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LAW, URBAN DEVELOPMENT, AND THE POOR IN DEVELOPING COUNTRIES*

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I. THE PROBLEM OF URBAN DEVELOPMENT

One of the great problems of the poor countries of the world has been their inability to cope with massive and unprecedented urbanization.¹ Governments have been unable either to stem the flow of peo-

* An earlier version of this Article was presented to the Committee on Legal Services to the Poor in the Developing Countries at a conference held at the International Legal Center in New York City in November 1973. It was rewritten and presented in November 1974 to a seminar on law and the city, conducted by the East-West Center in Honolulu, in which Mr. Magavern participated as a Senior Fellow. It has benefited from the valuable criticisms of the other members of the seminar, Ester de Jesus Amor, Tai-joon Kwon, Ernest V. Devadson, and John J. Costonis. The Article incorporates another paper prepared for the seminar, "Law and Illegal Settlement in Manila," which will be published by the East-West Center with the other seminar papers.

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1. Several disclaimers are in order. First, the authors do not assume that urban development policies designed to favor the poor will necessarily foster national economic growth, political stability, or other developmental ends. Nor do we assume that the general long-term interests of the poor would necessarily be advanced most effectively by policies according a high priority to the immediate, environmental needs of the urban poor. These issues are beyond the scope of this Article. We believe, however, that those needs do deserve more attention than they have received. Secondly, we do not accept the notions that there is a single process—and a single end—of development and that the poor countries are in various stages of this process. Nor do we assume that the processes of change underway in the poorer countries (or in the richer countries for that matter) necessarily represent development in the sense of improvement. It does seem that the welfare of the people is in fact improving in some of the poorer countries. Nevertheless, for the sake of convenience, the conventional term "developing country" will be used. Thirdly, rapid urbanization can engender a need for legal services for the poor in several ways. Social life may depend upon legal relationships to a greater extent in rural than in urban areas. By disrupting traditional institutions and primary relationships, urbanization may require greater recourse to legal institutions to define social norms and relationships, to resolve disputes, and to maintain social order. It should be

ple into the cities or to manage urban development to provide an acceptable environment for their swelling populations. The resulting gap between rapid urbanization and grossly inadequate urban development has been manifested in generally deteriorating urban environmental conditions and, most dramatically, in the proliferation of squatter settlements in the interstices and peripheries of the major cities. The poor especially have suffered from the inadequacy of urban development. They have been left to develop urban settlements by their own efforts, and governments have tended at best to neglect and at worst to disrupt and destroy these settlements.

In this Article, the potential role of legal services for the urban poor in achieving levels and forms of urban development more satisfactory to their welfare will be considered. It will be seen that the inadequacy of urban development policies is a manifestation of the fundamental problems of political development confronting the poor countries and that only under uncommonly favorable political conditions can legal services prove effective in securing more favorable environmental conditions for the urban poor.

This Article is directly concerned with urban squatters. While many squatters are not poor, most of the urban poor are squatters. The most significant challenge of urban development to the governments of developing countries, in improving the welfare of the poor, is to accommodate and enhance the process of spontaneous development manifested in squatter settlements. Our analysis and conclusions will be determined and limited to a great extent by the condition that

noted, however, that recent studies suggest that the disruptive effect of urbanization upon the poor has been exaggerated and that the urban poor are often quite capable of developing their own forms of social order. *See generally* K. KARST, M. SCHWARTZ & A. SCHWARTZ, *THE EVOLUTION OF LAW IN THE BARRIOS OF CARACAS* (1973); A. LAQUIAN, *SLUMS ARE FOR PEOPLE* (1971); *PEASANTS IN CITIES: READINGS IN URBAN ANTHROPOLOGY* (W. Mangin ed. 1970).

The problem of the extent of the disruptive effects of urbanization is, however, beyond the scope of this Article. Our concern is with a narrower set of issues. The policies and programs adopted by government in response to urbanization may create a specific need for legal services to the poor, insofar as they are affected by those policies. To the extent that programs are designed to benefit the poor, legal services may be required to assure effective implementation. *See Metzger, Legal Services to the Poor and National Development Objectives*, in *LEGAL AID AND WORLD POVERTY, A SURVEY OF ASIA, AFRICA AND LATIN AMERICA* 3-18 (1974) [hereinafter cited as *LEGAL AID AND WORLD POVERTY*]. And to the extent that programs work against the interests of the poor, legal representation may help the poor resist or alter their implementation.

squatters, by definition, do not have a legal right to the land on which they live. Insofar as the political limits of law and legal representation of the poor are concerned, consideration of legal services in relation to urban squatting will have broader implications. The problems of the poor consist not only in a lack of formal rights (as distinguished from inadequate access to adjudicatory and enforcement institutions), but also in governments' inability to give effect to laws, programs, and policies that favor the poor.

A. *The Urban Development Gap*

The magnitude of the gap between massive urbanization and inadequate urban development needs little demonstration. While national populations have been increasing at rates of two to three and one-half percent per year, the larger cities of the poor nations have been growing at two or three times those rates and now contain three to ten times their pre-World War II populations.² Yet many cities still depend upon essentially pre-war infrastructure systems. Often, piped water and sewer systems are available to less than one-fourth of the urban dwellings. A number of major cities have no sewer systems at all. While improvements of roads, bridges, and public transportation systems have received a high priority in the allocation of public funds, the resultant construction has not kept pace with urban expansion and an increasing use of automobiles by the more affluent.

The gap between rich and poor is most obvious in the case of housing. Only the upper and middle classes have been able to afford conventional urban housing on planned streets with sufficient municipal services. In a process aptly characterized as autonomous urban settlement,³ the poor have built their own housing on whatever land and from whatever materials—packing crates, scrap metal, palm leaves—they have been able to find. The quality of their housing varies from quite satisfactory to wretched. The more basic problems lie not in the quality of the individual houses, but in the lack of water, sanitation, and, above all, legally secure possession of home sites. Nearly one third of the populations of some of the major cities of India—unable to find

2. UNITED NATIONS, *GROWTH OF THE WORLD'S URBAN AND RURAL POPULATION, 1920-2000* (1969).

3. Turner, *Uncontrolled Urban Settlement: Problems and Policies*, in *THE CITY IN NEWLY DEVELOPING COUNTRIES* 507-34 (G. Breese ed. 1969).

accommodation other than that offered by sidewalks, railroad stations, and other public places—are classified as pavement dwellers.⁴ In most of the poor countries, squatter settlements comprise from one-fourth to one-half of the population of the larger cities.⁵ Even Singapore, which has achieved extraordinary success in fostering economic growth, urban development, and rising standards of general welfare, has accorded low priority in urban planning policy to the immediate needs of the poor. Since 1959, the government has ameliorated a severe housing shortage by constructing public housing for nearly half the population of the city.⁶ Despite its achievements, the government has failed to provide adequate housing for the poorest quarter of the population. Moreover, in order to provide land for urban development projects, the government has razed squatter settlements and densely inhabited neighborhoods of old shop houses, driving the poor out of low-cost housing and disrupting their community-based economic and social relationships.⁷

In general, the environmental problems of the urban poor are attributable to the low priority those problems have received in the operation of public policy as well as to the insufficiency of public resources for urban development. The overriding objective of most governments appears to be to develop the city as an efficient and prestigious center for government and the modern sector of the economy, with the expectation that in the long run the poor will benefit from economic growth and national development. That objective tends to conflict with the immediate interests of the poor, not only in the allocation of public investment funds, but also, and more importantly, in the allocation of land. Competing demands for locations accessible to employment and urban services, whether on land already occupied by the poor in squatter or slum settlements or on peripheral land ripe for conversion to urban use, are intensified by the inadequacy of urban transportation systems and by the sheer size and speed of growth of the largest cities of the developing countries.

4. FAR E. ECON. REV., Nov. 19, 1974, at 47.

5. Turner, *supra* note 3, at 507.

6. See generally H. Stockwin, *Housing: Running in Order to Stand Still*, FAR E. ECON. REV., Aug. 9, 1974, at Supp. 22 [*Focus: Singapore in Asia '74*], citing 1973-74 SINGAPORE HOUSING DEV. BD. ANN. REP.

7. See I. BUCHANAN, SINGAPORE IN SOUTHEAST ASIA (1972); R. GAMER, THE POLITICS OF URBAN DEVELOPMENT IN SINGAPORE (1972).

B. *Alternative Policies*

It is clear that the governments of most of the developing nations have not been able to respond effectively to rapid urbanization, particularly in respect to the welfare of the poor. It is not clear that more effective policies are available.

Can the process of urbanization itself be checked? Urbanization in Europe and North America is generally considered to have been both a condition and a consequence of industrial development. It has proceeded at rates corresponding to the growth of employment in urban-based industry and has been more or less manageable. Post-war urbanization in the developing countries has proceeded far more rapidly than industrial development and in great part outside the scope of institutional management. Many observers have deplored what they conceive to be pathological, premature, or pseudo-urbanization in the developing countries. Noting the inadequacy of employment opportunities and the squalid physical conditions of life in the cities, especially for the poor, they have warned of socially and politically disruptive consequences and have advocated policies to check urban immigration or at least divert migration away from the largest cities. On the same assumptions, governments have occasionally announced rather half-hearted policies to check the process of urban growth. In recent years, however, the debate has taken a more positive turn. It has been argued that urbanization should be encouraged since it provides economies of scale and agglomeration, drains surplus labor from the countryside, making it available to the modernizing industrial sector, and promotes social and political modernization.⁸

The debate over the desirability of rapid urbanization is, however, essentially irrelevant to the subject of this Article. In terms of the welfare of the poor, there is no reason to believe that urban in-migrants are not seeking out the best opportunities available to them, and finding better though meager opportunities in the cities than in the

8. See generally THE CITY IN NEWLY DEVELOPING COUNTRIES (G. Breese, ed. 1969); J. FRIEDMANN, URBANIZATION, PLANNING AND NATIONAL DEVELOPMENT (1973); G. MYRDAL, ASIAN DRAMA 467-71 (1968); R. POETHIG, CITIES ARE FOR LIVING (1972); URBANIZATION AND NATIONAL DEVELOPMENT (L. Jacobson & V. Prakash, eds. 1971); Dotson & Tenune, *On the Consequences of Urbanization*, in METROPOLITAN GROWTH: PUBLIC POLICY FOR SOUTH AND SOUTHEAST ASIA 13-43 (L. Jacobson & V. Prakash, eds. 1974); Jacobson & Prakash, *Urban Planning in the Context of a "New Urbanization,"* in *id.* at 259-86.

countryside. Nonetheless, most governments do not appear to have the economic and political capacity to alter the causes of rapid urban population growth or satisfactorily deal with the problems that result. Cities will continue to grow from natural increase of the urban population. In addition, overpopulation of rural areas in relation to their economic base contributes heavily to urban in-migration. In many countries, rural areas are already overpopulated and lack additional arable land for cultivation. Rural population growth may be reduced somewhat, but over the next two decades it will necessarily continue at rapid rates.⁹ Although agricultural productivity can be increased greatly, the process is a slow one, unlikely to absorb labor at a rate corresponding to population growth. To the contrary, in some cases, mechanization of agriculture may displace labor. Continued rural-urban migration, therefore, seems inevitable.

Industrial dispersal has been advocated as a means to divert immigration from large cities to smaller regional centers. In a few instances, such as Ciudad Guyana in Venezuela, the Jurong Industrial Estate in Singapore, the Kaohsiung port and foreign trade zone in Taiwan, and the Ulsan industrial complex in Korea, there may be opportunities to establish complexes of industries in new centers favored by proximity to raw materials or natural harbors. The poor countries, however, cannot afford to increase the costs of industrial development by barring it from urban areas. In general, the necessary economic data and analytical techniques are not available to determine the comparative costs of industrial location in outlying regions and major cities. Although policies giving priority to development of the countryside may be desirable, few governments have the political capacity to retard the growth of cities, either by rapid and intensive reorganization of the rural economy or by directing the location of human settlement and economic activity. It seems, therefore, that continued rapid urbanization must be accepted as inevitable. Hence, if government is to respond effectively, attention must be turned to positive urban development policies.

