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Special Issue: Faculty Perspectives: HEADING SOUTH BUT LOOKING NORTH: GLOBALIZATION AND LAW REFORM IN **LATIN AMERICA***

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SUMMARY:
... While this Article does not pretend to be the product of empirical and field country studies, it will try to bring to light some of the values and premises underlying both global and domestic reform policies, and examine other sometimes unstated but nevertheless relevant factors that affect both the articulation and implementation of reform goals, including the links between global and domestic actors and forces on these processes of legal reform. ... Because of perceived links between the rule of law, democracy, and development, legal reform has become a focal point in the world of international assistance. ... The dynamic relationship between these two modes substantially affects the shape and content of current legal reform programs. ... Finally, the legal culture - that is, prevailing perceptions of what the legal system stands for - together with actual practices and customs that have become ingrained in the profession, can vitally affect the system's accessibility and effectiveness. ... Perceptions of an interdependent and complex global economy and democratization relationship with legal systems in general and its justice sectors in particular has led the World Bank and other global players, as well as national reformers, academics, and economic and modernizing elites, to demand changes in the administration of justice, leading to complex legal reform processes. ... Traditional legal culture, for instance, is being challenged, and several law schools also have become active in legal reform movements, such as the Faculties of Law of the National University of Uruguay and Diego Portales University in Chile. ...

TEXT:
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Throughout **Latin America,** law reform is in the air. After decades of neglect, Latin American legal systems are experiencing substantial if not drastic processes of reform and transformation. The administration of justice in particular has been singled out as inefficient, if not corrupt, inaccessible to most, unable or unwilling to respond to human rights abuses, and largely irrelevant to the needs of modern economies.

These reform processes respond to global and domestic actors and pressures. On the surface, both global and domestic forces share the goal of helping to cement good governance, n1 including the rule of law, n2 throughout **Latin America.** This apparent goal consensus, however, can be broken down into two different orientations that reveal not only agreement but also overlapping and sometimes conflicting goals:

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(a) Market Orientation: An appropriate legal environment including uniform, predictable, and enforceable rules securing property and contract rights is viewed as crucial for modernizing the Latin American economies and incorporating them into a global economy characterized by unrestricted trade and free-market efficiency.

(b) Democratic Orientation: An effective rule of law is also deemed vital for consolidating democratic institutions; n3 making legal systems more transparent, responsive to social needs, and accessible to the disadvantaged sectors of society; and preventing human rights violations while simultaneously becoming more efficient in preventing and sanctioning criminal activity.

Furthermore, both domestic and global actors also seem to agree that reaching these somewhat contradictory goals would require a more independent, effective, and accessible administration of justice, including broad powers of **judicial** review and effective **judicial** independence, as well as new civil and criminal trial institutions and processes. Indeed, in recent years several Latin American nations have incorporated reform proposals into national legal frameworks through constitutional amendments or new legislation. n4

But this apparent harmony of interests, goals, and means may mask conceptual vagueness as well as tensions and contradictions between global and national goals and policies, and indeed, even among themselves. Establishing market-friendly legal frameworks can clash with the democratic goal of facilitating access to the courts to historically excluded interests, such as non-unionized workers, women, and the poor in general. Similarly, a majority population facing rising criminality may use democratic means to [*693] push for stricter and more efficient law enforcement, even at the expense of the human rights of those suspected of criminal activity. Finally, potential distortions of programs or implementation problems also are sometimes overlooked. Correa, for instance, has pointed out that dominant elements of the judiciary may outwardly support legal reform, but perceiving it as threatening to their corporative interests or status within the administration of justice, may operate behind the scenes to undermine or control the process. n5

This hard-to-unravel socio-legal tapestry calls for deep studies of reform goals, of social, political, national, and global contexts in which the reform processes are inserted, and of the various conflicts, tensions, and sometimes unforeseen consequences these reforms mask or have produced. Fortunately, these studies are beginning to emerge, though empirical and evaluative studies still are hard to come by. n6 While this Article does not pretend to be the product of empirical and field country studies, it will try to bring to light some of the values and premises underlying both global and domestic reform policies, and examine other sometimes unstated but nevertheless relevant factors that affect both the articulation and implementation of reform goals, including the links between global and domestic actors and forces on these processes of legal reform.

I. The Global perspective of Legal Reform in **Latin America**

Because of perceived links between the rule of law, democracy, and development, legal reform has become a focal point in the world of international assistance. The world, of course, has changed; the end of the Cold War, the collapse of the Soviet Union, and the emergence of Western hegemony no doubt played a key role in the emergence of this emphasis on democratic institutions and market-oriented development. On the one hand, international human rights have become part of national political agendas, pointing to the need for legal reform to meet its principles. On the other hand, the "Washington Consensus" has become "the dominant paradigm in development thinking." As such, it "promotes markets as allocative institutions, favors privatization and promotes closer linkages to the global economy." Meeting this goal requires an appropriate legal framework, making legal reform essential. n7

[*694] To a large extent this global process has provided the opportunity to focus on the economic failures, corruption, human rights abuses and similar ills plaguing most of the developing nations, to a large degree blamed on the prevalence of undemocratic or patrimonial regimes and institutions. As Donelly puts it, "Democracy, although not strictly necessary for development ... may restrict predatory misrule that undermines development." n8 The systematic denial of civil and political rights does not necessarily hinder economic development, as shown by the experience of Europe and the United States in the nineteenth century, and South Korea, Taiwan, Brazil, and Chile in recent decades, which brings into question the relevance of a democratic legal environment for the development of free-market economies. Nevertheless, while the power of human rights and of such concepts as democracy and the rule of law should not be overemphasized, the Vienna Declaration of 1993 constitutes a strong endorsement of the universality of such rights. Most states today appeal to human rights, democracy, and development as a way of establishing national and international legitimacy. Moreover, "civil and political rights, by providing accountability and transparency, can help to channel economic growth into national development rather than private enrichment." n9 This position, in turn, has led to a perceived need for a liberal constitutional order with political pluralism, fair elections, a strong and independent judiciary, and an efficient and responsible administration. Constitutionalism, as it were, has "come in from the cold." n10

Liberal constitutionalism is indeed relevant for **Latin America,** particularly in view of current transitions from authoritarian to democratic regimes and from State-intervened economies to free markets and insertion in global economies. The components of this transition include the separation of State and

civil society, the rule of law, and the limitation of the scope of governmental power. Liberal constitutionalism and the rule of law embody certain basic values emphasizing individual civil, political, and property rights, underpinned by the concept of the equality of all citizens under the law. This is a powerful ideology that can be, and some would argue, has been, used to legitimate the dominance of elites and Western regimes throughout the world, while at the same time limiting the arbitrary power of the State. n11

The debate about legal reform thus takes us to the role of the State and law in the current globalization process. The State now must contend with different forces; nationally, it must deal with all the demands and constrictions of the internal political process, and internationally, it must [*695] respond to global markets and the international economic and political process. This scenario introduces complexities into classical notions of the State and necessarily impacts on the affected legal spheres.

