consideration—a legal system which operates in a language which is not understood by the majority of the citizens may fail to inspire confidence in its fairness. The parties to a litigation may fail to understand the proceedings (even more so than in other countries). Countries which are striving towards models of popular participation in the machinery of justice find the use of the local language to be an essential preliminary.

248. The Committee did not debate the merits of such policies. We considered some of the challenges to the legal educators when changes are initiated. We were struck by the fact that very little attention has so far been devoted to the relationship between law, education and national language. Such treatment as there has been has tended to concentrate on questions such as the problem of finding exact equivalents in indigenous languages to highly sophisticated legal terms imported from Western legal systems, whereas some of the more far-reaching effects of the language problem have tended to

be neglected. It is likely that more countries will shift to a local language and the impact on legal education will be great. This underlines the need to undertake a number of studies in this area. It is important to make known the steps that have been taken by some countries (e.g., Israel, Indonesia) to translate the laws into the local language, to prepare legal lexicons, etc., and to evaluate such experiences.

249. The Committee drew attention to some of the likely consequences of a shift in the language of instruction. Unless there is a tradition of legal literature in the local language, there will be problems of teaching materials. A great deal of translation will have to be done, and unless paraprofessionals are trained for the task, valuable and scarce time of good scholars will inevitably be taken up in the exercise. If there are multiple local languages, even more resources have to be expended; and money may be required for a larger staff (as in Sri Lanka). If the previous sources of law continue to be that of the metropolitan country, the students are, in course of time, likely to be cut off from the primary sources (as seems to be happening in Indonesia). This may have negative consequences both for scholarship and teaching. In the initial stages it is likely that scholars who can teach in the local language will be few; the base for recruitment will become narrower, with linguistic ability rather than legal scholarship as the chief criterion. Teaching may be affected in another way; for instance, it may be the case that a law school which had been moving in the direction of more and more teaching by discussion, research projects and papers may revert to situations in which students rely exclusively or almost exclusively on the mimeographed lecture notes of their lecturers. They may, in short, become much more dependent on the teacher and on a very limited range of written materials. If the literature in the local language is uneven between various subject areas, there may be a tendency to rely overmuch on areas where there is the literature, regardless of relative importance and relevance.

250. The above remarks are not intended to suggest opposition to the policy of instruction in the local language. Indeed, as indicated, there are strong reasons for sympathy to that policy. Quite apart from making the law and the legal system more accessible to the public, it may help foster a genuine tradition of local scholarship and the adaptation of the law to local contingencies with the freedom from the otherwise ever pervading influence of "metropolitan" derived rules. At the same time, it remains, of course, vital that through foreign language education and overseas study a sizeable proportion of the law-trained persons in a developing country have access to and continuing contacts with the legal experience, personnel and literature of other important parts of the world. Many of the problems discussed above are hopefully of a transitional nature, and attention is drawn to them to highlight the need for planning and preparation and to point out that there exists in some countries, by now, considerable experience which could be studied with benefit.

f. Finance: Budgets--Their Planning and Administration

251. Generally, legal education is considered to be cheap, at least when compared to other types of higher education. This is especially true when the publication of legal literature is rare, when the professors are practicing lawyers who only teach on a part-time basis for reasons of personal prestige and who receive insignificant salaries, when the library has very few books, when research is practically non-existent, when there are no systems of advice and counselling for students and when the learning process of the student is almost exclusively dependent on his own efforts at memorization.

252. But if we want to eliminate these evils and begin a process of reform with concrete objectives, legal education will become more expensive. It is practically impossible to achieve the goals discussed in this report, in particular, to succeed in making legal education relevant to the development of society, unless funds are available that, once budgeted and appropriated, will permit the implementation of indispensable changes in legal education.

253. Many academics are disdainful of problems of finance and administration. In some settings the work of budgeting and administration is accorded an inferior status—perhaps on the theory that this approach helps to maintain academic freedom. Yet universities and their faculties are, corporately, accountable for a vastly increased fraction of a society's resources. A careful analysis of how they use these resources may be a corollary to the autonomy and discretion delegated to them.