Is the answer, then, to allocate a greater share of national resources to the urban sector? We do not believe so. In an analysis of the national economic development plans of Malaysia and Thailand, Pro-

9. The age structure of the populations alone would assure continued population growth, even if the most optimistic predictions for family planning are realized.

fessor Donald Fryer found that, despite considerable rhetorical emphasis upon rural development and reduction of urban-rural income inequalities, the plans in fact allocated a disproportionate share of development investments to the urban sector. Failing to allocate to the rural sector a share proportional to the size of its work force or even its contribution to national product, the plans implicitly contemplated a widening of the urban-rural income gap.¹⁰ Similarly, in the Philippines the declared goals of industrial dispersal and accelerated development of lagging regions have been ignored in the public investment program of the current four-year development plans and the granting of industrial investment incentives by the Board of Investment.¹¹ There is little reason to think that similar patterns do not exist in other developing countries. Nevertheless, a convincing case has not been made, in the interest of either social justice or economic development, for the allocation of a greater share of national resources to urban development.

Most of the developing countries have experimented with a variety of public housing techniques and policies. Although few have constructed public housing on more than a token scale, many continue to postulate low-cost public housing as the ultimate solution to the urban housing problem. The cheapest cost per unit for conventional public housing in a poor country is at least \$2,000. In comparison, it is possible for a squatter to build a satisfactory house at a cost of about \$100, and it is possible to provide essential infrastructure facilities for another \$100 per unit.¹² As already noted, Singapore has provided public housing for nearly half of its population. Singapore is not a poor country, however; it is a city-state of about 2.2 million people, with a per capita income now in excess of U.S. \$1,500 per year.¹³ Yet even in Singapore, the poor cannot afford public housing. In most of the poor countries con-

10. D. Fryer, *National Development Plans and the Budget: Public Sector Resources for Urbanization*, March 24, 1969 (unpublished discussion paper prepared for Southeast Asia Development Advisory Group [SEADAG] Urban Development Seminar at the East-West Center).

11. A. Santiago & J. Magavern, *National Planning Legislation in the Philippines* 11-12, Oct. 1971 (Occasional Paper No. 6 for U. of Phil. Inst. of Planning).

12. Cf. R. Stone, *PHILIPPINE URBANIZATION: THE POLITICS OF PUBLIC AND PRIVATE PROPERTY IN GREATER MANILA 57* (1973); Etherington, *Facing the Squatter Problem in Developing Countries*, *SOLIDARITY*, July 1973, at 8-9; Sadove, *A View of the Urban Needs of Developing Nations*, *SOLIDARITY*, Sept. 1973, at 51-59.

13. See C. Lee, *Economy: Optimism, but Caution Prevails*, *FAR E. ECON. REV.*, Aug. 9, 1974, at Supp. 16, 18 [*Focus: Singapore in Asia '74*].

ventional public housing is not economically feasible for more than a small fraction of the urban population.

If, then, most governments are unable to check continued rapid urbanization, commit a greater share of public resources to urban development, or construct conventional public housing within the means of either the poor or the government, what sort of urban planning and development policies might make possible a more effective response to the environmental needs of urban citizens, especially the poor? Professional urban planning in most of the developing countries, as in the western world, has been dominated until recently by the illusion of the comprehensive master plan. The traditional master plan represented an attempt to lay out in maps and documents an ultimate physical design of the city, to be brought into being over a period of twenty or more years. In the last two decades, as the limitations of a static and design-centered planning process have been thoroughly exposed,¹⁴ the planning profession has shifted to a more comprehensive concern with social conditions, economic policy, and intermediate-term programming in pursuance of plan implementation. Nevertheless, comprehensive, long-term urban planning has remained a futile exercise in most of the developing countries, as well as in the United States. A number of ambitious urban planning projects have been undertaken in major cities of poor countries. None has had a significant direct impact upon the course of urban development.¹⁵ Rather, urban planning has tended to become bogged down in empirical studies and theoretical deliberations, which have been out-paced by rapid urban growth and economic and political change. Of equal importance, urban planners have failed to recognize the inevitable economic, administrative, legal, and, above all, political constraints upon the capacity of government to finance, organize, and direct urban settlement and development. While governments have been criticized harshly for failure to implement plans, the fault lies as much with planners who have continued to produce utterly unrealistic planning documents.

14. See Friedmann, *The Future of Comprehensive Urban Planning: A Critique*, PUB. AD. REV. May-June 1971, at 315; Friedmann & Hudson, *Knowledge and Action: A Guide to Planning Theory*, 40 J. AM. INST. PLANNERS 2 (1974).

15. This is not to deny that such projects may yield more indirect benefits through the development and dissemination of knowledge or eventual implementation of elements of the plan. The World Bank, for example, is now considering assistance to Calcutta for a complex of urban development projects based upon a plan and studies completed in 1966 by a massive planning effort heavily supported by the Ford Foundation.

In recent years, planning theorists have persuasively criticized comprehensive, technocratic rationality as a model of planning,¹⁶ but they have failed to produce a functional methodology of urban planning that is not vulnerable to the criticisms they themselves make. Perhaps for this reason, planning practitioners have generally continued to adhere to the ideal of comprehensive planning.

Nevertheless, in recognition of the impracticability of large-scale public housing and the futility of comprehensive master planning, a consensus has begun to take shape about the limits and elements of a more effective approach to urban planning and development in poor countries. This emerging consensus may tentatively be summed up in the phrases "action planning" and "sites-and-services." The most influential proponent of this more pragmatic approach was Charles Abrams.¹⁷ In the report of a United Nations Mission to Singapore, Abrams and two colleagues, Susumu Kobe and Otto Keonigsberger, did not attempt a detailed, comprehensive master plan. Rather, their report recommended a set of environmental performance standards, a guiding concept, and independently-planned programs of action.¹⁸ Because its emphasis was upon workable programs for specifically identified development projects, this approach was termed "action planning." The report's planning concept was compatible with the highly pragmatic, result-directed style of the Lee Kuan Yew administration. Indeed, the Singapore government adopted a far more ad hoc form of planning than the authors of the report contemplated. The guiding concept of a ring of diversified settlements around the perimeter of the island was ignored. In its determination to execute specific projects quickly and efficiently, the government tended to pay insufficient attention to the contents of its Master Plan, the recommendations of its planning department, and the social impact of its physical development projects.¹⁹ Nonetheless, Singapore's remarkable achievements in urban and economic development are attributable, at least in part, to an incremental, project-centered and relatively short-term approach to planning.

As an alternative to conventional public housing for the poor,

16. See, e.g., Friedmann & Hudson, *supra* note 14, and sources cited.

17. See generally C. ABRAMS, *MAN'S STRUGGLE FOR SHELTER IN AN URBANIZING WORLD* (1964).

18. C. ABRAMS, S. KOBE, & O. KOENIGSBERGER, *REPORT FOR THE GOVERNMENT OF SINGAPORE* (1963).

19. For an excellent analysis of the political context of the planning process, see

R. GAMER, *supra* note 7.

Abrams proposed a more realistic approach, which in more recent elaborations has become known by the term "sites-and-services."²⁰ The essential idea is to turn to advantage the process of spontaneous urban development now manifested in squatter settlements. A sites-and-services policy calls for the improvement of existing squatter settlements by provision of essential urban facilities and services, including access, fresh water, drainage, and sewage disposal. In a subsequent phase, provision is made for the planning of similar but more highly organized new settlements with sites-and-services development as an integral part of the urban expansion process.

The most obvious advantages of a sites-and-services policy are economic. For example, in the Philippines, the cost of providing sewage collection, asphalt roads, and water mains and laterals to each house in a tract containing building lots of one-hundred square meters has been roughly estimated at U.S. \$100 per unit. A Manila squatter can construct a decent dwelling at a cost of approximately U.S. \$100 more. Hence, the total cost of housing and site development is approximately U.S. \$200.²¹ In contrast, the cost of construction of conventional apartments or single-family houses is at least \$2,000. Moreover, the construction and costs of owner-built housing can be phased over a number of years by the owner's progressive improvement of his house in a manner that would not be feasible for publicly built housing.²²

Beyond purely economic considerations, a sites-and-services policy has other potential merits. It would enable squatter communities to retain their social cohesiveness, accessibility to employment and public transportation, and household and community-based occupations such as hawking, small-scale retail trade and services, and part-time fishing and poultry-raising. Such a policy would direct a more equitable share of the benefits of public infrastructure investments to the poor. Finally, by bringing squatting within the law and the planning process, a sites-and-services policy would enable governments to manage urbanization and urban development more effectively. Until alternative

20. See C. ABRAMS, *supra* note 17; C. ABRAMS, *SQUATTER SETTLEMENTS: THE PROBLEM AND THE OPPORTUNITY* (1966); A. LAQUIAN, *supra* note 1; R. POETHIG, *supra* note 8; *URBAN PLANNING IN DEVELOPING COUNTRIES* (J. Herbert & A. Van Huyck eds. 1968); Sadove, *supra* note 12; Turner, *supra* note 3; Van Huyck & Rosser, *An Environmental Approach to Low Income Housing*, 8 INT'L DEV. REV. 15 (1966).

21. Etherington, *supra* note 12.

22. See Turner, *Barriers and Channels for Housing Development in Modernizing Countries*, 33 J. AM. INST. PLANNERS 167 (1967).

urban settlement opportunities are made available, most governments cannot reasonably expect to bring squatting under control. If a feasible alternative to illegal and uncontrolled autonomous settlement is to be developed, it must start with a "minimal standards approach"²³ of legalizing, supporting, and improving the process. Such an approach must attempt to impose only those controls required to reconcile inexorable settlement pressures with essential planning objectives, such as rational locational arrangements and provision of basic services and facilities.²⁴ If successful, a policy of this kind would further serve to reduce the strain on the legal system arising from sporadic or arbitrary enforcement of the law. Experience has demonstrated convincingly that, under current distribution and legal norms of land ownership, the gap between the formal legal system and the social needs and values represented by urban squatting cannot be closed simply by attempting to enforce the existing law more rigorously against squatters. The only alternative is to accommodate those needs and values within the legal system.

A sites-and-services policy, to be successful, would have to be implemented on a large scale. Otherwise, in their quest for land, unmanageable numbers of squatters would press into areas designated for distribution, and, even in the face of a forfeiture clause, many would sell their "rights" to more affluent land seekers and resume squatting elsewhere. If possible, sites should be provided for middle-income as well as low-income families and for commercial and industrial as well as residential and community use. Ideally, if all or most urban land were to be brought within public ownership, distribution and occupancy should be by leasehold. If, however, private ownership is to remain the dominant form of urban land tenure for the foreseeable future, then, for all but the most destitute, an installment purchase plan should be established to cover the costs of site acquisition and development, even though collection of the installments and administration of the plan might prove extremely difficult or impossible.

Most squatting has been on public land. Where such land is not urgently needed for some other use, tenure should be stabilized and minimal facilities and services introduced. Extremely dense and irregular patterns of occupancy make this proposal no easy task. Where relocation is necessary, it should be on a community-wide basis in locations as near to the prior residence as possible in order to mini-

23. Sadove, *supra* note 12, has used this phrase.

24. See Turner, *supra* note 3.
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mize economic and social disruption. To accommodate urban population growth and squatters relocated from other sites, new sites should be included in urban expansion schemes, to be developed as infrastructures services are extended outward on the urban periphery.

If sufficient public land were made available, it would be possible to restrain new squatting on private land. Where private land is already occupied by squatters, the availability of alternative public sites could be expected to facilitate private arrangements between owners and squatters for voluntary removal, probably at lower levels of compensation than often prevail under present circumstances. In some cases, the government could acquire and redistribute squatter-occupied private land to the squatters, possibly basing compensation to the owner upon the value of the land as encumbered by squatter occupancy, with due regard to the difficulties of removal through legal process.²⁵ As an interim measure, police power regulations could be enacted to restrict the owner's right to evict squatters who had established occupancy prior to initiation of the program.²⁶ In countries with unusually effective governments, the extension of public streets and utilities and the approval of plans to subdivide and develop private land could be conditioned upon agreement by the owner to allocate a portion of the land for use as sites-and-services projects.²⁷

The minimal urban planning and development strategy outlined above would be difficult, and in some respects perhaps impossible, to implement. But even if sites-and-services programs were to break down with respect to site layout, project financing, or linkage to more comprehensive urban development plans, great improvement could be realized if a government were effectively able to plan where settlement would take place, provide some form of community water and sanitation facilities, and allocate a greater share of public investment to the benefit of the poor. A sites-and-services policy, in other words, could be of significant value even if imperfectly implemented. The problem,

25. Singapore, which abrogated its constitutional just-compensation clause upon separation from Malaysia, limits compensation in roughly this way. See Koh, *The Law of Compulsory Acquisition in Singapore*, [1967] MALAYAN L.J.