In **Latin America,** the received concept of legal science became ingrained as a foundational principle of the new legal systems within decades of their independence in the early nineteenth century. As befits a "science," law was perceived as rational and non-political. Responding to similar drives to mold national States out of diverse factions and ethnicities, the emerging Latin American nations also received the concept of "legal positivism" from Europe: The State was to be the sole source of law and all other social, religious, or, in the case of the indigenous peoples, primitive norms were to be given a subsidiary status. Official legal statism, however, never fully established a true monopoly over legal relations. Aside from national law, both local and supra-national law continued to play important roles in regulating individual, social, and State behavior. Indeed, these legal pluralities have become more prominent and recognized in the current globalization process.

Latin American countries also embraced the original French doctrine of separation of powers under which courts were to play a relatively minor role in the legal process. For one thing, they were not to make law, only to interpret and apply it. Under this doctrine, there are, strictly speaking, no binding precedents, nor erga omnes **judicial** review of the constitutionality of statutes, as contrasted with the constitutionality of the doctrine's application to a specific, individual case. While courts usually can review the legality of administrative actions, this review is usually limited to the specific and particular application of executive power, and has no broad ranging application to the law or regulation under consideration. Civil law countries have been moving toward a type of **judicial** review used in the United States, but this is a recent development and has yet to become the norm throughout **Latin America.**

Needless to say, the end of the millennium brought with it new challenges to the paradigms of modernity reflected in such notions of the State and law. For Santos, legal systems are hybrid, as they reflect multiple modernities and traditions. n12 In **Latin America,** for instance, the pre-modern, the modern, and the post-modern co-exist even among the same people. Though **Latin America** was always active in world markets, the more recent and complete integration into North-dominated global economies make legal hybridization even more evident. Following Santos, we could say that the process of globalization consists of two principal modes. "Globalized [*696] localism" describes the process by which a local condition succeeds in extending its reach over the globe, with the capacity of designating any other condition as "local." Examples can go from the proliferation of fast food outlets to the management strategies of first world corporations. Indeed, some would argue that the current programs of legal reform to a large degree reflect this process, as U.S. or European legal institutions become the basis for such reforms. "Localized globalism," on the other hand, refers to the impact of the received institution on the local context, and conversely, how this local context, such as a different legal and political culture, in turn affects the received institution or process. A legal reform with very similar imported components produces results in, say, Costa Rica that are different from those in Peru. In any case, the reform will differ from its function in the "exporting" nation.

The dynamic relationship between these two modes substantially affects the shape and content of current legal reform programs. This is a "frontier zone," charged with ambiguities, where different contexts and realities will produce different results. n13 As examined in more detail below, for instance, the World Bank's law reform policies and programs have become more socially sensitive and inclusive, shifting from a narrow market orientation focus to a wider lens that includes the indigenous, the poor, and other marginalized sectors of society. In my view, this evolution probably reflects a "localizing" effect; as the Washington-elaborated Bank policies and programs moved South, new and often conflicting voices were heard and the Bank began to readjust its agenda. The Bank, however, has yet to resolve the inherent contradictions or conflicts within its new, broader agenda.

The World Bank: Law Reform Policies and Implementation Strategies

Legal reform, particularly as regards the role of the judiciary in social and economic development, has become an essential ingredient among multilateral agency policies and programs. The World Bank is a major player in promoting legal reform. n14 According to the General Counsel of the Legal Department of the World Bank, for instance,

The World Bank's activities to strengthen institutions and policies affecting legal and **judicial** systems have grown markedly in the past few years. The Bank has prepared 10 free-standing **judicial** reform operations that have been approved by the Board, [*697] and another 14 are currently under preparation. In addition, 15 other projects address legal and **judicial** issues from a broad systemic perspective, such as reforms of the law-making process and the judiciary and **alternative dispute resolution** mechanisms. Beyond that, there are some 350 operations in 87 countries that finance specific legal reform activities. n15

Initially, the Bank's focus seemed narrowly fixed on promoting a new development strategy based on the market and the private sector. In this process, the rule of law was perceived as a precondition for private sector development. Achieving this end would in turn require on appropriate legal framework, including an efficient and non-corrupt administration of justice. n16 The judiciary, as an essential component of this process, would have to foster an enabling legal and **judicial** environment conducive to trade, financing, and investment. In the view of the Bank, the Latin American judiciary had become an impediment to these ambitious goals due to its inefficiency, characterized by lengthy case delays, limited access to justice, a lack of transparency and predictability, and poor public confidence in the system. Thus, the goal of sustainable economic development was perceived as at-risk because of the lack of enforcement of the rule of law. Dakolias, a Bank official deeply involved in its law reform efforts, also viewed **judicial** reform as a key component for promoting economic development. Autonomous and dependable **judicial** systems were not only a basic condition for membership in the global economy; they carried the responsibility of harmonizing law and assuring foreign traders and investors that the law would be applied in accordance with international or regional standards. n17

As the Bank became more aware of the complexity of the "**judicial** sector" and its role in society, and of the problems involved in pushing for reforms in societies with conflicting interests, groups, and institutions, the Bank's articulation of policies and strategies for legal reform have become more nuanced and contextualized. As of 1995, for instance, the Bank recognized that implementing reforms would require a gradual or incremental process feasible within the political and economic capacity of each nation. Given political limitations and pragmatic considerations, the Bank found coalition-building necessary. Moreover, the Bank was seemingly aware that [*698] the initial push for reform process should come from within the affected country, with grassroots involvement, town meetings, and other local participation suggested as mechanisms for raising the necessary broad base of support. n18

However, a 1996 study by the Lawyers Committee for Human Rights ("Lawyers Committee") and the Venezuelan Program for Human Rights Education and Action (PROVEA) of the World Bank-financed Venezuela **Judicial** Infrastructure Project documented wide gaps between the Bank's articulated policies and its actions. n19 Launched in 1992, this **judicial** reform project was supported by a $ 30 million Bank loan and its technical assistance; indeed, it was ""marketed' as the Bank's flagship investment in this area, setting the stage for a number of other **judicial** reform projects in **Latin America** and elsewhere." n20