254. If in fact a law faculty claims the right and power to develop programs and standards of legal education, it may be unrealistic to gloss over problems of finance, budgeting and administering. It may be useful to see a budget as a vital component of a plan (although more often than not the planning assumptions in budgets are not made very explicit). The budget in effect allocates resources to achieve objectives.

255. Thus, a hypothetical budget might be directed *inter alia* towards these strategies and objectives: provision for teaching the "core curriculum" in modules of instruction where the average student-teacher ratio should be no more than X to 1; provision for teaching skills (identified with care) at a ratio of Y to 1, and clinical instruction and intern training at ratios of Z to 1; provision for time to be allocated to some (all) full-time teachers for preparation of literature thought to be necessary to develop instructional objectives; provision of additional time necessary to develop other research; additional teaching resources needed to attain other educational objectives (e.g., curriculum planning); resources to enable advanced training of teachers (e.g., via graduate study, special workshops) and better orientation of students to changes in teaching methods; to secure consultation and evaluation; to make possible typing and printing of material; to make possible empirical surveys and processing of data (e.g., in connection with studies of the legal profession or other projects); to enable other strategies

such as the creation of special programs or the publication of a legal journal to be carried out.

256. This approach embodies a more rational quantification of the manpower needed for teaching and other services, and it enables us to find formulae for calculating various kinds of costs. It begins to focus on the crucial problem of allocations of faculty energy and time—in order to pursue various strategies. It relates particular costs to particular purposes.

257. Budgeting and administration of funds spent will undoubtedly become a more complicated task as pressures develop for clarification of goals, better auditing and evaluation of results. The case for more expenditure on legal education cannot be made simply by arguing, as we have, that legal education, if strengthened and reformed in various ways, will contribute more usefully to society. Basic goals to do just that should be stated; educational and research strategies directed towards these goals should be stated; learning objectives (capacities to be produced) should be stated; resources to enable these tasks should be identified—and methods formulated to calculate and aggregate these tasks.

258. This is by no means all of the problem. It is very important to study devices to cut costs and generate efficiencies (without sacrifice of vital interests). We have suggested some lines of analysis; the use of technical learning aids and examination methods which may avoid wasteful uses of faculty time, the use of new technologies for developing libraries and materials. The subject of finance, in itself, is worthy of more detailed study as part of a broader program to produce a modern, useful body of literature on legal education and development.

VI. Some Final Observations: The Importance of Studying Legal Education

259. Education is, of course, a field of study in itself, and it is an important sector of development, like agriculture and industry. In recent years **the** study of problems of higher education has been seen as an important area for development-oriented research, and there has been a growing emphasis on comparative approaches. Such studies are thought to provide important tools for educational planners and policy-makers.

260. Comparative studies are particularly useful when they identify differences between systems of similar activity and, at the same time, suggest explanations for the differences found. They help us to discern **key factors**—or variables—which influence the character of the system. In that way they help us, by providing not only insights, but also data for better theory building.

261. Recent studies of higher education have been directed at such topics as the development of methodologies and institutional mechanisms for planning and decision-making; the development of non-traditional forms of higher education ("open" universities, external degrees, systems of "recurrent" and "continuing" education); broadening access to and equality of opportunity; the use of new technologies; the costs and financing of different programs; curriculum planning; institutional research (and its linkage with the official decision-making processes); the governance and accountability of institutions of higher education.

262. Some of these topics might be fruitfully explored from the perspectives and problems of legal education. It might be useful if international organizations concerned with law **and/or** higher education could help to catalyze the appropriate interdisciplinary projects.

263. In our report we have also identified some other topics which may be particularly important to planning development of legal education. For example, we have stressed the importance of studying law roles, the usage of law trained people, the work and **socio-economic** character and ideologies of lawyers. We have suggested the importance (in some countries) of studying large-scale legal education—explanations for the phenomena, the social functions, and effects on the legal and social system. We have suggested various hypotheses about language policies. We have suggested that it is important to know more about the legal acculturation and socialization of different groups in society—in order to understand better the needs for and

problems of developing popular education about law. We have suggested that it may be very important to study experience with and prospects for developing full-time law teaching professions in developing countries.