26. Rent control in Singapore has this effect under certain circumstances. See Koh, *Rent Control in Singapore*, 8 MALAYA L. REV. 32-45, 176-232 (1966).

27. In Korea a considerable part of urban development is carried out in conjunction with land readjustment schemes; the government takes a portion of the land under development as compensation for public costs incurred in providing facilities and executing the scheme.

though, is not simply one of technique or knowledge; more fundamentally, it is that the willingness and ability of government to implement such a policy depend on uncommonly favorable political conditions.

II. THE ROLE OF LAW AND LEGAL SERVICES TO THE POOR IN URBAN DEVELOPMENT

The character and extent of the involvement of the legal profession in problems of the urban poor have been determined by the size and structure of the legal profession itself and by the characteristics of the underlying political system. The provision of legal services to the poor on an organized basis has tended, in many countries, to evolve in the following stages:²⁸

1. assignment of counsel to defendants accused of serious crimes;
2. formation of small-scale legal aid clinics as private charitable operations, serving clients with private-law problems in such areas as domestic relations, wage claims, and property disputes;
3. staff representation of potential beneficiaries of social reform programs in areas such as agrarian and industrial labor relations;
4. government or other institutional sponsorships of general legal aid programs designed to enforce existing legal rights and to seek to inform, motivate, and defend the poor against the abusive exercise of both private power and official authority; and
5. attempts, through legal representation, to employ legal and political processes to organize the poor and to create and give effect to new legal rights for the poor.

It is not suggested that these stages correspond to any supposed stages of general development, nor that they necessarily represent a sound response to the legal problems of the poor. The pattern does not hold for a number of socialist nations where efforts have been made to de-professionalize the administration of justice.²⁹

Many of the poor countries have formally adopted programs similar to one of the first four described above. More often than not, however, the governments have failed to provide the necessary financial and political support to make the programs effective. No program of the fifth kind has been established in a developing country. The most ambitious program of that variety—the Neighborhood Legal Service

28. See generally *LEGAL AID AND WORLD POVERTY*.

29. See N. Tiruchelvam, *The Ideology of Popular Justice*, 1973 (Working Paper No. 21 for Program in Law and Modernization at the Yale Law School).
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Program in the United States—has been judged a failure, at least when measured against its initial objectives of sweeping social reform.³⁰ There is no reason to believe that such a program would be more successful in the developing countries.

The impact of law upon urban development policy and the welfare of the poor has been determined by both its substantive content and the relative strength or weakness of legal institutions. The basic contradiction between the formal law of property and the needs of the urban squatters has never been satisfactorily reconciled in either formal or effective law. Lawyers and legal processes have, at times, played a substantial role in the adoption and the implementation or frustration of policies both favorable and unfavorable to the urban poor. With a single exception, however, organized legal aid programs have failed to address themselves to the environmental needs of the urban poor. The reasons and the issues are illustrated by experience in four countries—Indonesia, Singapore, South Korea, and the Philippines.

A. *Indonesia*

The one country in which organized legal aid has been significantly concerned with urban development policy is Indonesia. In 1968, Adnan Buyung Nasution, an outstanding young advocate, proposed that the national bar association establish a legal aid office.³¹ The association endorsed the proposal and directed Nasution to establish an independent legal aid institute. He began by explaining the concept to a number of judges and government officials and securing their political support. He then approached General Ali Sadikin, the military governor of the special district of Jakarta, and presented a formal request for authorization and financial support for the creation of the proposed Legal Aid Institute (*Lembaga Bantuan Hukum*). The request was granted, and the Institute began operations in 1971. Approximately

30. See H. Stumpf, *The Failure of Legal Services or Let Them Clean Out Cellars*, Oct. 11, 1973 (paper presented at S.U.N.Y. at Buffalo), to be published in H. STUMPF, *COMMUNITY POLITICS AND LEGAL SERVICES: THE OTHER SIDE OF THE LAW* (Sage); cf. Brill, *The Uses and Abuses of Legal Assistance*, PUB. INTEREST, Spring 1973, at 38.

31. The following text is based on LEGAL AID AND WORLD POVERTY 155; D. Lev, *Bush-Lawyers in Indonesia: Stratification, Representation, and Brokerage*, 1973 (working paper for the Program in Law and Society at the Univ. of Cal., Berkeley); Interview with Adnan Buyung Nasution at a meeting of the International Legal Center Committee on Legal Services to the Poor in the Developing Countries in New York City, November 3-5, 1973.

eighty percent of the Institute's financial support is provided by the government and twenty percent by private donations. The Institute is staffed by ten full-time lawyers. In 1972 it received seventy-five applications for assistance per month and accumulated one hundred fifty civil and fifty criminal cases to be litigated. In the first half of its third year of operations, it handled fifteen hundred cases. One of the principal purposes of the Institute is "to raise the public's consciousness of law, particularly its rights under law."³² To that end, the Institute has conducted an instructional program for journalists and planned a series of radio and television programs on law and legal rights. Occasionally, it has resorted to the communications media to develop public support in behalf of the causes of particular clients.

In two prominent cases, the Institute provided legal representation for poor occupants of land required for government development projects. The first project was undertaken to implement a plan that called for the clearance of older communities for replacement by modern housing and industrial centers. A government contractor with strong political influence was assigned to demolish the village of Simprug, on the outskirts of Jakarta. The contractor arrived at the site accompanied by bulldozers and armed men to intimidate the villagers who owned the land. Nasution organized and encouraged the villagers to resist clearance, prepared pamphlets explaining that the threatened eviction was contrary to law, posted notices advising the contractor not to enter the property, and invited the press to witness the events. Rather than commence litigation he successfully negotiated with the contractor and the government. A written agreement providing fair compensation for the villagers' land and property in an amount roughly equivalent to U.S. \$1 million was concluded.

The second case arose when, in order to establish a greenbelt in accordance with the Jakarta development plan, the government sought to clear a settlement, known as Tebet, of about five thousand families. Unlike the landowners of Simprug, the inhabitants of Tebet were squatters who had occupied public land for thirteen years. Therefore, they had no legal grounds upon which to resist eviction or claim compensation. The government issued several warnings and deadlines for voluntary removal; when these went unheeded, clearance operations began. The people fruitlessly sent delegations to petition the gov-

32. LEGAL AID AND WORLD POVERTY 192.

error, the provincial parliament, and the dominant political party. Having heard about the Simprug case, the squatters then asked Nasution to represent them. He explained that as squatters they had no right to compensation, but agreed to ask the government to provide a relocation site. Again enlisting the support of the press, Nasution argued that if a relocation site were not provided, the people would have no choice but to resume squatting elsewhere. The government agreed to provide a site about five miles away. It is not known whether the relocation site will offer sufficient urban services and access to employment opportunities to enable the former Tebet villagers to establish a permanent settlement.

In January 1974, Nasution was arrested following the riots in Jakarta precipitated by the visit of the Prime Minister of Japan. At the time of this writing, he remains under detention, awaiting trial on charges of subversion. It is unknown whether Nasution's tactics as Director of the Legal Aid Institute contributed to his arrest, but it seems reasonable to speculate that his incarceration will discourage the use of such tactics in the future.

B. *Singapore*

Singapore, with a population of approximately 2.2 million, has fewer than 300 lawyers.³³ Though parliamentary in form, the government is dominated by the elite leadership of the highly disciplined People's Action Party and an able, determined, and pragmatic administration.³⁴ Although communists and pro-communists are subject to systematic repression, elections are free and regularly conducted. Organized opposition is weak, and dissent is tolerated only when the administration does not perceive it as a threat to the tight political and social order. The legal profession appears to be well organized and conventional in outlook.

Broad statutory provisions for legal representation of indigent defendants and litigants in criminal and civil cases have received only

33. *Id.* at 172.

34. On the politics and economy of Singapore, see generally T. BELLOWS, *THE PEOPLE'S ACTION PARTY OF SINGAPORE: EMERGENCE OF A DOMINANT PARTY SYSTEM* (1970); MODERN SINGAPORE (J. Ooi & H. Chiang, eds, 1969); C. PANG, *SINGAPORE'S PEOPLE'S ACTION PARTY* (1971); I. Sharp, *Social Attitudes: Pragmatism Versus Hypocrisy*, FAR E. ECON. REV., Aug. 9, 1974, at Supp. 20 [*Focus: Singapore in Asia* '74]; sources cited note 7 *supra*.

token implementation. In the late 1950's, the government established a Legal Aid Society, staffed by the government's legal and judicial service. The Society appears to function within the limits of a traditional legal aid perspective. A recent evaluation of legal aid in Singapore concluded:

It appears that members of the Singapore Bar are, on the whole, disinclined to enroll themselves on the panel and this includes the younger members of the profession. The probability is that they do not feel that legal aid is part of the pattern of their professional life; it is a system run by a Government department along lines which offer neither "incentive nor challenge".³⁵

As a result of its favorable geographical location, political stability, and effective planning, which has built upon the City's traditional entrepôt role and labor-intensive export manufacturing, Singapore has enjoyed one of the world's highest economic growth rates in recent years. The successive impacts of "confrontation" with Indonesia, separation from Malaysia, and withdrawal of British military forces have been absorbed, and the high level of unemployment prevailing at the beginning of the 1960's has been significantly reduced. Gains in literacy, education, and health have accompanied economic prosperity. An aggressive program of urban development has produced a modern central business district, a successful industrial estate and satellite town, extensive slum clearance, and massive public housing complexes, which now house nearly half of the population of the island.

Singapore's urban development law embodies a powerful array of planning controls, without significant legal checks upon their exercise.³⁶ Although often ignored by government, the Master Plan is legally sanctioned. Planning permission is required to develop or materially change the use of private land. A development charge may be exacted from developers proposing to develop land more intensively than indicated by the Master Plan, which clearly provides for outdated and unrealistically

35. Hilbourne, *The Quality of Legal Aid in Singapore*, [1969] MALAYAN L.J. at xliv.

36. See generally SINGAPORE HOUSING DEVELOPMENT BOARD, HOMES FOR THE PEOPLE: 50,000 UP, A REVIEW OF PUBLIC HOUSING (1965); J.H. Tan, Urbanization Planning and National Development Planning in Singapore, Jan. 1972 (unpublished paper for SEADAG seminar in Manila); Koh & Lim, *Planning Law and Processes in Singapore*, 11 MALAYA L. REV. 315 (1969); Koh, *supra* notes 25 & 26; Tan, *Metropolitan Planning in Singapore*, AUSTL. PLAN. J., Oct. 1966, at 111-19. The following account is based upon J. Magavern, Urban Planning Law in Singapore, 1971 (unpublished paper for SEADAG) without indication of direct quotations.

low densities. As an incentive to desired kinds of development, the development charge may be waived. Real property taxes are levied at very high rates, but may be abated as an incentive to development. Most property in the central city is subject to a stringent rent control statute, which bars eviction of tenants for redevelopment of the property. The planning authorities, however, are empowered to designate particular areas in which property may be released from rent control for redevelopment in accordance with an approved plan, on the condition that the owner compensate his tenants in an amount fixed by an administrative tribunal. To secure development, either public or private, land can be acquired by expropriation, without limitation by any doctrine of public use. Just compensation is not constitutionally guaranteed, and the statutory measure of compensation may in some cases provide only a fraction of the market value of the land taken in compulsory acquisition proceedings.

Although neither substantive standards nor procedural safeguards present significant checks on arbitrary, oppressive, and abusive application of these powers, there has been little controversy over their exercise. This may be explained in part by the sequence of evolution of the planning controls.³⁷ The foundation of the present structure of planning law exists in the statutory system of rent control enacted by the British colonial regime as an emergency measure at the outset of World War II. After the war, when redevelopment of existing urban areas was severely restricted by rent control, planning controls were established. These were based upon a Master Plan that contemplated both redevelopment and expansion of the urban area at what proved to be insufficient densities. Several years later, a development charge was imposed for development at the higher density levels recognized to be necessary, but not provided for by the Master Plan. Then the government was authorized to expropriate devastated land at its value as encumbered by occupancy under rent control and by planning restrictions on intensity of development. Finally, the rent control statute was amended to permit redevelopment pursuant to special permission and with compensation to tenants. In effect, rent control very nearly amounted to an expropriation of development rights in land occupied by tenants, and the imposition of planning control amounted to an expropriation of a considerable portion of the remaining development rights. Thereafter, the development charge, land acquisition act, and

37. For further details, see J. Magavern, *supra* note 36.

the decontrol amendments all treated landowners as already having been deprived of these rights, although at no time had they been compensated for them.