The Report cites the Bank's recognition that reform could not be imposed from the outside. The Bank also emphasized the need for prior diagnostic studies and set out several essential criteria for program implementation. One criterion required the reform process to be centrally coordinated from within in the country, as it would involve several government agencies with diverse and often competing interests. n21 Another criterion stated that reform should not be a closed process between the Bank and the Ministry of Justice, but rather should involve the participation of groups and individuals affected by reform, particularly the judiciary, bar association lawyers, and law professors. n22 But as of 1996, "the Bank's record to date in each of these areas has, unfortunately, been mixed at best." n23 The Project was not part of a comprehensive reform strategy; there was no broad government commitment to reform; reform strategies failed to address crucial structural impediments to **judicial** independence; access to justice concerns were not addressed; and there was no broad-based participation in the design and development of the Project. Consequently, actual accomplishments were limited in scope. n24

Nevertheless, the Bank's position has become more nuanced, reflecting a broader understanding of the diverse and legitimate goals, principles, and groups to be embraced by law reform programs. For

instance, the Bank has linked development to the protection of human rights, which in turn depends on a strong, accessible, and independent judiciary. At the same time, the Bank has asserted that

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accessible and efficient courts are essential to the attainment of sustainable and broad-based economic growth. In any society striving to achieve economic growth, the government must guarantee that contracts are honored and property rights are respected, and that domestic and foreign investors trust it to ensure that their investments enjoy legal protection. n25

The Bank has also stressed that human rights in developing countries are best safeguarded by improving the conditions of indigenous communities. Programs to fulfill this goal include improving the quality of education, health and sanitation, land reform, and **judicial** reform. n26

James D. Wolfensohn, the president of the World Bank, is well aware that market economies reward some more than others. Referring to developing countries, he recognizes that populations "remain split along a fault line that separates the lives and aspirations of the rich and poor." n27 Moreover, he regards legal systems as crucial, in that

without the protection of human and property rights and a comprehensive framework of laws, no equitable development is possible. A government must ensure that it has effective systems of property, contract, labor, bankruptcy, commercial codes, personal rights laws, and other elements of a comprehensive legal system that is effectively, impartially, and cleanly administered by a well-functioning, impartial, and honest **judicial** and legal system. n28

Still, the Bank's policy articulation and program emphasis reflect contradictory goals, apparently not acknowledged by the Bank, and its positions largely continue to reflect a "globalized localism" orientation.

[*700] This is not to say that the Bank's policy and strategy positions are irrational and indefensible. But the inherent contradictions in the Bank's policies and program raise important questions that can vitally affect the implementation of its programs. The diversity of interests and even conflicts between different sectors of society must be recognized and addressed. A prime example is the problem of rising criminality and the social demand for more effective police, which clearly engenders tension between the demands for "law and order" and the internationally recognized human rights of due process and humane treatment of those accused of criminal activity. Similarly, Guatemalan landless peasants will read the Bank's call for land reform in a manner that will inevitably clash with the landowner's interpretation of the World Bank's strongly held position that contract and property rights are essential for development. Conflicts between indigenous peoples asserting their ancestral land rights and the interests of local or foreign investors, government contract in hand, have become commonplace, sometimes leading to the abandonment of projects. If eventually a type of **judicial** or other "official" intervention is required, how should these conflicts be resolved? Through "customary" indigenous law and institutions, or in accordance with the newly reformed and efficient national legal systems that the Bank has been promoting?

To be sure, as already noted, the Bank appears to have learned from its experience and to have broadened its policy and programmatic agenda. n29 Nonetheless, the judiciary remains the cornerstone of the Bank's legal reform programs. But is such an emphasis well-placed? Even a superficial overview of **Latin America's** legal history reveals a judiciary with little social relevance, subservient to the executive on most important political issues as long as its corporative prerogatives were preserved, and mostly engaged in routine activity. Indeed, the image of the judge largely remains that of a faceless bureaucrat adverse to innovation. Despite some important exceptions such as Costa Rica and some clearly dedicated and innovative judges, Latin American judiciaries have yet to show a genuine commitment to the full panoply of democratic institutions and rights. n30

Indeed, we could view with skepticism the relevancy of adopting "modern" and expensive **judicial** processes in at least those countries where the "rule of law" has seldom been legitimate and many people cannot even read. **Judicial** review powers and independence for a nation's Supreme Court, together with sophisticated computerized systems, for example, may be irrelevant for most people, whose interaction with "law" is generally [*701] limited to low-level bureaucrats and the police. In this context, will an improved official administration of justice necessarily lead to a more accessible judiciary for everyone, or simply to a more efficient mechanism to protect the interests of the advantaged sectors of society?

None of the above is to deny that the judiciary and legal processes in **Latin America** do not need substantial improvement. Their inadequacies and problems have been well-documented. n31 But there are clear risks in using models from the North to fix the legal "insufficiencies" without due regard to the particular needs and contexts of the Southern "receiving" societies.

II. The National Perspective, or Localizing the Global

As suggested by the Lawyers Committee Report, global policies and programs, even if agreed upon, are mediated and often given new meaning or even diverted by national reality. Moreover, as this Article has suggested, this dynamic relationship between global and local forces also affects the exporting agency, which may begin to question some of its initial premises, policies, and operational strategies. This has been demonstrated by the evolution of the World Bank's positions regarding the law reform programs it has promoted in **Latin America.**

Understanding the local context thus is necessary to shift from an ethnocentric perspective to a "localizing" one; this exercise should provide different - if at times overlapping - questions and issues that are more rooted in the particular social context. Throughout **Latin America,** for instance, rule of law principles and processes are proclaimed in official documents and reiterated in substantive legal norms. But in practice they are often absent or unevenly distributed, producing a gap between the ideal "law on the books" and the operative "law in action," even within more "developed" Latin American societies. This situation predates the authoritarian regimes of the 1970s and 1980s and, unfortunately, continues to plague both re-democratized societies (e.g., Argentina, Brazil, Chile, and El Salvador) and others that arguably did not suffer from authoritarian regimes (e.g., Colombia, Mexico, and Venezuela). Indeed, according to Pinheiro, "Since the return of democratic rule to many countries in **Latin America,** relations between governments and members of society ... have been characterized by illegal and arbitrary use of power," with many authoritarian practices and violations of human rights unaffected by political changes or elections. n32

[*702] This situation is largely due to socio-political context, which has a direct impact on the norms, processes, institutional structures, and culture of a given legal system. In most of **Latin America,** for instance, **judicial** systems traditionally were politicized, usually intertwined with or dependent on the executive, even as they retained substantial corporative autonomy. This patrimonial trait, a part of the region's colonial heritage, became even more evident in the 1920s and 1930s when in response to pressure from below and the economic crises of the times, Latin American societies embarked on nationalist, import-substitution development programs conducted by an interventionist regulatory and welfare State. Since the public sector was to prevail over market forces, the State - that is, the Executive branch - assumed a key role in resolving conflicts among various economic sectors and enterprises, where political and ideological considerations were often deemed more important than economic efficiency or legal prescriptions. In the process, the role of the judiciary became relatively minimal, as important conflicts were aired and resolved in other arenas - administrative agencies, semi-autonomous State enterprises, or the offices of a Minister or the President himself. n33 The courts were relegated to such functions as deciding debt collection cases, or to processing common criminals (white-collar crime was largely ignored).

