

# Third World Legal Studies

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Volume 1

Article 1

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1-1-1982

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### Recommended Citation

Paul, James C.N. and Dias, Clarence J. (1982) "Introduction: Underlying Concerns and the Field to be Examined," *Third World Legal Studies*: Vol. 1, Article 1.

Available at: <http://scholar.valpo.edu/twls/vol1/iss1/1>

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## INTRODUCTION: UNDERLYING CONCERNS

### AND THE FIELD TO BE EXAMINED

by

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In much of the third world (as elsewhere) the range of state controls over land and over production, reproduction or allocation of goods and services essential to the well-being of rural people is increasing. At the same time more people are living in conditions of absolute poverty, and human needs for food, habitat, health care and education grow. Yet, despite the official rhetoric of development, state agencies which control resources essential to satisfaction of these needs regularly underallocate them to the rural poor, and basic conditions of life for most rural people in most countries are deteriorating in both relative and absolute terms.

Economic impoverishment has been accompanied by--and often accomplished through--political exclusion. Increasingly, rural people lack opportunities to exert power and popular controls over governmental agencies which dispose of land, goods or services in ways directly affecting their welfare. Moreover, they must overcome formidable barriers in order to use existing administrative or judicial institutions to impose accountability upon officials who make allocative decisions. Thus, both economic and political gaps between the "haves" and "have nots" grow even as state power over the production and distribution of goods and services is enlarged.

The increasing interest in "alternative" development reflects widespread disenchantment with "modernization" paradigms of social change in non-western societies: depictions which emphasize the role of state bureaucracies, and "top-down," elitist modes of policy making and authoritarian modes of administration; a scenario which often rationalizes exploitation or neglect of rural peoples as an inevitable consequence of "growth" of commercial agriculture and transnationalization of rural economies. While concepts of alternative development and approaches to initiate it vary, the term is intended (here) to denote a dramatic shift from reliance on existing state structures to reliance on the collective efforts of rural people to redress conditions of impoverishment by changing legal relations governing control of resources essential to their needs. Thus, alternative development focuses on the formation and advancement of strategies which enable people acting collectively, through their own groups and in joint efforts with other groups, to:

- (a) exercise greater popular power --through direct participation, representation or other means --in governmental bodies which allocate essential resources to people or which plan and administer other controls over these resources;
- (b) secure more resources to satisfy basic material needs (such as land, credit and other essential goods or services) through redistribution or more equitable distribution from the state or dominant private groups which control these resources;
- (c) develop new intangible resources (such as functional literacy, systems of communication and civic knowledge) which enable people to become more self-reliant in social and political as well as economic terms; and
- (d) create new, endogenous organizations (such as community self-help associations, group-managed farms or cooperatives) which enable people, working together, to develop new economic activities, gain more political influence and greater control over their social and physical environments.

These approaches have been discussed in a number of important international documents.<sup>1</sup> They entail a critical rethinking, not only of priorities and policies governing state resource allocation, but, perhaps more important, because it seems a prerequisite, a change in the way programs are designed and administered --a change in the structures which make development possible.

Most previous studies of rural development have focused on social factors which produce underallocation or misallocation of resources essential to the satisfaction of basic human needs (e.g., studies of class or social biases affecting policy making or local administration of particular programs of resource allocation; studies of flaws in the organization of bureaucracies or in modes of administration; studies of other bureaucratic pathologies such as corruption). Very few studies have paid much attention to the content and uses of the various kinds of laws which create and supposedly govern these state activities, to the relation of law to different modes of administration, and to the importance of law in different paradigms of development. The authors of reports in this symposium were invited to examine:

- 1) whether and how law contributes to, or condones, practices, in the design of administration of development programs which contribute to the political exclusion and economic impoverishment of people in rural areas; and
- 2) whether and how law can be used to facilitate policies and administration geared to alternative development and to redressing conditions of impoverishment and exclusion.

Few legal scholars have focused closely on these issues. As noted, most studies of the administration of rural development focus on such phenomena as the control or manipulation of state machinery by dominant classes and groups; or on organizational flaws and pathologies within bureaucracies which (allegedly) explain why they fail to do what they are officially established to do; or on relations between rural poor and state agencies and officials. Law, if treated explicitly in these studies of "bureaucratic bourgeoisies" or "administrative failures," is often treated summarily, as an epiphenomenon which is generally thought (often without much careful legal analysis) to condone if not command the results. Or law is treated (e.g., by experts in administration) (but again without much legal analysis) as a detail, a technical instrument, subordinate to theories and policies worked out by "experts" in one or another "sector" of "development."

Practicing lawyers tend to focus on law which is of concern to their clients: usually on law relevant to conflicts which can be brought to courts (or adjudicatory tribunals). The rural poor are seldom clients of the more articulate members of the legal profession. Their grievances against the state are not widely understood and they usually remain as inchoate conflicts; few people have attempted to convert them into legal claims.

Perhaps for similar reasons legal education and academic commentators have given little thought to the importance of law as a means to control the design and administration of programs of rural development. The roles and uses of law in designing and administering programs for rural development are seldom subjects for study in law schools--particularly interdisciplinary study. Most legal scholarship addressed to problems of "administrative law," seems heavily influenced by foreign (e.g., British or French) approaches to the conceptualization and study of that subject. Thus, administrative law--as developed in legal texts--focuses attention on court-made rules and principles which are used by legal professionals to determine such questions as whether a particular power exists (e.g., can it be derived from the terms of a statute--by "canons" of interpretation or "tests" for "ultra vires"); or, if the power exists, whether it was properly exercised (e.g., in accordance with

"natural justice"); or whether a court can be used to litigate these questions (e.g., whether there is "standing," or some other doctrine precluding judicial review). Administrative law thus conceived is part--but only part--of the law which concerns us here. The continuing systematic impoverishment of rural people and the vast number of social critiques of existing modes and paradigms of development administration, and the implications of demands for alternative strategies of development call for a much broader inquiry.

Accordingly, we are interested here, in the whole body of law (legislation, subsidiary rules, agency manuals and bureaucratic customs as well as court doctrines) which is used--explicitly and implicitly--to govern the design and administration of government programs of rural development. The "field" which we explore is the study of how law is used to structure organizations and programs and activities which produce or distribute resources essential to satisfaction of basic human needs. Two approaches are contrasted throughout the volume. One emphasizes the use of law to structure state-managed programs and empower officials to control these resources. The other emphasizes use of law to enable "non state," participatory organizations to create and manage these programs or participate in those processes and to impose accountability on state officials--the use of law to empower people.

In the chapters which follow, we and our collaborators explore:

- 1) the paradigmatic implications of these differing approaches to the design and administration of programs to produce development--notably rural development;
- 2) the legal implications of these two approaches: differing ways to use law to structure programs concerned with management of essential resources; and
- 3) the implications of the above for both legal specialists and theorists who seek to help create conditions conducive to "alternative" forms of development: differing functions and tasks for different kinds of lawyers.

FOOTNOTE

1. See, e.g., the 1975 Dag Hammarskjöld Foundation Report entitled What Now: Another Development, published in 1975 Development Dialogue (Nos. 1 and 2); the International Labour Office's Meeting Basic Needs: Strategies for Eradicating Mass Poverty and Unemployment. Conclusions of the World Employment Conference 1976; The Food and Agriculture Organization's (FAO) Program of Action (1979), reporting on the 1979 "World Conference on Agrarian Reform and Rural Development;" the special issue of Development (journal of the Society for International Development) (No. 1, 1981) entitled "Participation of the Rural Poor in Development." The July 1982 meeting of the Society will be devoted to an "Alternative Development Strategies' Programme."