RESEARCH ON LEGAL SERVICES AND POVERTY: ITS RELEVANCE TO THE DESIGN OF LEGAL SERVICES PROGRAMS IN DEVELOPING COUNTRIES

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I. INTRODUCTION

Conceptual clarifications are essential at the outset of any evaluation of research on legal services, a subject inherently fraught with uncertainties. Clarifying terms is probably the oldest duty required by methodology, since legal and sociological terms often fuse description, evaluation, and prescription. Descriptions frequently embody subjective elements and so, often, provide a clear indication of the author's substantive biases. A candid and explicit admission of those biases, accompanied by an awareness of the limitations they inevitably place upon intellectual analysis, is also essential if one is seeking reasoned assessment of such analysis. We begin, therefore, by explicating the terminology and taxonomy used in the following pages.

For purposes of this Article it is unnecessary to become embroiled in the lengthy, and often arid, controversy involved in attempting to define "development" in operational terms.[1] Instead, Unger's formulation of development as the sum of social transformations associated with the intensification of economic growth and, more narrowly, with industrialization is adopted.[2] Although the term "developing countries" must be used, it is not employed to imply any sense of identical attributes shared by such countries, and the developing countries are not perceived as a single, homogenous unit. To assist a more precise analysis, some of the bases for differentiation among the developing countries will be identified below.

The term "legal aid" refers to the provision of the services of the legal

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1. For the methodological problems involved in attempting to measure development, see *Special Issue on Development Indicators*, 8 J. OF DEV. STUDIES (1972).

2. R. Unger, The Place of Law in "Modern" Society: Sketch for an Interpretation 5 (unpublished).

profession to ensure that no individual is deprived of the right to receive legal advice (or, where necessary, legal representation before courts or tribunals) for lack of financial resources. The term "legal services" describes measures taken to ensure that the operation of the legal system does not vary with the income level, wealth, or resources of the individual. The term includes any of the following types of activities:

(1) legal aid as defined above;
(2) asserting legal rights that, although recognized in law, remain unimplemented;
(3) assuring more positive and sympathetic implementation of legal policies affecting the poor;
(4) increasing the fairness and reasonableness of adjudicative procedures and conciliation mechanisms;
(5) facilitating the development of legal rights in areas in which the law is now vague or biased against the poor; or
(6) assisting the creation of contractual relations, legal associations, or community organization designed to maximize the opportunities and benefits provided by law.[3]

"Lawyer" is defined as a member of the legal profession, and the term "profession" is used in its sociological sense as clearly distinct from "occupation."[4] Nonlawyers who provide legal services will be referred to as "legal intermediaries." The legal system is viewed as consisting essentially of subordinate subsystems in society and as being formed, molded, limited, and inspired by more fundamentally important political, economic, and cultural determinants.[5] The formal legal system must be distinguished from the operative legal system,[6] and, indeed, it is in this distinction, as applied to the dispute settlement process, that a substantial bias is admitted. This bias takes the form of the assumption (entirely untested and therefore purely speculative) that the poor find the less formal levels of the legal system more accessible and are able to secure greater satisfaction of their problems at those levels. Another untested assumption underlies much of the thinking embodied in this Article. It is

3. Carlin, Howard & Messinger, *Civil Justice and the Poor—Issues for Sociological Research*, 1 L. & Soc'y Rev. 9, 60-61 (1966).

4. For theoretical insights into the sociology of professions (applicable to the study of the legal profession), see Goode, *Community within a Community: The Professions*, 22 Am. Sociological Rev. 194 (1957).