This process had very negative consequences for an already weak administration of justice. Judges came to have little social relevance and mostly engaged in routine activity; the image of the judge became that of a bureaucrat adverse to innovation. The State, for its part, invested little in the administration of justice, which had to make do with obsolete technology, poor organization, and poorly paid and trained judges. Inefficiency, influence-peddling, and even corruption became commonplace throughout courthouses of **Latin America.**

At the normative level, codes of civil and criminal procedure dating from the mid-nineteenth century and other dated legislation still burden the administration of justice in most of **Latin America** with a document-based, time consuming, and expensive process. In Uruguay, for instance, the recently repealed code of civil procedure dated from 1879, itself a copy of the Spanish Code of 1850, which contained many medieval elements. n34 In addition, institutional/structural problems still plague the administration of justice throughout **Latin America.** n35 Overcrowded dockets resulting from an insufficient number of poorly paid judges to handle caseloads and the lack of adequate resources, in conjunction with civil and criminal procedures [*703] dominated by documentary, non-oral processes handled in chambers, encourages the resolution of cases by non-**judicial** staff, such as actuarios, n36 or secretarios. n37 Not rarely, a judge will barely skim over a case dossier produced by his law clerk and sign the findings with little or no analysis of her own. n38 This is particularly serious in criminal prosecutions, raising issues of due process.

In most countries of **Latin America,** the judiciary is a public civil service career that nevertheless has been traditionally organized as a closed system. While externally subject to varying degrees of political control by the Executive, Supreme Courts generally exercise iron-hand control over internal court administration, including entry-level selection and promotion of lower court judges. Once a member of the judiciary, a young judge is assigned to a lower trial court in one of the provinces, gradually moving up the career ladder into higher and better paid **judicial** positions and more amenable living conditions. If he perseveres and does not get into conflicts with the higher appellate courts and the Supreme Court, he might eventually be named to an appellate court or even to the Supreme Court. This system perpetuates a patronage system that rewards obeisance and good connections. n39 But some progress is evident. A product of legal reform programs, new **judicial** schools in Chile, Uruguay, and other countries appear to be eroding the patronage system. Merit has become a relevant criterion for selection, with preference being given to candidates who have successfully completed the full course or special seminars at the new **judicial** schools. n40

A combination of social, structural, and cultural forces also have made it difficult to attain effective access to justice, particularly for the more disadvantaged sectors of society. In Chile, for instance, a 1993 survey n41 indicated that only thirty-two percent of those who had suffered some criminal act (by far their most common "legal problem") actually called or went to the police to complain, and of those, a full fifty-seven percent effectively received no response whatsoever. In the end, only 1.5 out of every [*704] 100 victims of a criminal act obtained a full criminal prosecution against a defendant. It is hardly surprising, then, that seventy-one percent of those who denounced a criminal act concluded that their recourse to justice had been a waste of time, and that a full sixty-eight percent of those who suffered a criminal act never bothered even to complain to any authority. For them, at least, "justice" was unattainable. n42 Civil litigation is not any more accessible. As in most countries, litigating in Argentina, for instance, does not come cheap: Aside from lawyer's fees, as of late 1993 parties filing civil or commercial complaints must deposit in escrow with the court three percent of the amount claimed, recoverable only if the plaintiff wins the case. n43

Finally, the legal culture - that is, prevailing perceptions of what the legal system stands for - together with actual practices and customs that have become ingrained in the profession, can vitally affect the system's accessibility and effectiveness. Most Latin Americans have very negative opinions toward legal processes in general and the administration of justice in particular. In Argentina, for example, sixty-one percent of the sample of a 1992 Gallup poll pointed to an inefficient **judicial** system as the most important cause of corruption. n44 Similarly, a 1993 survey in lower income areas of the three major Chilean cities revealed that eighty-three percent of the sample had very negative perceptions of the system of administration of justice in general, deeming it inefficient, discriminatory, arbitrary, slow, and corrupt. n45

Despite the paucity of empirical studies of the legal culture of the Latin American judiciary or other legal actors, n46 legal and other scholars have long been concerned with the historical and social roots of the Latin American legal culture. Maier, for instance, points to the cultural heritage from the colonial period. n47 At the time of the conquest, the Spanish crown was engaged in a process of nation building and of centralizing power in an absolute monarchy. As it did with other institutions, the Spanish colonial regime imposed on its colonies a **judicial** system based on its own political [*705] model; namely, a centralized, hierarchical system with highly developed control mechanisms over the lower courts. n48 The judiciary was structured as a bureaucratic organization, where power was delegated from the top down to inferior officials, and where judges and other **judicial** personnel were functionaries at the service of the State, not of the individual. The **judicial** system thus was not really conceived as an institution to resolve the conflicts of the population at large, but rather as a component of the administration of State power; that is, as an instrument of social control.

This legal tradition was only partially affected by the process of independence in **Latin America.** n49 Rhetorical articulations of liberal ideology notwithstanding, independence and the replacement of absolute monarchism by republican forms of government did not result in a new social order, but rather in the replacement of an Iberian elite by its local or criollo counterpart, which did not particularly want to share political power with the impoverished masses. While the liberal reforms of nineteenth-century Europe enlarged the sphere of individual rights, established the separation of powers, and promoted greater citizen participation in the political process, their impact was attenuated in the vastly different social context of **Latin America.**

Despite recent reform efforts, the administration of justice in **Latin America** to a large extent continues to be based on a bureaucratic model; as such, it is hierarchically organized and retains a written process that facilitates the internal control of the proceedings (and the **judicial** functionaries), but strictly

limits participation in the process by the affected parties. This model still reflects the centralizing, patrimonial, and non-participatory political/legal culture inherited from Spanish colonial rule. As Moreno Ocampo puts it, "The law in this tradition is a means for the exercise of State power for the purpose of controlling its subjects." n50

The legal profession largely continues to follow the "liberal" tradition of solo practice or, in the case of the larger and more "modern" internationally oriented firms, organization around families, akin to "legal dynasties." But the increasing sophistication and internationalization of these more modern legal practitioners, many with graduate degrees from the most prestigious law schools in the U.S., does not necessarily involve the absorption of human rights or democratic values. By and large, these "modern" lawyers are dedicated to private practice that increasingly involves the structuring of business deals with domestic or foreign investors in accordance with internationally accepted criteria. They have little if any concern for issues touching on the role of law in society. n51

[*706] Though certainly not the only cause, to some extent the persistence of this legal culture can be linked to the traditional mode of legal education long dominant throughout **Latin America.** Notable exceptions apart, the five-to six-year formation and training received by law students lacks the broadening enrichment of critical debate; instead, instruction is authoritarian in style, anchored in traditional pedagogy based mostly on foreign legal sources, and encyclopedist with an emphasis on memorization. Given the "rationalist natural law" basis of the Codes, the student who knows their content knows "the law." This thesis is inculcated throughout the long years of law school and reiterated in a legal scholarship with scant relations to reality, forming a dogmatic system of knowledge and truth few have been able to question or resist. n52 Legal scholarship and education to this day, despite growing critiques and some notable exceptions, continues largely unchanged.