264. These are, of course, only illustrative subjects. The main point is to stress again the need for more research on legal education. It has been a neglected field of development studies, a neglected field of legal scholarship.

Appendix I

Biographical Data on Members of The Committee

Jorge Avendaño V., apart from his independent law practice, is presently Professor of Law as well as General Counsel to the National Commission of Social Property, a governmental agency in charge of implementing self-managed enterprises in Peru. He has taught at the Law School of the Catholic University of Peru since 1957. He was Dean of that Law School (1964–1970) and Pro-Rector of the University (1970–1973). Mr. Avendaño has written numerous articles on Property Law and Expropriation. As an Honorary Fellow, he has done research at the University of Wisconsin Law School. He is President of the Consejo Latinoamericano de Derecho y Desarrollo.

Andrés Cúneo Macchiavello, is Professor at Universidad de Chile and Católica de Chile in Santiago. He has taught at the Universidad Católica de Valparaíso. He has written *Materiales para un Estudio del Fenómeno Jurídico* (Materials for a Study of the Legal Phenomenon), *Editorial Jurídica de Chile*, (1974), and various articles mostly centered on legal education.

Carlos Alberto Menezes Direito, is Professor of Constitutional Law at the Catholic University of Rio de Janeiro. He is the former Director of the Law Faculty, former Dean of the Center for Social Sciences and former Vice-Rector of Development of the Catholic University of Rio de Janeiro. He has written "O Estado Moderno e a Proteção dos Direitos do Homem", "As transformações da Ordem Política" (with Celso de A. Mello e João Mestieri), "Estudo de Problemas Brasileiros" (with other colleagues), and various articles on constitutional problems. He is an effective member of the Instituto dos Advogados Brasileiros and currently acts as member of the Conselho Secional do Estado da Guanabara da Ordem dos Advogados do Brasil.

Yash P. Ghai, was educated at Oxford and Harvard. He has taught at Oxford, Dares Salaam and Yale and has been the Director of Research, International Legal Center. Currently he is a Research Fellow at the Faculty of Law, Uppsala University. He has written (with J. P. W. B. McAuslan) *Public Law and Political Change in Kenya*, and (with D. P. Ghai) *Portrait of a Minority: Asians in East Africa*; and various articles on law in East Africa, and the East African Community. He has acted as a constitutional consultant to the Government of Papua New Guinea, and as a legal consultant to the East African Community. He has acted as an external examiner to several universities, and was asked in 1971 to evaluate university legal education in Ethiopia.

John N. Hazard, is Professor of Public Law at Columbia University. He was President of the International Association of Legal Science (1968–70), and is currently President of the American Foreign Law Association and the American Branch of the International Law Association. He has authored the following books: *Law and Social Change in U.S.S.R.*, *Settling Disputes in Soviet Society*, *The Soviet System of Government*, and *Communists and Their Law* and numerous articles on law in socialist countries.

David M. Helfeld, is currently directing a study for the Governor of Puerto Rico on collective bargaining in the public service. He has visited and consulted with many Law Schools in Latin America and has written on legal education in Latin America. He has taught at and served as Dean, School of Law, University of Puerto Rico. Mr. Helfeld has also served as a consultant to the Virgin Islands' Constitutional Convention.

John B. Howard has been President of the International Legal Center since 1967. At the Ford Foundation (1951–1967) he worked for twelve years as Director of the International Training and Research Program and for two earlier years as Deputy Director and Director of the Division of Overseas Activities. With the U.S. Government (1942–1951) he served in the Department of State as Special Assistant to Secretary of State Dean Acheson, Deputy Chief of the first Marshall Plan Mission to Greece and Assistant Legal Advisor in charge of UN affairs and in various other capacities. He holds a J.D. from the University of Chicago Law School and a Ph.D. from Harvard University, and was a Junior Fellow in the Harvard Society of Fellows.