5. D. Lev, Legal Research in Indonesia: Problems and Possibilities, December 1972 (unpublished).

6. B. Metzger, Legal Services in Asia, October 1972 (unpublished).

that a consensual mode of dispute settlement (conciliation) is, by and large, more conducive to the implementation of developmental goals than a coercive mode of dispute settlement (adjudication).[7]

II. Theoretical Speculation

With one notable exception,[8] the literature of research on legal services is devoid of attempts to examine the relationship between the provision of legal services and the implementation of development planning. Metzger has attempted to examine the impact of economic development upon the demand for legal services, but only tangential attempts have been made to trace the impact of the supply of legal services upon economic development.[9] There is, in fact, a striking scarcity of research on the effect of legal systems and the legal professions upon the development process in the third world. Nevertheless, there is a widely shared presumption that *ineffective* legal systems constitute a serious deterrent to development. Law and development theorists still agonize over precise theoretical formulations of the capacity of a system of legal controls to bring about massive shifts and large-scale transformations in the social structure, compared with the capacity and limits of a system of other social controls to achieve the same end. In its present state, however, the law and development literature tends to lend credibility to the view that the legal system can act in a supportive, reinforcing role to assist the attainment of development goals and that certain "types" of legal systems (or more accurately, certain types of legal forms and institutions) become necessary as societies move towards the complexity inevitable upon the attainment of certain development aims and targets. At the risk of oversimplification (and subject to empirical verification), the relationship between the legal system and the development process may be hypothesized as follows:

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7. R. Dahrendorf, Class and Class Conflict in Industrial Society 157-205 (1959).

8. B. Metzger, Legal Services to the Poor and National Development in the Developing Countries, October 1972 (unpublished).

9. Metzger suggests that provision of legal services to the poor in the developing countries can contribute as well to:

(1) the creation of a unified national legal system;
(2) the more effective implementation of existing social welfare and regulatory legislation intended to benefit the poor;
(3) greater public accountability of the government and bureaucracy;
(4) greater public participation in the governmental process; and
(5) strengthening the legal profession.

Id. at 3.

(1) that an effective legal system can facilitate the implementation of development planning;[10]
(2) that the absence of an *effective legal system* slows the pace of development.

An effective legal system may be described as one in which there exists a high degree of congruence between legal rules and human conduct. Thus, an effective legal system will be characterized by minimal disparity between the formal legal system and the operative legal system. Arguably, the effectiveness of a legal system is secured by:

(1) the intelligibility of its legal rules;
(2) a high level of public knowledge of the content of the legal rules;
(3) efficient and effective mobilization of the legal rules through
  (a) a committed administration; and
  (b) citizen involvement and participation in the mobilization process;[11]
(4) dispute settlement mechanisms that are both easily accessible to the public and effective in their resolution of disputes; and
(5) a widely shared perception by individuals of the effectiveness of the legal rules and institutions.

Legal services programs can substantially help achieve these five goals; therefore, to the extent that they increase the effectiveness of the legal system, legal services contribute to the development effort. Depending upon their design and implementation, legal service programs can certainly assist in the dissemination of knowledge of legal rules and rights among sections of the society that otherwise would not have such knowledge. Legal service programs can thus encourage the mobilization of law by providing the information without which individuals might not be able to assert their rights. These programs should also increase access of the poor to dispute settlement mechanisms and, to the extent the poor are helped to vindicate their legal rights, create a sense of the efficacy of seeking recourse through the legal system, thus altering the perceptions of the poor that the formal system of legal justice is biased against them. Moreover, certain steps taken to make the legal sys-

10. Existing empirical evidence, however, does not enable us to state categorically whether or not an effective legal system is a necessary prerequisite to development.

11. Black, *The Mobilization of Law*, 2 J. OF LEGAL STUDIES 125-26, 128 (1973), defines "the mobilization of law" as the process by which a legal system acquires its cases. The mobilization process may be reactive (when the legal agency acts in reaction to a citizen's complaint) or proactive (when the legal agency acts upon its own initiative).

tem more effective may, themselves, have legal service side effects, such as simplifying and clarifying legal rules or facilitating the establishment of a system of popular justice.

III. The Effectiveness of Legal Systems in Developing Countries

The preceding argument that the increased provision of legal services is justified because it makes the legal system more effective, may be evaluated by examining the legal systems of developing countries. For this purpose it is useful to differentiate among the developing countries on historical, political, social, and economic grounds.