The logic of this sequence in the development of land use planning powers may explain why the process went so smoothly. But, of course, there must be more substantive reasons. Some of these are obvious. Singapore is a prosperous, well-located city-state of 225 square miles, 2.2 million people, and one level of government. It has not had to contend with a powerful, agricultural landowning class striving to protect entrenched property rights. Before 1959, Singapore was ruled by an authoritarian colonial government, and since 1959 it has been ruled by a tightly disciplined administration that quickly and shrewdly developed overwhelming political power. Although it can no longer be characterized as such, the administration came into power as a leftist party, based on labor union and pro-communist support. The government has relied upon and supported the dedicated and highly competent senior officials of the professional civil service. Corruption has been practically eliminated. The Minister of Law and National Development has not abused the vast discretionary powers vested in his office. He has exercised these powers mainly through the promulgation of general rules. For example, development charges and density policies have been determined in terms of planning criteria of general application. Finally, the government has been highly successful in providing housing and employment to a large part of the population.

While Singapore's urban development laws and policies have been administered effectively and have benefited a majority of the people, the immediate impact upon the poor has been distinctly unfavorable.³⁸ To provide land for urban development projects, the government has razed squatter settlements and densely inhabited neighborhoods of old shop houses, thereby driving residents from low-cost housing, disrupting their community-based economic and social relationships, and impairing their earning capacity in such occupations as hawking, small-scale shopkeeping, and the raising of poultry, hogs, and vegetables. Although the government provides compensation and relocation opportunities to squatters, and stalls in the markets of new housing complexes to former street hawkers, public housing is estimated to be beyond the

38. See sources cited note 7 *supra*.
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means of the poorest twenty-five percent of the population, who live in squatter settlements and extremely overcrowded old shop houses. For those who resettle in public housing, the result can be an increase in housing costs of from 5 to 18.7 percent of their total budget.³⁹

The priorities reflected in urban development policy and the role of law and lawyers in making and implementing it are illustrated by the enactment of a statute permitting property to be released from rent control for the purpose of redevelopment.⁴⁰ In the late 1960's, the government came to see rent control as an obstacle to redevelopment of the old central city. Consequently, it proposed a bill to allow property to be released from rent control for redevelopment pursuant to an approved plan. The bill required the owner to compensate his tenants and established a Tenants Compensation Board to decide disputes about what properties should be released from control and the amount of compensation required. The draft bill was referred to a select committee to conduct hearings and make recommendations for revision before final consideration in Parliament. The committee was made up of eight members including the Minister for Law and National Development who served as chairman. Thirty-seven persons and groups presented written statements and testimony to the committee. Among the groups represented was the Advocates and Solicitors Society. The Society urged that proceedings before the Tenants Compensation Board be considered judicial in character, and, accordingly, that only advocates and solicitors be allowed to practice before the Board. In addition, the Society recommended that the presiding officer be a qualified legal officer, and that decisions of the Board be subject to judicial review. The select committee accepted all three recommendations, with the exception that judicial review of compensation awards was expressly precluded.

Two issues of particular significance to the poor were considered by the select committee: the measure of, and eligibility for, compensation. The bill established minimum levels of compensation based upon multiples of existing rents and, as noted above, created a Tenants Compensation Board to fix compensation when the owner and tenants could not agree. This approach to compensation, based upon a multiple of existing, controlled rent, leads to the anomalous result that compen-

39. I. BUCHANAN, *supra* note 7, at 242.

40. For details, see J. Magavern, *supra* note 36.
https://openscholarship.wustl.edu/law_lawreview/vol1975/iss1/9

sation varies inversely with the economic injury suffered by reason of eviction. While injury increases to the extent controlled rent is lower than economic rent, compensation is reduced. Moreover, to the extent that rents generally vary with income, less affluent tenants receive less compensation than the more affluent.

The issue of eligibility for compensation was of greater significance to the poor. The bill limited compensation to legal tenants and subtenants, a relatively affluent class as compared to licensees, squatters, and bed space renters, who were excluded from compensation.

The Advocates and Solicitors Society raised no objection to the compensation provisions, although its representative did observe that the minimum levels provided by the bill were "far too small." The Legal Aid Society did not appear in the hearings. The most carefully prepared objection to the compensation scheme was presented by the Singapore Planning and Urban Research Group (SPUR), a small organization of architects and other persons interested in urban planning, including a former Dean of the Faculty of Law of the University of Singapore.⁴¹ SPUR proposed that the compensation schedule be inversely related to the income of the occupant and that eligibility for compensation be broadened to include licensees and squatters. The select committee rejected SPUR's proposals and recommended retention of the bill's original provisions. The committee's objective was to devise a simple formula roughly approximating the existing private "market" rates of compensation. Such a formula would not greatly alter the economic positions of the parties and would encourage compensation agreements without recourse to the Board. By confirming expectations developed during three decades of rent control, the bill embodied a property-centered resolution of the issue of compensation.

After the bill was enacted into law, the Legal Aid Society appeared in the first case heard by the Tenants Compensation Board.⁴² The early cases were expected to serve as tests of the Board's attitude about compensation rates, and thus to establish a basis for voluntary settlement of future disputes. In the first case, however, a Legal Aid lawyer

41. T.T.B. Koh, who was then serving as Singapore's permanent representative to the United Nations.

42. The following text is based upon S.Y. Tan, *A Critique of Overseas-Chinese Banking Corporation Ltd. v. Chew Lian Mee and Others*, 1971 (unpublished paper submitted to SEADAG and the transcript of those cases, Tenants' Compensation Board

Application No. 1 of 1970.

appearing for a group of subtenants raised no objection to the release of the property from rent control. On the issue of compensation he presented no evidence, brief, or detailed argument, but simply asked for favorable consideration of his clients' cases. The Board's decision was unfavorable to the tenants; it awarded compensation only slightly higher than the minimum level prescribed by the statute. It is unclear whether a more aggressive approach would have been more effective. The point is simply that in neither the proceedings of the select committee nor the important first case brought under the new act did the Legal Aid Society effectively advocate the interests of the poor.

Although the urban development policies of Singapore have been unfavorable to the immediate environmental interests of the poor, other factors must be taken into account. Singapore has been and remains under considerable geopolitical stress, and consequently requires a strong and stable government and rapid economic development. It may be that in the long run the poor will benefit most from policies that defer attention to their interests in the short run. That, however, is not the kind of judgment that can be made by a professional advocate, nor one within the scope of this Article. The primary question here is not what is the best national policy, but rather what is and what can be the role of legal services to the poor in urban development policy.

C. *South Korea*

Traditional Korean culture and politics were strongly antilegal in character.⁴³ Cultural values emphasized hierarchy, harmony, and accommodation. Political power was highly centralized, unchecked and unbalanced by strong local, religious, or economic institutions. The dictatorial legal order of the Japanese regime of the early 20th century was fiercely resented by Koreans and aroused a strong antipathy to legal institutions. During the post-World War II period, Korea has undergone extremely rapid social change.⁴⁴ Postwar political experience has been characterized by a continuing tension between autocracy and constitutionalism, with cyclical shifts in either direction. The political system suffers from inadequate development of politi-

43. See P. HAHM, *THE KOREAN POLITICAL TRADITION AND LAW* (1967); G. HENDERSON, *KOREA: THE POLITICS OF THE VORTEX* (1968).

44. See G. HENDERSON, *supra* note 43; H. LEE, *KOREA: TIME, CHANGE AND ADMINISTRATION* (1968).

cal parties as independent and stabilizing institutions. The press, the churches, the bar, and the students and universities have supported constitutionalism against autocratic tendencies, however. The legislative branch has provided a measure of popular participation and an appreciable, if weak, check on centralized executive power. The judiciary has grown somewhat more independent. On several occasions these developing institutions, strengthened by considerable popular adherence to the ideals of constitutional democracy, have restrained the executive branch from entirely subverting the constitution.⁴⁵ Recently, however, the administration was able to push through a sweeping set of constitutional amendments that concentrated authority in the presidency, undermined the independence of the judicial and legislative branches, and drastically impaired constitutional guarantees of freedom of expression and political organization. The constitutional amendments and the repressive actions thereafter taken by the government have given rise to considerable political tension. Although it is impossible to predict confidently the course of political developments, it is not unreasonable to expect that a modified form of constitutional democracy will eventually take firm hold in South Korea. While the formal legal institutions have remained weak, urbanization, education, economic development, and democratic ideals appear to be generating pressures for their development.⁴⁶

There are now in South Korea fewer than one thousand practicing lawyers to serve a population of more than thirty million.⁴⁷ Many Korean law schools were established in the proliferation of private universities after the conclusion of World War II, and they have produced thousands of law graduates. Only a small number of these, however, have passed the bar examination and been admitted to practice.

Despite provisions for the assignment of counsel in the Codes of Criminal and Civil Procedure, very few indigent defendants and litigants have had representation in court. In the 1960's, Korea's only woman lawyer, the Dean of the College of Law and Political Science of Ewha Woman's University, founded a Legal Aid Center for Family Relations. The Center is modestly funded by private charity and a

45. See D. COLE & P. LYMAN, *KOREAN DEVELOPMENT: THE INTERPLAY OF POLITICS AND DEVELOPMENT* (1971); J. OH, *KOREA: DEMOCRACY ON TRIAL* (1968); T. Kwon & J. Magavern, *Legal Change in Korea: Expropriation Law and Practice*, 1973 (unpublished paper sponsored by Int'l Liaison Committee for Research on Korea).

46. See T. Kwon & J. Magavern, *supra* note 45.

47. *Urban and World Poverty* 202.

small annual contribution from the government. As its name suggests, the Center takes only domestic relations cases. Also in the 1960's the First Bar Association of Seoul created the Korean Legal Aid Association. The Association assigns cases to its members on a rotating basis. It handles only fifty to sixty cases a year, most of which are claims for personal injuries. In 1972, on the direct initiative of President Park, the Korean government established a Legal Aid Foundation and provided it with substantial financial support. In the first six months of its existence, the Foundation received 1800 applications for counseling. It received 562 and accepted 248 applications for legal representation in litigated matters. The great majority of those cases concerned torts and workmen's injuries, wages claims, and debts. The Foundation is expressly prohibited from handling administrative matters and claims against the government. The poor, therefore, have to look elsewhere for legal assistance in matters involving opposition to official urban development actions.⁴⁸

Since World War II, South Korea has achieved rising levels of health, education, and welfare. The literacy rate is now approaching 90%. A sweeping program of rural land reform was successfully implemented in the late 1940's. In the 1960's, after a period of political instability and economic stagnation following recovery from the devastation of the Korean War, the Park administration established political stability and instituted economic policies and incentives designed to promote capital formation, foreign investment, exports, and labor-intensive manufacturing.⁴⁹ The results have been remarkable. The annual gross national product per capita has now risen to U.S. \$400-500. Although this economic growth has brought widening rural-urban income disparities, it has been generally equitable in other respects.⁵⁰ By 1970 unemployment was reduced to 4.5 percent, and real wages were rising at the annual rate of 20 percent in the manufacturing sector and 12 percent in agriculture.

In the meantime the largest cities were growing at explosive rates, with little infrastructure development and less planning. In the latter half of the 1960's the government began to give attention to problems of urban development. The president appointed new mayors for the

48. *Id.* at 202-03.

49. See D. COLE & P. LYMAN, *supra* note 45.

50. See Adelman, *Strategies for Equitable Growth*, CHALLENGE, May-June 1974, at

three largest cities. The new mayor of Seoul, who quickly became known as "Bulldozer Kim," initiated a massive public works program of 800 projects, costing \$87 million in 1966-67 and generating 2.9 million man-days of employment in 1966.⁵¹ The Seoul development program engendered considerable conflict both within the government and between the government and owners and occupants of land required for public use. The city's planning, land acquisition, and development practices were designed almost exclusively, to achieve concrete, short-term results. This produced speedy project execution and a pronounced disregard for planning standards, legal procedures, and social impact. Owners and tenants were intimidated and inadequately compensated for property taken for public use. Squatter settlements on land required for public works projects were cleared summarily.

On several occasions, however, land owners petitioned, demonstrated, and retained lawyers to bring legal action against illegal and coercive tactics employed by the government.⁵² As a consequence, the government moderated its tactics considerably and ceased its open defiance of the law. It continues, however, to employ such high-pressure tactics as dispatching highly visible demolition squads into a neighborhood before beginning negotiations for land acquisition.

