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## ON TEACHING LAW AND DEVELOPMENT

Robert B. Seidman\*

The problem: What constitutes the proper subject-matter of a course in Law and Development? I first thought of teaching the course many years ago, when I taught jurisprudence in Ghana and reflected on the idiocy of teaching African students the standard jurisprudence course that started with Socrates and ended with John Austin (with a hurried soupcon of more contemporary jurisprudence). I actually taught law and development for the first time in Dar es Salaam, in 1968. Because I then taught African law students in Africa, I had to think of the subjectmatter in terms that might serve their purposes. It seemed to me selfevident that by "development" one meant solving the problems that affected the majority of Africans, that is, poverty and vulnerability. Lawyers typically concern themselves with the uses of law to solve those problems in the role of parliamentary drafter or other government lawyer involved in formulating proposals for legislation or subsidiary legislation. Ever since that experience, I have engaged in a private running battle to define what might most usefully serve the needs of those law students. What follows constitutes a brief summary of my current notions:

- 1. The problems that law and development must solve do not constitute in the first instance difficulties within the legal order, but social difficulties—at their most general level, poverty and vulnerability.
- 2. In Africa (the only area in which I have any experience or which I have studied), poverty and vulnerability result from a set of institutions inherited from the colonial era. Development therefore requires massive institutional change.
- 3. All schools of social science look to the legal order to make concrete their policy proposals to solve social problems.
- 4. Law does not constitute a free good in unlimited supply. On the contrary, it comes in short and expensive supply. The central task for teaching law and development comes in discovering how to use this scarce resource more efficiently, successfully to carry out the demands of devel-

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opment. Pound called it the question of the limits of law. The central question for law and development becomes the analysis of the limits of law in conditions of development.

- 5. Social problems arise because of the activity of people. The legal order attempts to solve those problems by using the threats and promises of the law to channel behaviour in new and different ways. A principal problem for law and development becomes, How (and why) do people act as they do in the face of a rule of law prescribing their behaviour?
- 6. The legal order affects behaviour by changing the arena of constraints and resources within which the laws' addressees act—that is, choose. It does that in a variety of ways, in the end all depending upon the behaviour of various state officials. In conditions of development, that requires wide discretion in officials. Unless constrained, officials will exercise discretion in favour not of the poor and dispossessed, but in favour of those with power and privilege. The necessities of development in favour of the poor requires clothing officials with the very power that, unless curbed, they will likely use to defeat development in the sense I use the terms here.
- 7. Of all officials, those involved in the law-creating process have the greatest discretion. Unless constrained, they too will use their discretion to create laws that favour not the poor but those who already have power and privilege.
- 8. Power and privilege arise from existing institutions. Those with power and privilege inevitably favour incremental change (or no change at all); development in favour of the poor and dispossessed (as noted above) requires massive institutional change.
- 9. Development in favour of the poor therefore requires a legal order with the following characteristics: It must include laws that will
  - a. transform economic institutions from those received at independence into new institutions that will ensure high productivity and more equitable distribution of income among the population;
  - b. actually affect the behaviour of their various addressees, lay and official;
  - c. where addressed to officials, ensure conforming behaviour, and especially, that those officials exercise discretion in favour of the poor and disinherited; and
  - d. with respect to laws defining law-making institutions, ensure that those institutions create laws that favour the interests of the poor and disinherited.
- 10. In sum, law and development concerns a study of how to use the legal order to ensure (a) higher productivity and more equitable

distribution, (b) effective (i.e. non-symbolic) law, (c) legality and (d) greater democracy. Only if the legal order meets these objectives will development take place. One can achieve these objectives only if one can analyze the causes of the difficulties that give rise to them. More: We must explain them in terms of the variable that we think we can manipulate, that is, the legal order itself. In terms of the legal order, therefore, we must explain (a) low productivity and inequitable distribution, (b) ineffective law, (c) illegal behaviour by officials, and (d) the lack of control by the mass of the population over government decisions. In my view, that constitutes law and development's research agenda.

- 11. Teaching law and development therefore requires that we teach students how to achieve these objectives in actual conditions of development. Because nobody has a very clear understanding about how to do that, lawyers in the real world must constantly undertake investigations about how to accomplish those objectives in concrete situations. Teaching law and development requires, therefore, not that we teach students a body of knowledge, but that we teach them how to make practical investigations into concrete problems, to the end that they learn to design and draft laws that will solve specific problems in light of the four objectives stated.
- 12. One cannot train students to make investigations in the abstract. Making investigations constitutes a practical skill. No more than one could teach another to ride a bicycle by textbook exercises can one teach development lawyers to create laws likely to bring about development by teaching them textbook knowledge. The best way to teach the skills of investigations consists in involving students in actual, ongoing investigations. In my own experience I have found that I can do that best by involving students in the actual work of government ministries. In Zimbabwe, I solicited government ministries for projects, and worked with students to solve them. As an educational venture, I thought that that worked very well indeed.
- 13. In this country (i.e. the United States) teaching law and development in the way I have described becomes more difficult because we are so far from the actual scene. The best I have done consists of simulated investigations, using library data in lieu of real-life data. As a device to catch student interest, that works only moderately well. Moreover, this limits law and development to a research seminar environment, where every student does his or her own investigations.
- 14. In any event, before students can engage in research, one must teach them a variety of frameworks that make research possible: methodologies for conceptualizing problems; vocabularies for talking about

problems of law and behaviour; simple systems models for analysis of decision-making institutions; economic concepts; and so forth. I have found that a combination of text materials and lectures, and case studies and discussions, work best. One way to help each other in the enterprise would consist of exchanging case studies that we use in our seminars for teaching purposes. We all know that putting together those case studies requires enormous expenditures of time and effort and usually requires that the teacher have personally been involved in the enterprise. Sharing case studies seems to me a useful way both of sharing our third world experiences, and helping each other to teach law and development.