From an historical point of view, countries in the immediate post-colonial phase can be distinguished from those in a later phase. We may hypothesize that countries in the immediate post-colonial phase share a conception of the instrumentalism of law and the formal legal system.[12] Several explanations may indicate the plausibility of the hypothesis (and its susceptibility to empirical verification). Most colonial administrations have successfully demonstrated the potential of the legal system as a control mechanism. Consequently, governments that have only recently shaken off the colonial yoke are confronted with a major policy decision. Should they attempt to weaken the effectiveness of the legal system because the system's potential for oppression and tyranny is antithetical to conceptions of freedom and liberty that usually usher in independence? Or, should they attempt to retain the effectiveness of the system and use it, not for the purposes given priority by the colonial administration, but rather to implement development planning? On the other hand, countries that have enjoyed independence for a long period are likely to have less effective legal systems. These countries usually were left, as a colonial legacy, a legal system with alien institutions, often manned by an elite group that, at best, only partially shared the post-independence set of values. The waning prestige of the judiciary in the African states and the Privy Council as a final court of appeal for former British colonies[13] exemplifies the declining influence of alien legal institutions during the post-independence phase. Governments in these

12. Y. Ghai, Institutions for Law and Development Research: Some African Proposals, January 1973 (unpublished).

13. Marshall, *The Judicial Committee of the Privy Council: A Waning Jurisdiction*, 13 Int'l & Comp. L.Q. 697 (1964).

countries may well be seeking ways to restore confidence in the legal system and thereby increase its effectiveness.

Another historical basis for differentiation is the nature of the transition from colony to independent statehood. Where the transition has occurred smoothly and gradually, the inherited legal system is likely to retain its effectiveness and saliency. But where the break was sudden, or involved tactics such as the civil disobedience movement that brought India its independence, the effectiveness of the inherited legal system (if retained) is likely to be low.

Countries seeking diversification of their economy can be differentiated from those that have already achieved, in significant measure, a degree of industrialization. Both categories need a more effective legal system, the former because implementation of economic planning goals is imperative, and the latter because, as a society moves into industrialization, fresh legal needs are created both de novo and in areas formerly subjected to social control mechanisms that have been weakened by urbanization.

From a social point of view, countries seeking to achieve social modernization (and here an effective legal system is crucial) can be differentiated from those seeking the restoration of indigenous values. As far as the latter are concerned, the move towards restoration of indigenous values and institutions may be prompted by ideological factors, or the need to make the system less alien, more intelligible, and thereby more effective. In some cases the move may even occur because the inherited legal system has become largely irrelevant and dysfunctional.

From a political perspective, countries that have enjoyed political stability since independence (whose legal systems are likely to be effective) can be differentiated from those that have not. In the latter case, confusion about the legitimacy of the ruling government may have created doubts about the legitimacy of the legal system, leading to a loss of confidence in the latter.

The scale of a country may also be a significant variable. Geographic vastness of a country or high population density may be factors making it difficult to retain an effective legal system due to the problems of supervision over remote areas or problems created by an overwhelming population. Heterogeneity of population may also render the task of achieving an effective legal system more difficult.

The above, impressionalistic taxonomy should make clear the analytical hazard of generalizing about developing countries or treating them

as a homogenous unit. Research directed toward producing a more scientific and precise taxonomy is likely to help not only in the design of legal service programs in developing countries, but also in any further theorizing about law, development, and the effectiveness of legal systems.

IV. Areas of Research Relevant to Legal Services Programs

This section of the Article is meant to be merely suggestive of the range of areas (and kinds of studies within each) in which research can contribute specifically to the more effective provision of legal services. The focus of research may be any one of the following: poverty, legal needs, the client in need of legal services, the agency providing the service, or the legal system and rules and institutions within it.

A. Poverty

Sociological research on poverty in western countries has usually begun by treating the following questions:

(1) Who are the poor?
(2) What are the causes of poverty, and what are the issues involved in eliminating poverty?
(3) What are the techniques (legal and nonlegal) available to secure the elimination of poverty?