As a small but growing number of land owners began to retain lawyers to challenge the level of the compensation offered by administrative officials, the courts demonstrated increasing willingness to require more adequate compensation. Thus far, however, only a small number of sophisticated and relatively affluent land owners have been able to employ private lawyers. Poorer land owners have continued without protest to accept grossly inadequate compensation.

Squatters, as well as landowners, resisted summary clearance for urban development projects, although the squatters had no recourse to judicial proceedings.⁵³ On a number of occasions, groups of squatters demonstrated and petitioned the government to abandon or defer projects or to provide more favorable relocation opportunities. In a

51. D. COLE & P. LYMAN, *supra* note 45, at 226-27.

52. See T. Kwon & J. Magavern, *supra* note 45.

53. See S. Choe, A Study of the Ability of the Legal System to Facilitate Urban Renewal in Korea, 1972 (unpublished paper for SEADAG Project No. 70101); Kwon, *An Evaluation of the Capacity of Law to Facilitate Urban Development: The Case of Kwangju Squatters Resettlement Program*, 10 KOREA J. PUB. AD. 130-65 (1972).

few instances they were at least partially successful, particularly in getting clearance programs deferred during election campaigns. As the "squatter problem" gained public attention, the city of Seoul in 1967 initiated a set of three programs; (1) "legalization" of 46,000 squatter housing units; (2) on-site construction of new apartment buildings to replace 14,000 units; and (3) clearance of 76,650 units and relocation of the occupants to a new town. The program of legalization was soon dropped when the target areas were inundated with new squatters seeking a legal foothold in the city. More than 400 apartment buildings were built in two years under the second program. The city ran out of suitable land for the apartment projects, however, and encountered difficulty in obtaining additional public or private land. Also, complaints were voiced about the location, quality of design, and construction standards of the buildings. In early 1970, one of the apartment buildings collapsed, causing thirty-three deaths and many injuries. In the ensuing scandal, Mayor Kim resigned from office. It was later found that only about 50% of the squatters who had been assigned apartment units still occupied them. The others had either sublet or sold their rights of occupancy.

The most ambitious of Seoul's urban development projects was the new town that was planned for construction outside the city in the village of Kwangju.⁵⁴ The plan for the Kwangju New Town project was formally submitted by the city government to the Central City Planning Committee of the Ministry of Construction in the spring of 1968. The planned population of the new town was 350,000, to be achieved by a five-year settlement program during the years 1969-1973. Approximately eighty percent of the proposed population was to be composed of squatters relocated from Seoul. The balance were to be voluntary settlers attracted to the new town. A large scale industrial estate was to provide employment for at least one member of sixty percent of the families. The financial program, which was expected to make the project self-liquidating, called for public expenditures of 9.3 billion Won⁵⁵ largely raised by the sale of land in the new town.

Serious difficulties were encountered in developing the new town. Initially, squatters were relocated without adequate shelter, urban services, employment opportunities, or transportation to Seoul. Large

54. This account is based on Kwon, *supra* note 53.

55. At that time the official rate of exchange was W 270 to US \$1.

numbers of voluntary settlers began to arrive in quest of land. Many squatters illegally sold the land allotted to them to voluntary settlers or speculators and moved back to Seoul. The city had originally purchased only about one-third of the area of the new town. As speculation took hold, land prices rose rapidly; the result was that the government was unable to purchase additional land at its agricultural value, as had been planned. Farmers who had sold land to the government at agricultural values now saw former farmland being bought and sold at greatly inflated prices. Also, while the government awarded land to relocated squatters at subsidized prices, it charged voluntary settlers the full market value. Discontent over disparities in land prices, especially on the part of voluntary settlers, led to demonstrations and a riot in the new town. In response, the government agreed to make land available to voluntary settlers at the same prices offered to relocated squatters. The financial program for the project was based upon the purchase and resale of land, however. When the city had to pay more than planned for undeveloped land and sell developed land for less than planned, its financial program was disrupted, and development stalled. Consequently, it became impossible to accommodate all of the squatters to be relocated from Seoul.

Although the plan broke down and its original goals were achieved only in part, the project must nevertheless be considered a qualified success. The new town is now a prosperous and bustling community of approximately 250,000 people, about half of whom are former squatters. Industries have been established and urban services and adequate transportation to Seoul have been provided. The community has been established as an independent municipal government and is continuing to grow. The Kwangju new town project demonstrates both the difficulties of executing a sites-and-services project, even when carried out by a highly effective government, and the value of even an imperfectly executed project.

Even before the massive urban development program of the late 1960's was undertaken, a rather comprehensive set of urban planning and land expropriation laws could be found on the statute books, but the laws had never been thoroughly implemented and tested. As the government proceeded with its program, it discovered a number of inadequacies in these laws. A principal difficulty was the government's inability to control development and appreciation in the value of the land it wished to allocate to urban development or acquire for public

use. Consequently, in the early 1970's the government enacted an array of amendments and new laws authorizing the imposition of highly restrictive controls on the use of land classified for agricultural or other low-intensity uses. A freeze was placed on the price and further private development of land designated for future public use or for urban or industrial development.⁵⁶

In the last several years, the Korean government has attempted, with considerable success, to restrict the proliferation of squatter settlements and the overall growth of the large cities.⁵⁷ It has undertaken an aggressive regional development program, which calls for five new urban industrial centers, with a projected total work force of two million. Stringent land use controls have been imposed in and around the large cities. In 1970, the president decided that circumferential greenbelts should be established around the largest cities, and the City Planning Law was amended to implement that policy. The amended law prohibits practically any development in designated greenbelts. There is no compensation for land owners. The law is enforced strictly. A greenbelt designated around the developed area of Seoul is kept under constant surveillance by helicopters; any attempt to construct new dwellings is promptly blocked. A district chief who allows construction of an illegal dwelling in his district is subject to the immediate loss of his job. By using strict and vigilant police measures, Seoul has been one of the few large cities in a developing country to have halted the development of squatter colonies around the urban periphery.

Seoul's effective control of squatting and peripheral urban expansion, together with the continued clearance of existing squatter settlements, appears to have had a seriously adverse impact upon the poor. Despite a fifty percent tax on speculative gains, land prices in the central city have been driven up rapidly, pricing the poor out of the market. It has been estimated that, while the number of squatter dwellings in Seoul has been reduced from 180,000 to 120,000 the number of *squatters* has remained the same.⁵⁸ The effect of government policies is the further overcrowding of the poor in a decreasing number of

56. See T. Kwon, *Changing Patterns of Planning Law in Korea, 1974* (to be published by the East-West Center, Honolulu); T. Kwon & J. Magavern, *supra* note 45.

57. The following discussion is based on J. Magavern, Report to Korean Housing Policy Task Force, Aug. 3, 1974 (unpublished).

58. Interview with Professor Chung-Hyun Ro, at Yonsei University, Seoul, South Korea, Aug. 1974.

dwellings in the central city and longer and more expensive transportation for commuters living outside the greenbelt.

A recent incident arising from a campaign to organize the poor to oppose urban development actions of the government illustrated the limits of that approach where governmental and police power is highly centralized and relatively unrestrained by effective legal and political institutions.⁵⁹ A leading clergyman, the Rev. Pak Hyong Kyu, pastor of Seoul's First Presbyterian Church, headed a community action committee that undertook to organize the residents of Seoul's slum neighborhoods. The committee's organizing efforts initially met with some success. When the city administration ordered the clearance of the Songjong Dong squatter settlement to make way for construction of a subway, the Rev. Pak's committee organized a protest by the residents, who petitioned President Park for compensation. As a result of the protest, a community leader was reportedly arrested, beaten, and directed not to organize further petition campaigns. Several weeks later, the Rev. Pak and a number of his followers were arrested on charges of subversion. The charge against the Rev. Pak was based not upon his community organization activities, but upon another incident in which his followers had distributed leaflets calling for a "revival of democracy" at an Easter sunrise service. (Martial law had been declared and a new constitution adopted at the end of the previous year.) This charge, however, did not explain the fact that among those of his followers arrested was the chief organizer of the Songjong Dong residents, who was not involved in the sunrise service. Observers concluded that the arrests were motivated by the community organization activities of the Rev. Pak's group. Pak was convicted and sentenced to two years imprisonment. The court explained that the sentence was limited to two years, instead of the minimum term of three years provided by the law under which he was charged, "in view of Rev. Pak's Christian faith." The effect of the arrest of Pak and his associates was to bring their community organization program to a halt.

In sum, South Korea has developed rapidly under a powerful, centralized government. Economic planning has met with outstanding success and has promoted rapid and generally equitable growth. All but the very poorest sectors of society have enjoyed rising levels of

59. This account is based on reports in FAR E. ECON. REV., July 16, 1973, at 16; *id.*, Oct. 1, 1973, at 17.
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employment and income. Urban planning has been relatively effective, compared to most other countries. As legal difficulties have been encountered, the government has enacted laws reflecting a technocratic perspective, as exemplified in the imposition of strict land use controls. The legal profession is small in number, and lawyers have played little part in development issues. Private attorneys representing a small but growing number of affluent and confident landowners have initiated judicial proceedings to restrain blatant disregard for the law in the acquisition of land for public works. Legal aid organizations have not been concerned with issues of urban development. The government-sponsored Legal Aid Foundation is not permitted to act in administrative proceedings, or in claims against the government. Church and community social action groups have been suppressed when they have aggressively attempted to organize and represent the poor in opposition to official urban development actions.

D. *The Philippines*

1. *The Social Context of the Philippine Legal System*

Every country manifests some degree of legal dualism reflecting a tension between the formal legal order and a traditional social order based upon informal norms and practices in which loyalty is owed to the person, family, or group. This dualism is relatively strong in countries that have experienced the imposition of an alien legal system by a colonial regime. Despite the persistence of such dualism, and perhaps reflecting it in part, the formal legal system has played an important role in Philippine society for many years by representing imperfectly realized policies of the central government and by providing a structure in which the government is limited and its policies are confronted, reshaped, and often frustrated by a society that is highly pluralistic and inadequately integrated at the national level.⁶⁰ For several

60. These are matters of degree and relative emphasis, and oversimplification is admittedly unavoidable in a discussion of this kind. For an excellent survey of the formal Philippine legal system, see Pascual, *The Philippines*, in *LAWASIA LEGAL SYSTEMS* (V. Venturini ed. 1970). On Philippine politics, see R. AGPALO, *THE POLITICAL ELITE AND THE PEOPLE: A STUDY OF POLITICS IN OCCIDENTAL MINDORO* (1972); O. CORPUZ, *THE PHILIPPINES* (1965); J. GROSSHOLTZ, *POLITICS IN THE PHILIPPINES* (1964); M. HOLLNSTEINER, *THE DYNAMICS OF POWER IN A PHILIPPINE MUNICIPALITY* (1963); C. LANDE, *THE STRUCTURE OF PHILIPPINE POLITICS* (1964); A. LAQUIAN, *THE CITY IN NATIONAL-BUILDING* (1966); B. VILLANEUVA, P. VILLANUEVA, E. PEREZ, C. CUENTO & J. PUA, *GOVERNMENT AND ADMINISTRATION OF A MUNICIPALITY* (1966).

hundred years, under Spanish, American, and Japanese rule, the formal legal system represented an imposed colonial regime, never fully accepted and at times actively resisted by the people.⁶¹ In addition, Filipino culture embodies certain antilegal characteristics, such as respect for hierarchy and authority, emphasis upon harmonious social relationships, strong identification with family and personal groups, and paternalism in tenancy, economic, and political relationships.⁶² Nevertheless, certain historical and political conditions have tended to place great importance upon law. The ideology of liberal democracy played an important part in the Filipino revolution against the Spanish colonial government.⁶³ After the American takeover, which was effected by military suppression of the revolutionary movement, independent legislative and judicial institutions were established, and specifically American concepts of government and constitutional law were incorporated in the legal system. As the struggle for independence shifted to legal and political channels,⁶⁴ and, as the institutions of government were occupied by Filipinos, law and lawyers assumed a role in politics and government comparable in many ways to their role in the United States. After independence, their role in the political process became even more pronounced. The colonial rulers established an alliance with the Filipino landowning elite, who have continued to rely on the constitution and legal structure to protect their property rights and position of economic and political dominance. The weakness of nongovernmental social organizations of national scope and the dominance of small group relations render the political system heavily dependent upon law to express and implement national values and to resolve factional disputes. Thus, the rule of law is both emphasized and partially negated by the tension between national government and traditional society.