Alfred B. Kasunmu, is Professor and Dean of the Faculty of Law, University of Lagos. He has taught at the University of Ife, Nigeria. His publications include *Nigerian Family Law* (with J.

W. Salacuse) and *Alienation of Family Property in Southern Nigeria* (with R. W. James) plus a number of articles in various periodicals.

A. T. Markose, is Professor and Head of the Department of Law at the University of Cochin. He was formerly the Principal of the Law College, **Ernakulam**; and Founder Research Director of the Indian Law Institute (195843). His special interests are in Constitutional and Administrative Law. He was Deputy Judge, International Administrative Tribunal, Geneva; Senior Fellow, Commonwealth Universities Scholarships Commission, 1964–65; Advocate; Research Fellow, Harvard Law School, 1956–57; U.G.C. National Lecturer, 1971–72. His publications include *Judicial Control of Administrative Action in India*, 1956; *Public Law: Some Aspects*, 1971 and many articles in books and journals, Indian and foreign.

Kéba M'Baye, has served as Chief Justice of the Supreme Court of Senegal since 1964 and prior to that in various governmental capacities and as a counsellor to the Supreme Court since its inception. He has represented Senegal in the United Nations Commission On Human Rights and in many other international organizations and meetings. He studied law at the University of Paris and has published numerous articles on legal subjects.

Mochtar Kusumaatmadja, is Minister of Justice of the Republic of Indonesia and Dean of the Faculty of Law of the University of **Pajajaran**. He has studied law at the University of Indonesia, Djakarta (SH 1955) and the University of **Pajajaran** (JSD 1962) and Yale (LLM 1955) and as a special student at Harvard (196445) and a Fellow at the University of Chicago (1965–1966). He has published two books and numerous articles in the field of international law and has served on numerous Indonesian delegations to various international proceedings. He has taught law for a number of years and has been active in legal education in Indonesia, organizing and chairing a consortium of law schools to improve programs and standards of legal education. He has published a number of articles on legal education including *Legal Education in Indonesia: Challenge and Response* which was used as a working paper by this Committee.

James C. N. Paul, is Professor of Law (and former Dean) of the Law School of Rutgers, The State University of New Jersey, and Adjunct Professor of Law at Columbia University and Director of Research at the International Legal Center. During 1963–1969 he served as professor and founding dean of the Faculty of Law, of **Haile Sellassie University** (now the National University of Ethiopia) and later as Vice President for Academic Affairs of the University. He has also served as Executive Vice President of Education and World Affairs in New York and was a member of an advisory commission on legal education to the University of Botswana, Lesotho and Swaziland in 1971. He has traveled extensively in Africa, as a consultant and external examiner. He is the author of several books and a number of articles on various legal subjects, mostly centering on constitutional and public law.

Michel Pédamon, is presently professor of the University of Law, Economic and Social Sciences of Paris (Paris 2). He had his higher education at **Poitiers** and at Paris, as well as at Bonn, Germany. *Agrégé* of the faculty of law in 1961, he taught at the University of Madagascar from 1961 to 1967; from 1964 to 1967 he was dean of the faculty of law. He has written various articles on Malgache law and on the law of developing countries. He has directed a study undertaken by the International Association of Juridical Sciences, at the request of UNESCO, on legal education in the countries of Africa south of the Sahara.

William Twining, is Professor of Law at the University of Warwick, England. He studied law at Oxford and Chicago Universities. He has taught law—notably jurisprudence—at the University of Khartoum (1958–1961) and at the Faculty of Law, Dares Salaam of the University of East Africa (1961–1965) and at Queen's University, Belfast (1965–72). He served in 1971 as member of a commission to advise the University of Botswana, Lesotho and Swaziland on legal education, and has served as an external examiner and consultant on legal education in numerous other countries in Africa and as a visiting professor at various American Universities. He has written many articles in the fields of jurisprudence and legal education and recently completed a book—*Karl Llewellyn and the Realist Movement*. He is also co-editor of a series of new books being published in England under the general title "Law in Context".