These are, undoubtedly, fundamental questions; as such, they have cross-cultural salience, although the answers predictably would vary from country to country. Defining and measuring poverty and identifying the poor appear to be a logical first step in the design of legal services programs. A sociologist's approach to this "first step"[14] may be quite different from the approach of a development planner. Instead of becoming embroiled in definitional problems such as where and how to draw the poverty line, it might prove more fruitful if research in the

14. Sociological literature has traditionally followed two approaches: the "class" approach, which emphasizes economic role and income; and the "cultural" or "status" approach, which deals with styles of life. A combination of the two approaches is adopted by Miller, *The American Lower Classes: A Typological Approach*, in New Perspectives on Poverty 22 (A. Shostak & W. Gomberg eds. 1965). He draws four categories: (1) the stable poor, (2) the strained poor, (3) the copers, (4) the unstable poor. For an approach that does not treat poverty as a phenomenologically separate category, but deals with it as a social category that emerges through societal definition, see Coser, *The Sociology of Poverty*, 13 Soc. Prob. 140 (1965).

developing countries proceeded from a plan-centered perspective. This would mean starting with an attempt at identifying the causes of poverty, the issues involved in the elimination of poverty in its specific societal context, and the *specific problem areas* in which the development effort is directed towards those issues. In India, for example, rural poverty may be attributed to an unsatisfactory land tenure system, rural indebtedness caused by an unsatisfactory rural credit system, lack of proper irrigation facilities, and inefficient methods of cultivation. Having identified the causes, the next step would involve identifying the techniques available to eliminate the causes and analyzing those techniques the development planners have chosen to adopt. For example, let us assume that in India the government has decided that the techniques to be adopted are reform of the land tenure system, redistribution of land, organizing rural credit institutions, setting up multipurpose hydroelectric projects, and disseminating information on the most efficient methods of production. The next stage would be to determine which of these techniques would be implemented most efficiently through the legal system (for example, land tenure, control of rural credit). Finally, a legal service program would be structured around these specific techniques (thus, specialized legal service agencies could be set up at the rural level to enable the assertion, and to secure the enjoyment, of the newly-created legal rights).

This type of "sectorial" approach[15] is based upon a realization that the poor are not a heterogeneous body. The groups that make up the poor have in common the characteristic that they lack command of goods and services. The dissimilarities among the groups require, however, that different techniques for eliminating poverty be applied to each group. Specialized legal service agencies catering to distinct categories of the poor by performing specialized services aimed at assisting the application of a specific technique for the elimination of poverty could prove more effective and manageable than legal service agencies more general in their field of operation.[16] Perhaps the sort of specialization sought may even be achieved through the establishment of new institutional structures or through the adoption of revised procedures in existing structures (such as tribunals operating not only reactively, but also proactively, with procedures that are investigative rather than adversary).

15. Metzger identifies some of the "sectors" of poverty in Asia as follows: land problems, discrimination, employment, criminal matters, and family law problems. B. Metzger, *supra* note 6, at 14.

16. *See, e.g.*, B. CURRAN, LEGAL SERVICES FOR SPECIAL GROUPS (1972).

B. Legal Need Studies

Without knowing the kinds of legal problems the poor have and the appropriate responses to them, it is impossible to project accurately the number of times consultation with a lawyer will be needed, how much and what kinds of legal services will be required, or what it will cost to provide these services. Thus research into the legal needs of the poor seems a logical prerequisite to the effective and efficient organization of a comprehensive legal services program.[17] There is, however, a common view that research efforts are mere excuses for delaying necessary action and a waste of time since the legal needs of the poor are, given the practical limitations of funding and other resources, too large to be met completely by any legal services program. Proponents of this view, however, usually fail to appreciate that rarely is the choice so starkly posed between establishing a program actually providing services and setting up a research project on legal need. While research undoubtedly would complement a legal services program, it need not either compete for scarce funding with such a program or act as an obstacle to the creation of a program. Ideally, research should precede the establishment of a legal services program, but, given the practical urgencies of the problems of poverty, the establishment of a service-providing program need not be delayed until research on need has been conducted. If the legal services program is organized with sufficient flexibility, the results of research into legal need can always be treated as a part of "evaluative research." In a sense, "evaluative research" may be viewed as a phase in systematic program development—program implementation followed by an evaluation phase, which in turn contributes to further planning and program refinement.