61. See T. AGONCILLO, *THE FATEFUL YEARS: JAPAN'S ADVENTURE IN THE PHILIPPINES, 1941-45* (1965); O. CORPUZ, *THE BUREAUCRACY IN THE PHILIPPINES* (1957); O. CORPUZ, *supra* note 60; J. LARKIN, *THE PAMPANGANS: COLONIAL SOCIETY IN A PHILIPPINES PROVINCE* (1972); J. PHELAN, *THE HISPANIZATION OF THE PHILIPPINES* (1959); E. ROBLES, *THE PHILIPPINES IN THE NINETEENTH CENTURY* (1969).

62. See sources cited notes 60 & 61 *supra*.

63. See T. AGONCILLO, *MALLOS: THE CRISIS OF THE REPUBLIC* (1960); T. AGONCILLO, *THE REVOLT OF THE MASSES: THE STORY OF BONIFACIO AND THE KATIPUNAN* (1956); C. MAJUL, *MABINI AND THE PHILIPPINE REVOLUTION* (1960); C. MAJUL, *THE POLITICAL AND CONSTITUTIONAL IDEAS OF THE PHILIPPINE REVOLUTION* (1957).

64. See T. FRIEND, *BETWEEN TWO EMPIRES: THE ORDEAL OF THE PHILIPPINES*

Until martial law was declared in September 1972, elections were conducted regularly in the Philippines. Though marred by localized violence, vote-buying, and fraud, the elections were openly and vigorously contested and resulted in frequent changes of administration. The two major political parties were ideologically indistinguishable and represented shifting alliances of regional and local organizations based upon patronage and loyalty to particular leaders and families.⁶⁵ The press was free and outspoken. The supreme court was untouched by scandal, enjoyed great prestige, and did not hesitate to strike down executive and legislative action it considered unconstitutional or otherwise unlawful. Although the lower courts were clogged with cases and occasionally involved in favoritism and corruption, they were, on the whole, independent and respected. Congress and local legislative bodies passed laws, initiated programs, and created agencies to deal with every significant public problem. Only rarely, however, was sufficient attention given to problems of financing and implementation. The bureaucracy received neither the financial nor the political support necessary for effective implementation of economic development and social reform programs; to the contrary, the bureaucracy was subjected to debilitating political interference in behalf of special interests of all kinds.

Thus, while the Philippines has achieved high standards of health, education and literacy, economic growth and social reform have been less satisfactory.⁶⁶ Following rapid recovery from the destruction of World War II, heavily protective economic policies were adopted to promote import substitution. Light industry sprang up in the Manila region, and a class of Filipino entrepreneurs emerged. Those policies outlived their usefulness within a few years, however, and a period of relative stagnation followed. A succession of planning and development agencies was created with broad and ambitious purposes and functions, but without the necessary political and financial support or coherent organization of overlapping and conflicting roles.⁶⁷ Economic

65. See sources cited note 60 *supra*.

66. See F. GOLAY, *THE PHILIPPINES: PUBLIC POLICY AND NATIONAL ECONOMIC DEVELOPMENT* (1968 ed.); G. SICAT, *ECONOMIC POLICY AND PHILIPPINE DEVELOPMENT* (1972).

67. See Magavern *Physical Planning Law in the Philippines: The Need for Legislation*, 43 PHIL. L.J. 571 (1968); Roxas, *Lessons from Philippine Experience in Developmental Planning*, 4 PHIL. ECON. J. 35 (1965); A. Santiago & J. Magavern, *supra* note

planning was vitiated by political expediency and subservience to special interests. Public resources were dissipated.

In the late 1960's, planning was strengthened considerably, particularly in respect to project identification, programming, and execution. Incentives were shifted to favor exports. Several substantial mining ventures were initiated. It is still too early to predict the success of this reorientation of planning and policy. In the last two years, inflation has impaired the standards of living of the urban poor and middle classes, but rising commodity prices have resulted in record export earnings and probably in rising incomes in the rural sector.

Population has grown at annual rates well above three percent. In the past, sufficient land was available to support a growing population without rapid structural change. In the last generation, however, almost all remaining arable land has been brought under cultivation. Despite a vigorous campaign to raise agricultural productivity, disguised unemployment and underemployment remain high in the countryside. Major land reform laws were enacted in 1955 and 1963, but until the declaration of martial law in 1972, little effort was made to implement them, and agrarian tenancy continued to increase. The martial law government has accelerated land reform programs, but it is too early to assess the results.

2. *Legal Aid in the Philippines*

The Philippines does not suffer from a scarcity of lawyers. In 1960 the country had 27,500 lawyers, or approximately 1,000 lawyers per million population, as compared to 1,500 in the United States, 70 in Japan, and 200 to 1,000 in most of the countries of Western Europe.⁶⁸ The number of lawyers in the Philippines does not reflect a correspondingly high demand for legal services; many are employed as clerks in government and corporate offices. Nevertheless, the title of attorney is highly respected.⁶⁹ The many private and proprietary universities are able to provide legal education at a very low cost.

At the outset of American colonial rule in the Philippines, certain doctrines of American constitutional law were incorporated in the

68. Galanter, *Introduction: The Study of the Indian Legal Profession*, 3 L. & Soc'y REV. 201, 204 (1968).

69. In a survey of high school seniors, the occupation of lawyer ranked third in prestige, below doctor and college professor and above priest and corporation executive. *Castillo, Occupation Evaluation in the Philippines*, 10 PHIL. SOC. REV. 147 (1962).

Philippine legal system.⁷⁰ The organic laws of the colonial regime contained due process and equal protection clauses and assured the criminal defendant's right to counsel.⁷¹ The code of criminal procedure required the court to advise the defendant of his right to counsel and to appoint counsel for him if he had none.⁷² Failure of the court to observe this duty was held to violate the defendant's right to due process of law.⁷³

In 1935, a Philippine constitution was adopted, providing for national independence following a ten-year transitional period as a Commonwealth of the United States.⁷⁴ The 1935 constitution contained due process and equal protection clauses and the specific provision that: "Free access to the courts shall not be denied to any person by reason of poverty."⁷⁵ The same clause is contained in the current constitution.⁷⁶ Pursuant to constitutional authorization, the supreme court promulgated Rules of Court embodying rules of procedure for the judicial system. The rules provide for the right to counsel at every stage of criminal proceedings and require the court to advise the defendant of his right to counsel and to assign him an attorney de officio if he is unable to afford counsel.⁷⁷ In 1962, the court amended the rules to provide

70. The authors wish to thank Professor Asteya M. Santiago of the University of the Philippines, who graciously assembled the materials upon which the following account of legal aid in the Philippines is based. We have relied especially upon University of the Philippines College of Law, *Legal Aid in the Philippines* (undated mimeograph, circa 1965) [hereinafter cited as *Legal Aid in the Philippines*].

71. Act of Aug. 29, 1916, ch. 416, § 3, 39 Stat. 545, 546; Act of July 1, 1902, ch. 1369, § 5, 32 Stat. 691, 692; *see Legal Aid in the Philippines*.

72. General Order No. 58, *cited in Legal Aid in the Philippines*.

73. *United States v. Palisoc*, 4 Phil. 207 (1905); *see Legal Aid in the Philippines*.

74. The constitution was drafted by elected delegates of the people at a constitutional convention, adopted by vote of the people, and approved by the American government pursuant to the Philippine Independence Act, which required the constitution to provide for a ten year transitional period as a commonwealth, a republican form of government, a bill of rights, and protection of certain American rights and prerogatives.

75. Constitution art. III, § 1 (21) (Phil. 1935, revised 1973).

76. The constitution of 1935 remained in effect until January 17, 1973. On June 1, 1971, a duly elected constitutional convention convened to consider constitutional revision. On September 21, 1972, the president declared martial law. On November 30, 1972, the convention approved a revised constitution, subject to ratification by the people at plebiscite. On January 17, 1973, the president proclaimed that the revised constitution had been ratified by the people at a referendum of citizens assemblies conducted by ballot and viva voce under the supervision of the martial law regime. In *Javellana v. Executive Secretary*, 50 Sup. Ct. R. Ann. 30 (Mar. 31, 1973) (Decision No. L-36142) the supreme court, in a divided opinion, held the new constitution of 1973 to be in effect.

77. **RULES OF COURT 115-16, 122.**

for compensation to attorneys de officio. The rules also exempt indigent parties from filing fees and the printing of records and briefs.⁷⁸ The Code of Civil Procedure enacted during the American colonial period authorized the court in its discretion to assign counsel to an indigent party in a civil action,⁷⁹ and similar provision was made by the supreme court in the Rules of Court, which superseded the code.⁸⁰ It appears, however, that this provision has been largely ignored in practice.⁸¹

Two private legal aid offices were established in the years immediately following World War II. In 1946, the Women Lawyers' Association of the Philippines (WLAP) formed the Free Legal Aid Clinic, Funded by WLAP and the Community Chest, and located in an office provided by the government in the Social Welfare Administration Building in Manila, the Clinic receives over half of its cases by court assignment or referral by the Social Welfare Administration.⁸² A majority of its cases concern domestic relations. The balance includes wage claims, property disputes, and criminal charges. Most cases are disposed of by consultation, referral, or settlement, and only a small number of litigation. In 1970, with a budget of approximately ₱ 16,000 (or about U.S. \$4,000.00 at the then current exchange rate), the Clinic handled 646 cases.

In 1947, the University of the Philippines Women Lawyers' Circle (WILOCI) formed the Domestic Relations Consultation Center. Its rationale was that women preferred to confide in women lawyers in domestic relations cases. The Center was originally located in the office of the WILOCI president and staffed by WILOCI volunteers. In 1960, it was renamed the WILOCI Legal Consultation Center; services were broadened to include all kinds of cases; and a permanent staff lawyer and a clerk-typist were employed to supplement the WILOCI volunteers. The Center has been financed by WILOCI benefit performances and fund drives. As of 1965, the Center was handling more than three hundred cases per year, and a panel of WILOCI volunteers was handling about the same number of assigned cases in juvenile and domestic relations court. The case load of the WILOCI

78. RULES OF COURT 41, 56, 124.

79. Act 190 § 35.

80. RULE OF COURT 138.

81. See Legal Aid in the Philippines.

82. Information derived from the ANNUAL REPORTS of the Clinic.

Center appears to be similar in composition to the WLAP Legal Aid Clinic.⁸³

In 1967, at the initiative of Salvador H. Laurel, a practicing lawyer and a member of a prominent family, the Philippine Bar Association formed the Citizens' Legal Assistance Committee (CLAC). The Committee was composed of ten prominent lawyers, with Laurel as chairman. CLAC's rationale went well beyond traditional legal aid notions of charity. Unlike the WLAP and WILOCI legal aid clinics, which dealt principally with private disputes and problems, CLAC was concerned with abuses of official authority and perversions of criminal justice. Its stated purposes were:

- (a) To render legal assistance and counsel to helpless victims of oppression, intimidation, insult, violence, abuse, or other unlawful acts perpetrated by any public official or his agents, particularly by members of the police and armed forces;
- (b) To provide free legal aid to citizens unable to prosecute serious and valid criminal cases or to defend themselves against false and serious accusations by reason of poverty;
- (c) Honest policemen and other agents of the law who in the performance of their duties may be subjected to vengeance and injustice will also be accorded legal aid by the Committee; and
- (d) To help defray necessary legal expenses in prosecuting and defending such cases.⁸⁴

Several months after the creation of CLAC, Laurel was nominated by the leading political party as one of its candidates for the senate in the 1967 elections. The day after his nomination, he announced that he was resigning as chairman of CLAC in order to keep it free from politics. After his election to the senate, he was again appointed CLAC chairman by the board of directors of the Philippine Bar Association.

In 1969, CLAC was incorporated as Citizens' Legal Aid Society of the Philippines (CLASP). CLASP's statement of purposes placed somewhat less emphasis upon perversion of the administration of criminal justice as its target. It provided that CLASP's purposes were:

83. See Grino-Aquino, *A Nutshell History of the WILOCI Legal Consultation Center* (printed in program guide for a WILOCI benefit cinema); *Legal Aid in the Philippines*.