The practical and instrumental aspects of the legal process are largely "learned" through work experience; as regards the more "modern" aspects of the law, this opportunity is generally limited to those with the appropriate connections or who have managed to attend the more elite law schools. In any case, this aspect of the prevailing "legal culture" is not particularly conducive to a participatory democratic discourse or process, at a time when Latin American societies are engaged in serious efforts of "redemocratization" and economic modernization. To a large degree, legal systems and institutions have lost relevance in the face of the social and economic needs of the region. n53

III. Conclusions

Perceptions of an interdependent and complex global economy and democratization relationship with legal systems in general and its justice sectors in particular has led the World Bank and other global players, as well as national reformers, academics, and economic and modernizing elites, to demand changes in the administration of justice, leading to complex legal reform processes.

As noted, the World Bank's active support for law reform projects in **Latin America** is premised on the idea that secure and predictable legal environments are necessary for investment and market-oriented development. But some careful students of Latin American legal systems question this premise, arguing instead that the certainty that investors seek has historically been related more to political rather than legal or **judicial** structures. n54 To be [*707] sure, weak and inefficient judiciaries, crowded dockets, and other similar deficiencies are a reality throughout **Latin America.** But cases involving small debtors, minor offenses, and common crime (as opposed to white-collar crime or corruption), among other problems, are the most frequent type of cases confronting the **judicial** systems in the region. The big players tend to solve their disputes in other settings, such as the top levels of administrative or executive agencies or international arbitration arenas. n55

Even when, as in Argentina, effective innovations are adopted partially in response to foreign investors who want guarantees through legal institutions, these tend to be limited to private dispute resolution processes, such as mediation or arbritation, which function "outside but around the public institutions of the state." n56 As a result, Dezalay and Garth conclude that the World Bank legal reform project in Argentina, initiated in 1992, "has not resulted in any tangible results." n57 Given this context, perhaps the Bank and other multilateral agencies should reconsider their notion of the judiciary as the primary institutional actor in producing the stability assumed necessary for market development. n58

What of the presumed relationship between law and democratic institutions in **Latin America?** Latin American reformers, profoundly influenced by their harsh experiences under authoritarian regimes, have come to consider an effective justice sector as a key factor in consolidating their as-yet fragile redemocratization processes. As Correas notes, the only currently viable political and social project for **Latin America** is liberal democracy, [*708] which in turn implies a respect for the rule of law. n59

Yet, these reform-mongers would be the first to recognize that Latin American courts by and large do not carry a legacy as defenders of human rights or democratic institutions. As already argued, this is not solely due to lack of resources, inadequate technical training, and other institutional deficiencies. Far more important are the legal and **judicial** cultures that have developed over centuries as a reflection of **Latin America's** political and social structures and processes. Saez insightfully recognizes that reform of the official **judicial** structure must go in tandem with relevant changes in informal institutions and organizational arrangements, as these largely have a controlling effect over the formal system. n60 "Indeed, one of the basic questions confronting any reform effort is how much change can be produced within the justice sector, if extrasectoral behavior remains relatively untouched." n61 The World Bank itself, in a relatively recent policy statement, suggests that **judicial** reform programs should "address the political, economic and legal causes at the root of an inefficient and inequitable judiciary," because otherwise "there will be a minimal probability for success." n62

What, then, are the prospects for current and proposed legal reforms in **Latin America?** The financial resources available from various foreign donors have without a doubt influenced the process of reform. Nevertheless, several countries initiated reform projects and made headway in their agenda prior to the arrival of the global agents or with minimal external or technical assistance. These include Brazil, Chile, Costa Rica, and Uruguay, with varying degrees of success. n63 Indeed, critical re-evaluations and reformulation of their legal systems and important changes can be observed throughout the region. Traditional legal culture, for instance, is being challenged, and several law schools also have become active in legal reform movements, such as the Faculties of Law of the National University of Uruguay and Diego Portales University in Chile. Other law schools, including the University of Belgrano in Argentina, Catholic University of Peru, and Diego Portales University are becoming more active in critical and policy-oriented legal research and publications and are slowly introducing curriculum reform and clinics into their programs. Perhaps the most notable experiment, funded by the Ford Foundation, is an active public interest clinical program carried out among these three schools, which periodically meet to discuss their experiences and coordinate activities. n64

[*709] Structural innovations include Centro de Estudios Juridicos (CEJU), the **judicial** school recently instituted in Uruguay, which has become the major source of candidates for the judiciary and the public prosecutor's office in the process of loosening the traditional hold of the Supreme Court on entry into the judiciary. Moreover, CEJU workshops are training sitting judges in ADR techniques as well as bringing them up to date on other legal developments and innovations. In Argentina, the Ministry of Justice has a well-organized program of mediation training and diffusion and has introduced it as an essential component in its legal aid clinics in four lower-income neighborhoods. Other countries also have inaugurated new **judicial** academies and are in the process of replacing the investigative (inquisitorial) magistrates with an independent public prosecutor's office, as well as substantially improving their legal aid and public defender programs.