Research into the legal needs of the poor should identify the existing needs and the urgency or seriousness of each. It would isolate the categories and frequency of situations involving need, perhaps comparing them with the needs of the nonpoor. This research also might attempt to identify:

(1) the categories of problems the poor perceive as being "legal";
(2) the extent to which the poor had recourse to legal intermediaries, and the result;

17. For typical studies on the legal needs of the poor, see F. MARKS, THE LEGAL NEEDS OF THE POOR: A CRITICAL ANALYSIS (1971); P. STOLZ, THE LEGAL NEEDS OF THE PUBLIC: A SURVEY ANALYSIS (1968); Sykes, *Legal Needs of the Poor in the City of Denver*, 4 L. & SOC'Y REV. 255 (1969); Note, *The Legal Problems of the Poor*, 1969 DUKE L.J. 495.

(3) which categories of problems, not perceived by the poor as being "legal," are capable of being resolved through the legal system;
(4) the knowledge and perceptions of the poor of the legal rights and procedures relevant to their specific problems;
(5) the perceptions of the poor of the possible effectiveness of legal intermediaries on their behalf in specific problems;
(6) the perceptions by the poor of nonlawyer and nonlegal alternatives available for the solution of their specific problems.

A study along these lines not only would provide information about "legal need," but also could help provide insights into various relationships such as:

(1) the impact of knowledge of the poor about legal resources and problem-solving styles upon the use of such resources and styles;
(2) the perceptions of the poor of the effectiveness of the legal system;
(3) the perceptions of the poor of the accessibility of the legal system.

These insights could prove invaluable to development planners who are generally concerned about the effectiveness of the legal system.

C. Clients

Clients of legal service agencies provide a largely untapped but potentially fruitful source of data for research on legal services and poverty. There is of course the methodological limitation caused by their being a self-selected group. Nevertheless, even working within this constraint, much can be achieved. The case file usually maintained by legal service agencies could furnish a social profile for each client. Using the information in these files, it would be possible to examine the relationship between the client's social, economic, and educational background and the type of legal problem, its degree of seriousness, and the range of problem-solving methods employed by the client. The potential of data collection from this source cannot be overstressed. By careful planning (based upon a set of hypotheses and assumptions to be tested), the case file sheet could be designed so that the data collected would lend itself to analysis.

Clients of legal services programs also can be used as subjects in interview-based survey research or as participants in research based upon an experimental design. For example, information about knowledge of law and expectations of effectiveness of the legal system may be obtained by oral questioning of a client. Additionally, information may be gathered on subjects such as the client's perceptions of the accessibility and effectiveness of the legal system, the factors influencing use or nonuse of

available specific problem-solving techniques, the factors that have helped build up the client's assertiveness, and the sources of support and reinforcement that have led him to seek the services of the agency. In some circumstances, research (adopting an experimental design) may be used to study the outcome of resort to different forms of dispute settlement (adjudicative or conciliatory, formal or informal) by randomly assigning clients with disputes in similar matters to one or the other of two available forms of dispute settlement. In both instances, the legal service agency would provide the full range of services possible within each dispute settlement process.[18]

An ethical caveat, however, should be sounded here regarding the use of clients in this manner. Participation in either survey-type or experimental research should be left entirely to the volition of the client, and care should be taken to ensure that the position of dominance enjoyed by the agency is not abused. If the voluntary cooperation of a client is obtained, his sense of participation in the research endeavor may have a beneficial psychological effect. One view of social intercourse is that by supplying needed services, an individual establishes a power over the persons receiving the services. Unilateral dependence occurs when the receiver of benefits is unable to reciprocate by bestowing benefits upon the donor.[19] The poor, when receiving assistance, are assigned a low and degraded status by virtue of a determination that they cannot contribute to society. Their inability to contribute in turn degrades them to the condition of unilateral receivers. Involvement in research might help reduce the sense of unilateral dependence that the poor client may otherwise have.