84. *Resolution of the Philippine Bar Association May 16, 1967.*

1. To bring justice within the reach of the masses by providing free and competent legal assistance and counsel to indigent litigants with meritorious cases. Such assistance may take the form of legal advice and/or actual appearance in fiscal's offices, the courts, or administrative bodies, in defense of the indigent litigants or to assist him in the prosecution of a case in which he is party in interest.
2. To develop the social conscience of the members of the Bar by enlisting their services in handling cases free of charge for indigent litigant.
3. To check abuses, ineptness, and corruption in the judiciary, the police and the prosecuting agencies of the government and to help promote the dispensation of justice in the country by bringing to the attention of the authorities concerned inadequacies in the administration of those defects.⁸⁵

By 1970, CLASP had established 42 city and provincial chapters throughout the country, had a roster of 339 volunteer lawyers, and had received more than 9,000 cases and disposed of about 1,000 of them.⁸⁶ A summary of 96 cases handled by CLAC includes many disputes between private citizens and police officers, both in the form of criminal charges against CLAC clients and in the form of civil claims and disciplinary proceedings in behalf of other clients against police officers.⁸⁷ In addition, CLAC lawyers prosecuted a number of ordinary personal injury claims. It is interesting to note that many of the cases, including those arising from violent assaults, were terminated by amicable settlement or by the failure of the complaining witness to appear in the proceeding.

After his election, Senator Laurel introduced and congress enacted four laws to assist low-income litigants by providing calendar preferences in criminal cases in which an indigent is involved, travel allowances to indigent litigants and witnesses, free transcripts of proceedings, and exemption from bail in offenses not of a serious character.⁸⁸

85. Citizens' Legal Aid Society of the Philippines (CLASP), Articles of Incorporation (1969). In 1970, CLASP became a nonprofit foundation, apparently for tax reasons, with the additional functions of granting scholarships to deserving law students and establishing professorial chairs in social science and the humanities.

86. CLASP Brochure. See also Statement of Senator Laurel, Press Conference at Manila Overseas Press Club, Dec. 15, 1968.

87. CLAC Report (undated).

88. Republic Act Nos. 6033-36 (1969). More particularly, the four "Laurel laws": (1) require the courts to give calendar preference to criminal cases in which an indigent is involved either as the victim or the accused, Republic Act No. 6033; (2) authorize the courts to grant travel allowances to indigent litigants and witnesses for transporta-

An indigent or low-income litigant is defined as one whose monthly incomes does not exceed ₱300 per month or is insufficient for the subsistence of his family. (At the official rate of exchange at the time of enactment of the laws, ₱300 was equivalent to approximately U.S. \$75; at today's floating rate, it is less than U.S. \$50.)

During the 1950's, the social reform laws were enacted and administrative agencies were created to regulate agricultural tenancy and industrial labor relations. Under those laws, legal representation of tenant farmers and industrial workers was provided by the Office of Agrarian Counsel and the Department of Labor, respectively. Soon after declaring martial law in 1972, President Marcos, by executive order, implemented a plan for the reorganization of the executive branch of government; the plan had been pending before congress.⁸⁹ Pursuant to

tion, meals, and lodging from place of residence to the court and back, Republic Act No. 6034; (3) require court stenographers to furnish free transcripts of proceedings to indigent or low-income litigants, Republic Act No. 6035; and (4) exempt defendants from posting bail if they are unable to afford it in cases involving offenses of a less than serious character, except where the defendant has confessed, been caught in flagranti, or violated the terms of bail, parole, or pardon, Republic Act No. 6036.

89. A Commission on Reorganization had been created in 1969, pursuant to an act of congress passed in 1968 at the request of the president, to prepare an integrated reorganization plan

to promote simplicity, economy and efficiency in the government to enable it to pursue programs consistent with national goals for accelerated social and economic development and to improve the service in the transaction of the public business

in the executive branch. Republic Act No. 5435 (1968). The commission was directed to submit the plan to the president; the president was authorized to modify it and required to submit it to congress, with or without modification. Upon approval by congress, the president was to implement the plan by issuing executive orders. The commission was organized into a number of panels and staffed by a highly qualified group of academic and government experts. It submitted a recommended plan to the president late in 1970.

After a year of review, consultation, and revision, the integrated reorganization plan was submitted to congress by the president. Congress did not act on the plan, however, and independent bills were introduced in both houses to establish a Citizens' Legal Assistance Office. S. 927 (1972); H.R. 3537 (1972). In an explanatory note to the bill introduced in the house of representatives, its sponsors stated:

In the past, the functions of the Office of the Agrarian Counsel have been enlarged to make it more responsive to the needs of the farmers and other agricultural workers by authorizing its attorneys to represent them in civil and criminal cases before the Courts of Agrarian Relations and other courts. This Office has thus become well-known in the rural areas for the legal services it provides at the grassroots level. It is, therefore, the ideal organization whose functions may be further expanded to provide legal services for a greater number of poor people in urban areas with valid causes of action and specially for those with legitimate complaints against abusive law-enforcement officers.

the reorganization plan, the Office of Agrarian Counsel was abolished, and the Citizens' Legal Assistance Office (CLAO) was created in the Department of Justice, with the function of

represent[ing], free of charge, indigent persons . . . or the immediate members of their family, in all civil, administrative, and criminal cases where after due investigation the interests of justice will be served thereby.⁹⁰

By early 1973 CLAO had 106 lawyers and 200 additional staff personnel located in regional offices throughout the country.⁹¹

No information is available on CLAO's caseload and the accomplishments in its first year of operation. In view of the limitation of representation to cases in which "after due investigation [it is determined that] the interests of justice will be served," the martial law emphasis on social discipline and the well-publicized clearance of squatter houses as one of the early acts of the martial law government,⁹² it would be surprising to find CLAO representing urban

It is a fact that while our courts are open to all in theory, they are, in reality, virtually closed to the people who do not have the money to pay for the services of competent legal counsel and are often victimized by unscrupulous shysters. This state of helplessness and discontent on their part against the established order can be rectified or redressed only if the Government were to show greater concern for the masses by providing free legal services for them, as it did for the farmers in the rural areas.

The house passed the bill in May 1972. The senate bill, which was nearly identical, was introduced by eighteen senators, representing both major parties. The president ordered the creation of CLAO by Letter of Implementation No. 4, Oct. 23, 1972.

90. Letter of Implementation No. 20, Dec. 31, 1972. CLAO was organized in five divisions: administrative, financial and management, special and appealed cases, legal research and statistics, and field services.

91. As the framework for coherent decentralization of the administration of the various departments of the national government, the plan defined eleven regions, with specified regional centers. CLAO was directed to establish regional offices according to the scheme of decentralization. Consistent with martial law themes of social and bureaucratic discipline, the officer-in-charge issued a series of directives placing the CLAO staff under strict rules on attendance, coffee breaks, use of vehicles, and general conduct. Staff lawyers were even required to submit detailed daily activity reports. 1 THE CLAO BULL., Feb. 28, 1973, at 21-35.

92. The only newspaper allowed to publish in the first days of martial law, carried a photograph on its first page showing squatters along the railroad tracks in Manila demolishing and removing their houses. The caption read:

They were tearing down instead of building up, but the community spirit prevailed among these squatters along the railroad tracks in Beata, Pandacan, who have had to give way to the rule of law and order as the New Society pursues its program for meaningful reform. Hopefully, it shall also provide them with the optimum climate and the maximum opportunity to be productive, useful, self-respecting citizens.

squatters in disputes with public or private landowners. More generally, it is not likely that any official legal aid office would systematically engage in the tactics of obstructive litigation that have been the essence of the services provided to squatters by private lawyers in the Philippines.⁹³

In 1974, the University of the Philippines College of Law established a legal aid clinic. The clinic is staffed by law students as a mandatory part of their curriculum and is operated under the supervision of an experienced full-time attorney with faculty status. It appears to have had a promising start. It is, however, difficult to imagine that such a clinic would be of much help to squatters, whose possession of land is clearly unlawful.

Although organized legal aid programs have not been designed to solve problems of the poor in relation to urban development, law and lawyers have been actively engaged in other ways in urban development issues. The poor have probably been represented in legislative, administrative, and judicial processes far more extensively in the Philippines than in most other developing countries.

3. *Urban Planning and Development Law in the Philippines*

Between 1948 and 1970, metropolitan Manila grew from 1.6 to 4.3 million people. Squatters accounted for a great part of this growth. By the mid-1960's, squatters represented about 25 percent of the population, and their numbers were increasing at two to three times the rate of total population growth in the metropolitan area.⁹⁴ The regional cities have experienced similar patterns of growth.

Philippines Daily Express, Oct. 10, 1972, at 1. The following day, the same newspaper reported that 5,200 squatter houses along three esteros in Greater Manila had been demolished and sixty percent of the occupants resettled about thirty kilometers from Manila (1-1/2 hours, and ₱ 1.20 by public transportation). The other forty percent had reportedly—but doubtfully—decided to return to the provinces from which they had migrated to Manila. Philippines Daily Express, Oct. 11, 1972, at —. The presidential order for the clearance of illegal structures and relocation of squatters is contained in Letter of Instruction No. 19, Oct. 2, 1972, and Letter of Instruction No. 19-A, Oct. 28, 1972. At the same time, the president ordered a large privately-owned tract in the suburbs of Manila (the Tatalon Estate in Quezon City) expropriated for redistribution to the tenants and squatters occupying it and other low-income families. Philippines Daily Express, Oct. 10, 1972, at 8. The presidential order is contained in Letter of Instruction No. 34, Oct. 27, 1972.

93. See text accompanying note 97 *infra*.

94. These are estimates based on figures compiled at various times and on the basis of various definitions of metropolitan Manila. See A. LAQUIAN, *supra* note 1; SPECIAL

Although sanitary conditions in Philippine cities are generally far better than in many developing countries, the urban infrastructure has become increasingly obsolete. The sewer systems of most Philippine cities were constructed in the 1920's and 1930's, or earlier, and they now adequately serve only twenty-five percent or less of the population. Larger residential subdivisions are equipped with privately operated community treatment facilities, which pollute streams and rivers. Many homes have individual underground tanks that discharge on the surface, and many others discharge or deposit human waste in the sea, streams, drainage channels, or dumping grounds. In Manila, drainage has been seriously neglected, with the result that rainy seasons bring frequent flooding and occasional loss of life. Potable water is available almost everywhere, but often only at certain times of the day and, in the poorer communities, only at neighborhood faucets or wells. Electricity is available almost everywhere in the larger cities. Transportation planning has principally been a matter of trying to build and improve highways and bridges fast enough to keep up with spreading cities and increasing automobile ownership. Access is uncontrolled and strip commercial development, sometimes encroaching on the right of way, is dominant. Traffic regulation is lax at best.

Although the Philippines has an abundance of laws and official agencies for urban planning, effective planning beyond the project level has been practically nonexistent.⁹⁵ The National Planning Commission was created immediately after World War II and given broad functions and powers of land use planning and control. Its major effort, a plan for metropolitan Manila, became bogged down in political and legal controversy. Then, the supreme court nullified the grant of planning power to the commission. Thereafter, congress vested land use planning powers in the local governments. Only a very few of the local governments have attempted to exercise their planning functions, and none has brought public or private land use under effective planning control. To the extent that zoning maps are not ignored entirely, they are vitiated by ad hoc exceptions granted by local legislative

COMMITTEE ON SQUATTING AND SLUM DWELLING IN METROPOLITAN MANILA, REPORT (1968), reprinted in A. LAQUIAN, *id.*, at App. B; Laquian, *Coping with Internal Migration in the Philippines*, SOLIDARITY, July 1973, at 14-28.

95. For a more detailed discussion of urban planning in the Philippines, see Magavern, *supra* note 67; A. Santiago & J. Magavern, *supra* note 11; Santiago & Magavern, *Planning Law and Administration in Philippine Local Government*, 3 PHIL.

bodies. Commercial and multiple dwelling uses abound in single-family residential subdivisions. It is not altogether uncommon for land ostensibly reserved for public use to be sold to private developers.

The Philippine Housing and Homesite Corporation was created to clear slums and provide low-cost housing. Since it has not been supported by sufficient budgetary appropriations, the corporation has been required, in the interest of survival, to concentrate its resources almost entirely on self-amortizing projects for the upper-middle-class. Massive low-cost housing programs, occasionally announced by the government, have invariably turned out to be neither massive nor low cost. The National Waterworks and Sewerage Authority was created to consolidate municipal systems, but became enmeshed in litigation and was required by judicial decision to return to the municipalities a number of the systems that it had taken over. The National Air and Water Pollution Control Commission was created by an act of congress in 1964, but was not fully organized until several years later. Even then it was severely understaffed and underfinanced. It has recently received more substantial, but still insufficient, support. Although the commission has performed well within the limitations of its financial and political resources, overall levels of air and water pollution have not evidenced significant abatement.