However, while oral trials and other innovative reforms can vastly improve the administration of justice, they require complementary structural improvements, including better-trained judges and support staff; adequate physical space to enable judges to hold hearings with the presence of opposing parties, counsel, and even interested public; computerization of **judicial** processes and computer links to essential legal data; and improvements in other public services whose timely collaboration is essential for an efficient administration of justice, such as the investigatory police, and other departments that must issue official reports or statistics. Thus, even if the proposed reforms would lead to the desired goals, their implementation faces difficult fiscal, political, and technical hurdles that may be beyond the capabilities of national entities and their external allies. n65

The rule of law and an accessible, efficient, and fair administration of justice can be one of the essential building blocks for an effective democracy. But potentially adverse side effects of law reform projects cannot be ignored. A pure free-market approach, for instance, will inevitably lead to a concentration of resources in a privileged few. Thus, if the poor are to benefit more evenly from economic growth, they must be provided with effective access to the allocation of goods and services, including justice. Similarly, if the long-neglected but recently assertive indigenous peoples are to participate in the anticipated benefits of the reforms and become empowered as citizens, then neither global nor local actors can ignore the reality of "legal pluralism." Diverse and operational legal systems exist throughout **Latin America;** they are part of the legal universe and ignoring them is but social denial. n66 Their recognition is due to the increasing and largely justified demands from provincial and municipal sectors for increased fiscal and political autonomy, calling for an end to the traditional system of centralized [*710] authority that prevails over most of **Latin America.** n67 While the global economy is pushing toward supra-national law and **judicial** review, indigenous and regional movements

are "localizing" law and politics. In the redistribution of sovereignty that occurs amid this tension, the State loses power in both directions. n68

In discussing recent World Bank funded legal reform programs in Africa, McAuslan critically analyzes the Bank's premises and approaches to legal reform, questioning whether, "legal development ... can achieve good governance and can develop the market economy in both developing and transitional countries." n69 Given this challenge, what should be the response of global agencies and other actors involved in legal reform? At the risk of being simplistic, I would suggest looking back before heading South, and once heading South, looking South. A logical starting point would be to carefully re-examine the Law and Development programs of the 1960s and 1970s, also premised on the centrality of law for promoting development in less developed countries. n70 To be sure, the world has changed since then, but nevertheless Law and Development's overall lack of success raises questions and provides lessons relevant to current global legal reform efforts. Indeed, one could ask, if "law" did not lead to "development" then, why should it now?

To start, one need look no further than the 1974 seminal report by the Research Advisory Committee on Law and Development of the International Legal Center. n71 After recognizing the flawed focus of the Law and [*711] Development movement of the 1960s and 1970s, this report called for a more realistic view of the role of law, emphasizing the need to go beyond formal rules to determine who has access to legal processes and how decisions are actually made. The report also emphasized the need for socio-legal research that goes beyond the premise that law plays a positive role; it also recognizes that law can distort or even be an obstacle to development while hiding behind the facade of change and legal equality. n72 After all, "it is seldom the rules of law that are truly significant or interesting about a foreign legal system; it is the social and intellectual climate, the institutional structures, ... and the procedures characteristic of the legal system that are instructive." n73 While almost platitudes for contemporary scholars, these concepts nevertheless are often ignored even as they are given lip service in current law reform aid packages.

It has become commonplace to emphasize that "disjointed efforts to **judicial** reform cannot succeed unless they are linked to measures addressing the deeply rooted political, technical, and structural factors which inhibit effective functioning of the judiciary." Reform is not neutral - it will produce conflicts between "winners" and "losers." n74 How can these problems be addressed? Among the practical courses of action future law reform programs could adopt is to ensure the full involvement of local actors; not only government officials and representatives of opposition parties, but also representatives of indigenous groups and grassroots organizations, in addition to experienced sociologists, political scientists, legal scholars, members of the bar, and other relevant individuals or groups. This participation is essential for pre-implementation studies, as well as follow-up studies or continuing assessments of the projects in question. It also is necessary for maintaining the principle that the choice and direction of legal reform, a political decision, rests with each country and not with the agency disbursing the loans and providing external advisors. n75

There also is a distinct need to foster closer links between the academic and practitioner community through periodic workshops involving both communities. Collaboration of academic and donor and other relevant institutions is needed for creating and organizing non-degree training programs and teaching materials on aspects of law and development. More than one scholar has pointed out the need for a renewed focus on comparative studies on the law and the process of reform in both developed and [*712] developing countries, including the study of how indigenous institutions evolve and adapt to modern functions. n76

In any case, both global and national actors involved in processes of law reform should not dismiss the too-often-ignored lessons from the past. Not least among these is that all reforms are political. Global inputs and technical expertise by themselves are not sufficient; national support from key constituencies is crucial. Moreover, while foreign institutions should be considered, they must be relevant to local contexts. Finally, reform actors should be prepared for long and unpredictable journeys. There are no quick and easy fixes to long-standing social problems. n77

FOOTNOTES:

n1. According to the United Nations Development Programme:

> Governance can be seen as the exercise of economic, political and administrative authority to manage a country's affairs at all levels. It comprises the mechanisms, processes and institutions

through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences.

Good governance is, among other things, participatory, transparent and accountable. It is also effective and equitable. And it promotes the rule of law. Good governance ensures that political, social and economic priorities are based on broad consensus in society and that the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of development resources.

Governance for Sustainable Human Development, U.N. Development Programme, U.N. Doc. DP Policy Doc. (Jan. 1997), available on <http://magnet.undp.org/policy/chapter1.htm>. Furthermore:

Governance includes the state, but transcends it by taking in the private sector and civil society. All three are critical for sustaining human development. The state creates a conducive political and legal environment. The private sector generates jobs and income. And civil society facilitates political and social interaction - mobilizing groups to participate in economic, social and political activities.

Id. <http://magnet.undp.org/policy/default.htm>.

n2. The "core idea" of the rule of law is defined by Whitford as "the accountability of transparent government decisions (including **judicial** responses to private lawsuits) to predetermined standards applied by an independent body, probably a court, through a procedure that can be practically utilized by the aggrieved." William C. Whitford, The Rule of Law, 2000 Wis. L. Rev. 723, 726.

n3. The Vienna Declaration of 1993 defines democracy as follows: "Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives." Jack Donelly, Human Rights, Democracy, and Development 21 Hum. Rts. Q. 608, 615 (1999) (quoting Vienna Declaration and Programme of Action, U.N. GAOR World Conf. on Hum. Rts., 48th Sess., 22d plen. mtg., pt. I, P 8, U.N. Doc. A/CONF.157/24 (1993), available in <http://www.unhchr.ch/html/menu5/d/vienna.htm>).

n4. Argentina and Guatemala, for example, have enacted new criminal procedure codes that include oral trials, and Colombia promulgated a new constitution that established an independent Public Prosecutor's Office. See Christian Riego, The Chilean Criminal Procedure Reform 2 (1997) (unpublished LL.M. thesis, University of Wisconsin Law School) (on file with the University of Wisconsin Law School). Chile inaugurated its first **judicial** training academy in 1994 and is in the process of promulgating a new Criminal Procedure Code in 1997. See Rodrigo de la Barra Cousi<tild n>o, Legal Reform in **Latin America:** Legal and Market Relations in Context, Paper Presented to ASIL Proceedings of the 92nd Annual Meeting (1998) (on file with author). For a discussion of other recent legal reforms, see Linn A. Hammergren, The Politics of Justice and Justice Reform in **Latin America:** The Peruvian Experience in Comparative Perspective (1998).