The anthropological approach of in-depth case studies of individuals over a lengthy period of time might be adapted and used with selected clients to provide information on when, how, and why disputes occur, the social setting of the dispute, and when, how, and why disputes are settled. Clients could be selected and information obtained about the history of the dispute as well as the many facets of an individual's social profile and record (which may provide insights into the dispute itself), the individual's attitude towards the dispute and the other disputants, his expectations of what might constitute a reasonable settlement, and the

18. In order to overcome ethical problems, this kind of research design would have to ensure that the normal functioning of the agency is unaffected by the experiment and that, in fact, the experiment is making possible an overall increase in the number of cases to be serviced by the agency.

19. P. BLAU, EXCHANGE AND POWER IN SOCIAL LIFE 118 (1964).

extent to which these expectations are dictated by a minimax/zero sum attitude. The dispute could be traced to its origin and followed forward as it passed through the dispute settlement process, thus permitting a study of the impact at each stage of social factors (for example, the social distance between the disputants or the disputant and the dispute settler) and legal and social norms or processes. This approach could furnish legal sociologists and legal anthropologists the kind of empirical data (related to both the mechanism of disputes and the dispute settlement process) needed before they can attempt to construct a social theory of adjudication or dispute settlement.[20] The theory, in turn, would be invaluable to the evaluation of existing dispute settlement mechanisms or to their reformation or reorganization.

D. The Agency

The literature on legal services agencies is rich in detailed descriptive studies of individual service agencies.[21] The usefulness of these studies would be considerably enhanced were they to follow a common pattern using common concepts and operational definitions, thereby permitting comparison. Thus, for example, an ideal, typical descriptive study could contain material on:

(1) the historical and political background of the establishment of the of the agency;
(2) the objectives of the agency;
(3) the area of coverage and degree of specialization of the agency;
(4) the individuals who use the agency (and, ideally, a description of those who do not use the agency) and the determinants of demand and use;
(5) the degree of integration with or insulation from other community service agencies;
(6) the typical working routine and administration of the agency;
(7) the nature of the records kept and the nature of the recordkeeping;
(8) the strengths and weaknesses of the particular kind of agency;
(9) the costs of running the agency;
(10) the impact and effectiveness of the agency; and
(11) the indirect or unforeseen impact, if any, that the agency has had

20. Carlin, Howard & Messinger, *supra* note 3, at 53 stress that the need is for a theory of adjudication.

21. *See, e.g.*, OFFICE OF PLANNING, RESEARCH & EVALUATION, U.S. OFFICE OF ECONOMIC OPPORTUNITY, LEGAL SERVICES EVALUATION STUDY: LITERATURE SEARCH REPORT (1971).

> on various aspects of social life in the community, such as the level and degree of community organization and social control mechanisms working in the community.

Comparative studies logically would follow the descriptive studies of single agencies or single agency types. These studies would assist program planners in making a choice of the kind of legal service agency to be set up by providing information on:

(1) the range of possible models of legal services agencies;
(2) the strengths and weaknesses of each model;
(3) the potential impact and effectiveness of each model;
(4) the probable cost of setting up each model;
(5) the possible reinforcing or overlapping relationships that any model may have to any other model; and
(6) the mix of political, social, and economic factors needed to make each model tenable (including the reaction of the public or sections of the public to such agencies).

Agencies also need to be studied for purposes of efficient "housekeeping." Cost and efficiency evaluation studies of individual agencies could be undertaken by employing methods used by the management sciences and the techniques of operations research. Evaluative research is an important aspect of program planning and refinement. Modern techniques of evaluative research[22] are sophisticated enough to permit the thorough and accurate assessment of the management of legal services agencies and their efficiency relative to cost, output, and program objectives.[23] Evaluative research, therefore, is capable of making an important contribution to the supervision of legal services agencies. Research also permits an agency's accountability to its funding source to be based upon objective rather than subjective criteria.

E. The Legal System, Its Rules and Institutions

The legal services provided the poor can have much greater impact and effectiveness than they might otherwise if certain kinds of traditional legal research are conducted and the results fed into the specific service-rendering agency. A legal services program has two broad goals (usually complementary but occasionally conflicting): (1) the goal of

22. For further material on this subject, see Caro, *Approaches to Evaluative Research: A Review*, 28 HUMAN ORGAN. 87 (1969).