Arthur Taylor von Mehren, is Professor at Harvard Law School concentrating on comparative law and private international law. He has written *The Civil Law System: Cases and Materials for the Comparative Study of Law*; *The Law of Multistate Problems: Cases and Materials on Conflict of Laws* (with D. Trautman); and numerous articles on comparative law and private international law. He edited and contributed to *Law in Japan: The Legal Order in a Changing Society*. As a Fulbright Scholar, he has taught and done research in Japan and in Italy.

He has also taught at the Indian Law Institute, New Delhi, and served as Consultant on Legal Education to the Ford Foundation, New Delhi.

J. H. Wootten, is an Australian citizen. He taught at the Australian School of Pacific Administration from 1945 to 1951. He practised as a barrister in Sydney until 1973, having become a Queen's Counsel in 1966. From 1969 to 1973 he was Foundation Dean and Professor of the Law School at the University of New South Wales, and in 1973 he became a Justice of the Supreme Court of New South Wales. In 1973 he was a member of the Provisional Board of Governors of the new College of Law in Sydney and in 1974 joined the Council of the Institute of Technology which is to offer a professional law degree. From 1970 to 1973 he was foundation President of the Aboriginal Legal Service.

Richard de Friend, who served as Research Associate and Consultant to the Committee, is presently a lecturer in law at the University of Kent, Canterbury and has taught at the London School of Economics and the University of Warwick and has worked for the Citizens Advice Bureaux in London. He completed his first degree at the University of Kent, in 1972 took a Masters Degree at the London School of Economics and in 1972-73 was a graduate fellow at Yale Law School.

Appendix II

List of Papers and Reports prepared for the Committee

- Legal Education in Latin America*, Andres Cúneo Macchiavello, June 1972.
- Legal Education in Anglophonic Africa*, Yash P. Ghai, May 26, 1972.
- The Teaching of Law in Francophonic Africa*, Michel Pédamon, June 1972.
- Legal Education for Socialist Development in Africa*, John N. Hazard, May 17, 1972.
- Legal Education and Development Planning: Some Notes on Literature Concerned with African Experience*, James C. N. Paul, November 1972.
- The Law Schools and the Behavioral Sciences*, Stewart Macaulay, October 1972.
- Legal Education in France*, Michel Pédamon, October 1972.
- Notes on Legal Education in China and North Korea*, Jerome Alan Cohen, October 1972.
- The Role of Legal Education in Development: A Point of View*, John Howard, October 1972.
- Indian Legal Education: Variations on an Inheritance*, A. T. Markose, October 1972.
- The Pedagogic Training of a Law Faculty*, Frank R. Strong, October 1972 (article prepared for publication in a future issue of *Journal of Legal Education*).
- Legal Education in Latin America — Bibliography*, prepared by Andres Cuneo Macchiavello, November 1972.
- Legal Aid and the Law Student in the Developing Nations*, Barry Metzger, 1972.
- Legal Education for Socialism*, John N. Hazard, May 1973.
- Socialism — Lax) — Legal Education*, Zygmunt Rybicki and Zbigniew Rudnicki, May 1973.
- International Collaboration in Legal Education*, J. B. Howard, September 4, 1973.

This is a report of an international committee of legal scholars appointed by the International Legal Center to study the progress and problems of legal education in the developing regions of the world.

The report argues that the importance of legal education, both as an educational experience and as a source of valuable practical skills for the development of a society, has been consistently underestimated in the developing countries. At the same time, the report urges that legal education has to be planned within the context of and related to the local social and developmental situation, taking into account such factors as differences in the use of formal laws and legal processes and in the perception of their value. It is necessary to approach law as a discipline which helps to understand and solve problems of development.

The report identifies some problems that are likely to be important concerns of legal education in the coming years: the problem of language of education and the legal system in plural societies or those with an official metropolitan language, the problem of large scale legal education when the law schools take or have to take more students than they can give reasonable instruction to or who can be absorbed in the legal system, the problem of recruitment, retention and career of law teachers, the problems of legal literature, especially in the smaller countries. It argues that legal education be informed by new developments in the planning of a system of education and in pedagogical methods.

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