n5. See Jorge Correa Sutil, The Judiciary and the Political System in Chile: The Dilemma of **Judicial** Independence During the Transition to Democracy, in Transition to Democracy in **Latin America:** The Role of the Judiciary 89, 97 (Irwin P. Stotzky ed., 1993).

n6. Leading examples are Hammergren, supra note 4, and Lawyers Comm. for Human Rights & Venezuelan Program for Human Rights Educ. & Action, Halfway to Reform: The World Bank and the Venezuelan Justice System (1996) [hereinafter Halfway to Reform].

n7. See David Trubek, Law and Development: Then and Now, Paper Presented to ASIL Proceedings of the 90th Annual Meeting 224-25 (Mar. 27-30, 1996) (on file with author).

n8. Donelly, supra note 3, at 610.

n9. Id.

n10. Yash Ghai, Constitutions and Governance in Africa: A Prolegomenon, in Law and Crisis in the Third World 52-53 (Sammy Adelman & Abdul Paliwala eds., 1993).

n11. Id. at 53-56.

n12. Many of the ideas in this Part derive from Boaventura de Sousa Santos, Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition 250-377 (1995), and Boaventura de Sousa Santos, Globalization, Law and Democracy Seminar, University of Wisconsin Law School (Fall 1997) (author's notes, on file with author).

n13. Saskia Sassen, Globalization Lecture, University of Wisconsin-Madison Department of Sociology (Oct. 4, 1999) (author's notes, on file with author).

n14. The leading player in this process is probably the Agency of International Development (AID); other important actors include the Inter-American Development Bank (IDB) and the United Nations Development Programme (UNDP). For a description of these programs, see Justice Delayed: **Judicial** Reform in **Latin America** (Edmundo Jarquin & Fernando Carrillo eds., 1998).

n15. Andres Rigo Sureda, Legal and **Judicial** Reform: Lessons of Experience and the Bank's Future Role, in **Judicial** Challenges in the New Millenium: Proceedings of the Second Ibero-American Summit of Supreme Courts and Tribunals of Justice 19, 20 (World Bank Technical Paper No. 450) (Andres Rigo Sureda & Waleed Haider Malik eds., 1999).

n16. Waleed Haider Malik, Overview to **Judicial** Reform in **Latin America** and the Caribbean: Proceedings of a World Bank Conference 1-2 (World Bank Technical Paper No. 280) (Malcom Rowat et al. eds., 1995).

n17. See Maria Dakolias, A Strategy for **Judicial** Reform: The Experience in **Latin America,** 36 Va. J. Int'l L. 167, 167-69 (1995) [hereinafter Dakolias, A Strategy].

n18. See id. at 225-231.

n19. See Halfway to Reform, supra note 6.

n20. Id. at 1.

n21. See id. at 2.

n22. See id. at 2-3.

n23. Id. at 3.

n24. See id. at 6-10.

n25. World Bank Group, Fact Sheets, Development, Human Rights, and **Judicial** Reform, (last modified Apr. 2000) <http://www.worldbank.org/html/extdr/pb/pbhr.htm>.

n26. See World Bank Group, News Release No. 2000/141/LAC, World Bank Launches Paper on Justice and Indigenous Peoples in **Latin America** (Dec. 9, 1999), available on <www.worldbank.org/html/extdr/extme/141.htm>: Among Bank-supported **judicial** reform projects in the region, Guatemala's **judicial** reform project is noteworthy for its achievements. With the participation of the country's civil society, the project aims to increase the access of over five million indigenous citizens to the justice system; strengthen the system of justices of the peace in rural areas by incorporating the use of local languages; and promote observance of customary laws.

n27. Seth Mydans, U.N. Trade Meeting Brings Nations Rich and Poor No Closer, N.Y. Times, Feb. 20, 2000, at 10 (quoting James D. Wolfensohn, President of the World Bank).

n28. Rigo Sureda, supra note 15, at 19 (quoting James D. Wolfensohn, President of the World Bank).

n29. For a recent restatement of Bank law reform policies and program strategies, see id. at 20-21.

n30. The Supreme Court of Chile, for example, recently upheld the censorship of a book critical of court corruption and its role during the Pinochet regime, on the grounds that it injured the dignity of the judiciary. The author had to seek political asylum in the U.S. to escape detention. See La Tercera, Andres Velasco remueva la Concertacion, Reportajes, Feb. 27, 2000, at 6.

n31. See Dakolias, A Strategy, supra note 17; Maria Dakolias, Court Performance Around the World: A Comparative Perspective, 2 Yale Hum. Rts. & Dev. L.J. 87 (1999) [hereinafter Dakolias, Court Performance].

n32. Paulo Segio Pinheiro, The Rule of Law and the Underprivileged in **Latin America:** Introduction to The (Un)Rule of Law and the Underprivileged in **Latin America** 1 (Juan Mendez et al. eds., 1999).

n33. See Correa Sutil, supra note 5, at 94; Rogelio Perez Perdomo, Justice in Times of Globalization: Challenges and Perspectives for Change in the Administration of Justice in **Latin America,** in Justice and Development in **Latin America** and the Caribbean 131, 132-35 (1993).

n34. Interview with Jorge Marabotto, Chief Justice of the Supreme Court of Uruguay (Sept. 21, 1993) (notes on file with author).

n35. See Dakolias, Court Performance, supra note 31.

n36. The actuario, or clerk, is a professional **judicial** functionary, often with a legal education. Traditionally, they have taken an active role in processing cases, sometimes deciding the whole process by themselves.

n37. See Jorge Correa Sutil, Presentacion, in Justicia y Marginalidad: percepcion de los pobres 5, 8 (Jorge Correa Sutil ed., 1993).

n38. In Chile, for instance, practicing attorneys have personally reported to me a past practice of copying judgments from past cases as a short cut for resolving similar current cases, to the extent that sometimes the judges or clerks forget to change the names of the parties from the earlier cases.

n39. Brazil may be an exception, as some federal lower court judges have in recent years dared to assert their independence against Supreme Court or government control, resulting in serious internal and political conflicts. See Marcus Faro de Castro, The Courts, Law, and Democracy in Brazil, 49 Int'l Soc. Sci. J. 241 (1997).

n40. See Interview with Supervisory Commission, Centro de Estudios Juridicos de Uruguay (Sept. 21, 1993) (notes on file with author).

n41. Justicia y Marginalidad, supra note 37, at 73-89.

n42. Conversations with students in Chilean legal aid clinics and with lawyers who are engaged in legal service work confirm the study's conclusions. This group of dedicated advocates nearly unanimously but ruefully agreed that they were almost never able to resolve their clients' legitimate complaints through a formal legal process.