23. For a study evaluating a legal services program in relation to its objective, see Finman, *OEO Legal Service Programs and the Pursuit of Social Change: The Relationship Between Program Ideology and Program Performance*, 1971 WIS. L. REV. 1001.

servicing the unmet legal needs of the poor; and (2) the goal of achieving certain law reforms likely to benefit the poor.

Achievement of the latter goal is sought through "test" cases by which the change of a legal rule of an administrative practice may be produced through litigation or other forms of adjudication. Lawyers, acting for the poor, may seek to reform the formal content of the law. For lawyers to function effectively in this role, they must rely heavily upon legal scholars' analyses of the formal content of the law relating to the poor.[24] Lawyers need to know whether the legal system, or any part (be it a rule, an institution, or a practice), is biased against the poor, and, if so, exactly where and how the bias arises.[25] They also need to have systematic information about the treatment of the poor by the courts and other legal agencies. In the less affluent countries, there is presently available little literature that might serve, even in a sketchy and sporadic way, as the basis for a systematic analysis of the formal content of the law and procedures relating to the poor. Legal scholarship in the developing countries has not really concentrated on the subject and seems unlikely to do so unless given some impetus. Rather, legal scholarship has often tended to concentrate on "topical" doctrinal subjects in the field of constitutional law—the topicality of the subject being determined by political trends reflected in the popular press. For example, much scholarly effort in India has been expended on the question of the amendability of the Indian Bill of Rights and, more generally, on the tussle for supremacy between the judiciary and the legislature. Legal scholars in developing countries often appear to feel compelled to concentrate their research energies on subjects current in the headlines. They perceive their role and social obligation to be one of providing the less-educated masses with a "legal theory" background for issues and problems that engage the attention of the nation. They seek to provide, in their writings, a "legal" basis for a discussion of the issue and thus claim that they enable the discussion to proceed beyond mere emotive rhetoric. The legal basis provided, however, often is either arrant legalism[26] or unscien-

24. For a good example of such a study, see tenBroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status* (pts. 1-3), 16 STAN. L. REV. 257, 900 (1964), 17 *id.* at 614 (1965).

25. *See* Carlin, Howard & Messinger, *supra* note 3, at 12-26 (elaboration on the bias of a legal system against the poor).

26. On revising his book, the author of one of the leading books on Indian constitutional law will be including detailed arguments that sovereignty in India rests not with

tific, facile, or intuitive assumptions about social relationships.[27] Legal scholarship and writing in the developing countries has also been preoccupied with international and comparative constitutional law.[28] Often the legal aid movement seeks legitimacy by couching the demand for legal aid in terms of a constitutionally guaranteed right given a fresh interpretation.[29] This trend may help provide the impetus to legal scholars in developing countries to turn their attention to the legal aspects of poverty. Perhaps at this juncture what is needed is a sense of direction about the scope, content, and techniques to be employed in legal research on poverty. Specific research designs need to be worked out and made available to scholars for use, not as models, but as guidelines for the development of their own research designs.[30]

These remarks need not be confined solely to studies of the formal content of the law and procedures relating to the poor; they apply equally to studies of the treatment of the poor by the courts, administrative tribunals, and other legal agencies.

V. Concluding Recommendations

The preceding section of this Article has sought to suggest the scope and usefulness of legal and social science research on poverty and legal services and has attempted to relate the output of such research to the more effective provision of legal services to the poor in developing countries. Before concluding, it would be appropriate to suggest several ap-

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the people, but stems from the Indian Independence Act—a statute of the British Parliament!

27. Typical of this kind of legal writing is a quotation taken from the judgment of Chief Justice Subba Rao in Golak Nath v. State of Punjab, [1967] 54 All India Rptr. 1643, 1670:

> The verdict of the Parliament on the scope of the law of social control of fundamental rights is not final, but justiciable. If not so, the whole scheme of the Constitution will break.

28. As far as India is concerned, one may attribute this effect to the education received by the deans of Indian law schools in the United States or the United Kingdom. An Indian law student in a foreign law school tends to specialize in international law or comparative law, including comparative constitutional law, because, among the subjects available in law schools, these are the only ones that are not purely local in their appeal and coverage.