n43. See Interview with Juan Jose Prado, Attorney-at-Law and Former President, Buenos Aires Asociacion de Abogados (Sept. 26, 1993) (notes on file with author).

n44. See Luis Gabriel Moreno Ocampo, En Defensa Propia: como salir de la corrupcion 199 (1993).

n45. See Justicia y Marginalidad, supra note 37, at 23-26. This negative perception of the law as authoritarian and arbitrary is aptly summarized by an old Brazilian proverb: "To friends, everything; to our enemies, the law."

n46. See, however, Dennis O. Lynch, Lawyers in Colombia: Perspectives on the Organization and Allocation of Legal Services, 13 Tex. Int'l L.J. 199 (1978), as well as the various studies by Yves Dezalay and Bryant Garth funded by the American Bar Foundation.

n47. See Julio Maier et al., Reformas Procesales en America Latina: la oralidad en los procesos 29-31 (1993).

n48. See Felipe Saez Garcia, The Nature of **Judicial** Reform in **Latin America** and Some Strategic Considerations, 13 Am. U. Int'l L. Rev. 1267, 1280 (1998).

n49. See Maier et al., supra note 47, at 32-35.

n50. Moreno Ocampo, supra note 44, at 200.

n51. See Yves Dezalay & Bryant Garth, Argentina: Law at the Periphery and Law in Dependencies: Political and Economic Crises and the Instrumentalization and Fragmentation of Law 58-60 (American Bar Found. Working Paper No. 9708, 1998).

n52. See id. at 32-33; see also Jose Eduardo Faria, El poder **judicial** frente a los conflictos colectivos, Otro Derecho, Marzo 1990, at 5.

n53. See Faria, supra note 52, at 14, 25.

n54. See, e.g., Matt Moffett, **Latin America** Supplants Asia on Direct Investment: European Firms Challenge Position Of U.S. in Region, Wall St. J., Feb. 22, 2000, at A21, A21, A24 (reporting that **Latin America** is now the largest recipient of foreign direct investment in the world - US $ 97 billion in 1999 - overtaking those in Asia).

n55. See de la Barra Cousi<tild n>o, supra note 4.

n56. Dezalay & Garth, supra note 51, at 95. Indeed, as of 1993, the Argentinean judiciary "by and large has opposed mediation; most judges are very conservative and fear any changes in the processes they consider tried and true." Joseph R. Thome, Searching for Democracy: The Rule of Law and the Process of Legal Reform in **Latin America,** Paper Presented at the Workshop on Reforma **Judicial,** Motivaciones, Proyectos, Caminos Recorridos, Caminos por Recorrer, Institutio International de Sociologia Juridica 30-31 (Apr. 6-7, 1998), available on <http://darkwing.uoregon.edu/caguirre/lawandsociety.htm>.

n57. Dezalay & Garth, supra note 51, at 89.

n58. While agreeing that most business conflicts either are resolved in out-of-court settlements, arbitration, or other alternative dispute processes, Perez Perdomo argues that in the Latin American "modernizing" process, justice also has become "privatized." Increasingly, national justice systems have had to deal with more complex commercial contracts and "global" business conflicts for which they are ill-prepared. They lack the requisite training, structure, and expertise in international trade. Not equipped for these new conflicts, the courts resort to formalistic decisions, or, in the worst of cases, corruption. See Perez Perdomo, supra note 33, at 140. A personal anecdotal experience helps to illustrate this dilemma: A Chilean attorney very experienced in international business law was named an adjunct member of the Chilean Supreme Court for a limited period. During his period in office, he in fact became the Supreme Court whenever any complex commercial or economic case had to be decided, due to the permanent Justices' almost total lack of knowledge and experience on these issues.

n59. See Oscar Correas, La Democracia y las Tareas de los Abogados en America Latina, in Los Abogados y la Democracia en America Latina 211, 212-18 (Joaquim Falcao et al. eds., 1986).

n60. See Saez Garcia, supra note 48, at 1319.

n61. Hammergren, supra note 4, at 13.

n62. Halfway to Reform, supra note 6, at 6.

n63. See Hammergren, supra note 4, at 23.

n64. See generally Las Acciones de Interes Publico: Argentina, Chile, Colombia y Peru, in 7 Cuadernos de Analisis Juridico (Felipe Gonzalez Morales ed., April 1997).

n65. See Hammergren, supra note 4, at 25.

n66. See Armando Guervara-Gil & Joseph Thome, Notes on Legal Pluralism, Beyond L., July 1992, at 75.

n67. For the Chilean case, see Esteban Valenzuela, Modernity: An Endless Goal in Chile - Two Old and One New Item on the Chilean Agenda for the Year 2000: Poverty, Democratization and Political Cultural Reform (1997) (research paper, University of Wisconsin Law School) (on file with author).

n68. See John Henry Merryman, The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and **Latin America** 158 (2d ed. 1985). The World Bank for its part also sees globalization and localization as forces that will fundamentally alter the development landscape in the near future, defining globalization as the integration of the world economy, and localization as the increasing demands for local autonomy. In its own unusually colorful words, "globalization can be thought of as a giant wave that can either capsize countries or carry them forward on its crest. Localization creates a situation where local entities - the crew of the boat, if you will - are free to exercise individual autonomy but have the incentives to work together." World Bank, Press Conference: World Development Report 1999/2000: Entering the 21st Century 2 (Sept. 15, 1999).

n69. Patrick McAuslan, Law, Governance and the Development of the Market: Practical Problems and Possible Solutions, in Good Government and Law: Legal and Institutional Reform in Developing Countries 25, 25 (Julio Faundez ed., 1997).

n70. For insightful analyses of the Law and Development movement, see James A. Gardner, Legal Imperialism: American Lawyers and Foreign Aid in **Latin America** (1980); John Henry Merryman, Comparative Law and Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement, 25 Am. J. Comp. L. 457 (1977); and David Trubek & Marc Galanter, Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development, 1974 Wis. L. Rev. 1062.

n71. Research Advisory Committee on Law and Development, International Legal Center, Law and Development: The Future of Law and Development Research (1974). Committee members were teachers, researchers, consultants, and practitioners with extensive experience in

developing countries, one-third of whom came from these countries. See McAuslan, supra note 69, at 26.

n72. See McAuslan, supra note 69, at 26.

n73. John Henry Merryman et al., The Civil Law Tradition: Europe, **Latin America,** and East Asia at viii (1994).

n74. See Pinheiro, supra note 32, at 12.

n75. See Julio Faundez, Legal Technical Assistance, Introduction to Good Government and Law, supra note 69.

n76. See McAuslan, supra note 69, at 43.

n77. See id. at 38.