29. *See, e.g.*, A. Berney, Legal Aid—A Constitutional Imperative, March 1970 (unpublished paper presented to the National Conference on Legal Aid, New Delhi); Huang-Thio, *Legal Aid—A Facet of Equality Before the Law*, 12 Int'l & Comp. L.Q. 1133 (1963).

30. The research designs do no more than raise questions or problems or identify specific topics for research.

proaches that could be followed to stimulate interest in, create capacity for, and systematize the conduct of such research.

1. Problem areas of particular concern to the poor in individual developing countries and the relationship of these problems to development efforts should be identified.[31] Studies should include an enumeration of present legal service programs and the potential for the use of the legal system in tackling the problems. Once the priority "sectors" have been identified, a literature search should be undertaken for each country to synthesize the existing information[32] in order to indicate the gaps that need to be filled by research. This phase of activity is, of course, related to adopting a "sectorial" approach to the design of legal services operations.

2. Research activities should be concentrated and coordinated in three areas:

(a) the factors contributing to the "effectiveness" of a legal system, more specifically, the relationship of "effectiveness" of the legal system and development;
(b) the relationship of alternate forms of dispute settlement and development; and
(c) the relationship of "deformalization" of the legal system and development.

3. Typical research designs (available for adoption by legal services agencies if they so desire) should be commissioned to illustrate and detail the specific methods to be employed in studies dealing with:

(a) ascertaining unmet legal needs
  (i) in specific sectors of the poor,
  (ii) in distinct geographic areas, villages, cities, etc.;
(b) measuring the impact of the legal services provided upon
  (i) the specific problem of the individual to whom the service was provided, and
  (ii) future problems of like nature in the same sector of the poor;
(c) evaluating the cost and efficiency of legal services agencies.

4. The design of typical "intake forms" should be commissioned. These forms would be kept in the files of legal service agencies and should maximize and standardize the data collected about:

31. What is called for here is a more detailed extension of the kind of effort made by Metzger, *see* note 15 *supra*.

32. For a good example of a literature search that organizes and synthesizes the materials presently available, see OFFICE OF PLANNING, RESEARCH & EVALUATION, U.S. OFFICE OF ECONOMIC OPPORTUNITY, *supra* note 21.

(a) the social profile of the client;
(b) the nature of the legal problems;
(c) the client's perceptions of the effectiveness and accessibility of legal and social institutions capable of resolving his specific problem; and
(d) such other matters as might be considered appropriate for research.

5. The feasibility and desirability of grafting a research component onto existing legal service programs should be explored in detail. The funding of this research should be separate from the funding of the service agency itself in order to avoid diverting funds from the actual provision of services. Aside from the benefit to be gained from ensuring a substantial and sustained research output, this technique would also have the advantage of providing an avenue for the involvement of law students, law school faculty, bar associations, and other professional bodies in the legal services program. Involvement of law students not only might expose them to a service-centered approach, which could have an impact on their own conceptions of professional responsibility, but also might lead to an improvement of their law school education through exposure to the law in action. Involvement of law school faculty might help diversify the content of their research and writing and enrich the materials they use in teaching. Involvement of bar associations (even if purely as a source of funding) might facilitate the breakdown of professional hostility to legal services agencies by providing members of the legal profession with accurate factual information about the functioning of the agencies.

One note of caution, however, must be expressed regarding the type of research activities suggested in this Article. This research is unlikely to produce spectacular results or even, perhaps, conspicuous results. The crucial need for research stems from that very fact. Research of the type outlined is of undoubtedly high priority if viewed from a long term perspective. The research, however, holds out no promise of quick payoffs, and its priority profile is obscured when viewed from a short term perspective. Research seeks in the long run to achieve two crucial goals: (a) more efficient implementation of development planning, and (b) improvement in the quality and quantity of legal services provided to the poor.

This may sound Utopian, but as Max Weber said, "man would not have attained the possible unless time and again he had reached out for the impossible."[33]

33. FROM MAX WEBER: ESSAYS IN SOCIOLOGY 128 (H. Gerth & C. Mills transl. 1958).