From time to time, congress and economic planning agencies have declared it to be national policy to disperse demographic and economic growth more evenly throughout the country. Regional development authorities have been created by legislation, but most have never been organized as operational entities, and none has received sufficient financial and political support. Although one of the objectives of the Board of Investments is to disperse industrial development, the enterprises to which it has awarded incentives are heavily concentrated in the Manila region and certain rapidly growing sections of Mindanao. Notwithstanding a declared goal of dispersed growth, a similar pattern can be found in the investment program of the national four-year development plan.⁹⁶

The martial law regime has implemented a sweeping reorganization plan, shifted power from politicians to technocrats, and strengthened planning and administration both technically and politically. While it is still too early to know how urban development policy will be affected,

96. See A. Santiago & J. Magavern, *supra* note 11.
https://openscholarship.wustl.edu/law_lawreview/vol1975/iss1/9

no radical change should be expected, if only because the critical economic and demographic factors are not readily amenable to the knowledge, techniques, and controls available to planning authorities.

To say that urban planning has not been effective is not to say that urban development patterns have been without merit. Manila has developed into a national center for politics, education, communications, and social change. Tagalog, the basis for the language mandated by the constitution, has developed spontaneously and rapidly, and is increasingly understood in the outlying regions. Social and political links between Manila and the provinces remain strong. Urban population growth has relieved some of the pressure of overpopulation in the rural areas. Within urban areas, densely populated settlements of the poor (many of them squatter settlements) have developed in areas accessible to employment and public transportation, without substantial expenditure of public funds. It is possible, when necessary, to convert land occupied by those settlements to use in the modern sector, usually with some form of compensation to the occupants, if only in the form of an inadequate relocation site. While land use controls have been almost entirely ineffective, the resulting patterns of intensive, mixed land use are in many respects more suitable to the Philippine context than the lower density, segregated patterns contemplated by the zoning ordinances on the books, which are based on American models.

Prior to martial law, the Philippine political system was sufficiently open to allow the poor a voice in government, but was incapable of subordinating special interests to the degree required for effective urban development planning. Those characteristics had both advantages and disadvantages for the urban poor. Urban squatters were able, with the aid of legal and political representation, to maintain relatively secure possession of the land they occupied. Although most squatting was on public land, squatters were able to occupy private land whose owners had relaxed their surveillance. Once squatters had occupied land, it became extremely difficult to dislodge them. Lawyers were readily available to represent them in eviction proceedings. By means of a fabricated claim to possession and repeated motions on every point conceivable, attorneys were able to keep the owner tied up in litigation for years.⁹⁷ Judicial dockets were overloaded, and on occasion lawyers reportedly were able to bribe judges to procure further delays. When

97. For an example, see R. STONE, *supra* note 12, at ch. 4.

finally confronted with imminent judgment, the squatter could quietly "sell" his occupancy to another squatter, thus requiring still further proceedings against the new occupant. Even in possession of a judgment, an owner would find it difficult to evict a squatter family who, having no place to go, simply declined to move. Given the prospect of protracted legal proceedings, many owners chose simply to negotiate with squatters to secure the latter's departure in exchange for some agreed compensation.

If the legal system made it difficult for land owners to evict squatters, until recently it also thwarted programs designed to redistribute private land to squatters. The Philippine constitution provides expressly that, upon payment of just compensation, private lands may be expropriated for subdivision into small lots and conveyance at cost to individuals.⁹⁸ On a number of occasions the government attempted to use that provision to expropriate and redistribute private land to urban squatters. In a series of cases, however, the supreme court, on questionable grounds of constitutional history and anticommunist ideology, held the constitutional provision to apply only to "landed estates with extensive areas."⁹⁹ Those decisions, in effect, ruled out urban land reform. In the 1960's, however, the court began to express an increasingly liberal philosophy in regard to social reform, and in 1970 it rendered an important decision severely limiting, if not overruling, the earlier line of cases. In *J.M. Tuason & Co. v. Land Tenure Administration*,¹⁰⁰ the court sustained the expropriation of the Tatalon Estate in Quezon City, a suburb of Manila and the national capital. The land in question, comprising about 100 hectares and occupied by some 1,500 families, had been the subject of a title dispute between the Tuason company and another firm. Prior to the determination that the Tuason company was the true owner, the occupants of the land had entered into transactions with the other firm for purchase of their lots. Some had constructed their houses as early as 1947. In 1959, congress enacted a law directing that the Tatalon Estate be expropriated and redistributed to the occupants and barring ejectment proceedings

98. Constitution art. XIV, § 13 (Phil. 1973), formerly art. XIII § 4 (1935). The present constitution provides that such lots may be conveyed to "deserving citizens," rather than simply to "individuals," the language of the 1935 constitution.

99. Republic v. Baylosis, 96 Phil. 461 (1955). For a discussion of this and other cases on point, see Magavern, *supra* note 67, at 613-18.

100. 33 Sup. Ct. R. Ann. 82, 66 Official Gazette 6758 (Phil. Feb. 18, 1970) (Decision No. 21064).

against the occupants.¹⁰¹ In 1962, the supreme court held the bar against ejectment proceedings to be unconstitutional.¹⁰² In 1963, a lower court, relying on earlier decisions of the supreme court, held the statute to be unconstitutional in its provision for expropriation of the property. In its 1970 opinion in *Tuason*, the supreme court reversed the decision of the lower court, reexamined the earlier line of decisions, and redefined the scope and limits of the constitutional provision for land reform. It is not necessary to consider the details of the opinion here. The court reviewed the relevant constitutional history and held that congress, provided that it acts reasonably and with due regard to the requirements of just compensation, public use, due process, and equal protection, is empowered to direct that substantial tracts of urban land be expropriated for redistribution to occupants. The *Tuason* court explicitly rejected the doctrine of the earlier cases, citing its "undue stress on property rights."¹⁰³ By September 22, 1972, when martial law was declared, the Tatalon Estate still had not been redistributed. Soon thereafter, at the same time many squatter houses were being cleared in other areas, the president ordered the property to be expropriated and redistributed to the occupants.¹⁰⁴

On public land, squatters were usually able to achieve greater security of tenure. Despite occasional official announcements of "get-tough" policies, clearance of squatter settlements was effected in few instances. Large-scale clearance projects were coupled with relocation programs. In most cases, however, relocation sites were too far from the city and lacked urban services, employment opportunities, and adequate transportation to other places of employment. Consequently, relocated squatters tended to sift back to the city, where they resumed squatting in new locations. The prevailing, but officially unacknowledged, policy toward squatting on public land was one of de facto acquiescence. A number of laws were enacted directing that particular tracts of public land be subdivided, streets and sewers provided, and title awarded to the occupants by sale at cost with long-term installment payments. Most of those laws were never implemented, but neither were the squatters evicted. Moreover, there usually were more

101. Republic Act No. 2616 (1959), as amended, Republic Act No. 3453 (1962).

102. *Cuatico v. Court of Appeals*, 6 Sup. Ct. R. Ann. 595 (1962).

103. 33 Sup. Ct. R. Ann. at —, 66 Official Gazette at 6771.

104. Letter of Instruction No. 34, Oct. 27, 1972; see *Philippines Daily Express*, Oct. 10, 1972, at 8.

occupants on the land than permitted by the statutory provisions establishing minimum lot sizes and the necessary reservations of land for streets and other public uses. Even apart from these difficulties, the costs of constructing roads and sewers and surveying, sorting out, and registering lots in the names of occupants far exceeded the resources committed to implementation of the laws.

The security of tenure that squatters achieved on public land was dependent to some extent on legal representation, and to a greater extent on political representation. When the government brought judicial proceedings to evict squatters, lawyers were often able to obstruct them by the same methods used against eviction proceedings brought by private owners. In the mid-1950's, however, the supreme court held that squatting on public land constituted a public nuisance, which municipal officials could abate summarily, without judicial proceedings.¹⁰⁶ Nevertheless, municipal governments continued to bring occasional judicial proceedings for eviction, possibly as a gesture to middle class voters that they were doing something about "the squatter problem." In an action for eviction initiated in 1962 by the City of Manila and decided by the supreme court in 1967, the court, noting that the city might have employed the remedy of summary abatement, expressed considerable impatience with squatters, lawyers, and public officials:

But, then, the mills of justice grind slow, mainly because of lawyers who, by means fair or foul, are quite often successful in procuring delay of the day of reckoning. Rampancy of forcible entry into government lands particularly, is abetted by the apathy of some public officials to enforce the government's rights. Obstinance of these squatters is difficult to explain unless it is spawned by official tolerance, if not outright encouragement or protection.¹⁰⁷

105. The stabilizing effects of legalization of tenure in a squatter settlement are demonstrated by a comparison of the communities on either side of a major highway in Davao, a rapidly growing regional city in Mindanao. On one side, title was awarded to the squatters occupying the land; on the other side it was not. On the one side of the highway, lot lines are regular, access is available by regular public streets, and the houses are of solid construction and under constant improvement. On the other side, houses are flimsy and squeezed together in a helter-skelter fashion, with access only by meandering passageways among the houses.

106. *Sitchon v. Aquino*, 98 Phil. 453 (1956); *see also* *Quinto v. Lacson*, — Sup. Ct. R. Ann. —, 50 Official Gazette 5095 (Phil. 1960); *Halili v. Lacson*, 98 Phil. 772 (1956).

107. *City of Manila v. Garcia*, — Sup. Ct. R. Ann. — (Phil. Feb. 21, 1967) (Decision No. L-26053). For a description of the background of this case, see R. STONE, *supra* note 12.

Ironically, five years after the city's victory in the supreme court, the land still remained occupied by the squatters, who explained that their lawyer had influence with a Manila councilor.¹⁰⁸ Apart from their ability to obstruct eviction in protracted legal proceedings, squatters were usually able to bargain with aspiring or incumbent politicians for protection against ouster by official action.¹⁰⁹ Political candidates who did not actively seek the express support of squatter organizations at least hesitated to take a position that could mobilize about one fourth of their urban constituents against them. For example, during the 1969 presidential election campaign, President Marcos quietly suspended a program he had announced with some fanfare several months earlier to clear squatters who for three decades had occupied the right of way adjacent to railroad tracks in Manila.

While squatters were usually able to maintain fairly secure tenure through participation in the political process, they were vulnerable to exploitation. In some squatter settlements, policemen were reported to collect regular "rent" payments from residents. Politicians occasionally retaliated against squatters who did not give them sufficient support in elections by having them evicted.¹¹⁰ More fundamentally, the political system did not provide the support required for planned development programs to improve the condition of squatter and slum settlements. Laws directing the expropriation and redistribution of private land were, for many years, subject to judicial nullification; even after the favorable *Tuason* decision, little was done to implement such laws. Statutory mandates that public facilities be provided and title be awarded to squatters on public land were seldom carried out effectively. Relocation programs were invariably ill-planned, uncoordinated, and entirely inadequate for the most basic needs of the squatters.¹¹¹

4. *The Tondo Foreshore Land*

The way in which the political system worked to the advantage as well as the disadvantage of urban squatters and the tension and process

108. R. STONE, *supra* note 12, at 115.

109. A. LAQUIAN, *supra* notes 1 & 60; R. STONE, *supra* note 12; ZONE ONE TONDO ORGANIZATION, ZOTO IS PEOPLE POWER, May 13, 1973 [hereinafter cited as ZOTO PUBLICATION].

110. For an example, see R. STONE, *supra* note 12, at 116.

111. See A. LAQUIAN, *supra* note 60; R. POETHIG, *supra* note 8.

of accommodation between the formal legal order and illegal urban settlement are exemplified by the experience of the Tondo Foreshore Land.¹¹² The Tondo Foreshore Land comprises 185 hectares reclaimed by the Bureau of Public Works from Manila Bay, adjacent to the North Harbor of Manila. The government's purpose in reclaiming the land was to develop it for a port-related complex of maritime, industrial, and civic uses. The plan was to allocate a small portion of the land to low-cost housing for workers in the port area. In the disorder of post-World War II reconstruction, large numbers of urban in-migrants flooded the city and settled on any land available, preferring large tracts of public land near places of employment. A settlement was soon established on the Tondo Foreshore Land. The settlement continued to grow and is now the most heavily populated squatter community in the country, containing more than 100,000 people.¹¹³

The original as well as many of the more recently built houses were constructed of bamboo, palm leaves, scrap lumber, tarpaper, and corrugated steel, usually on piles, in the manner of traditional rural houses. Many houses were constructed over the tide waters, connected by a network of narrow plank walkways. As the residents became established, they progressively improved their houses. Those houses situated on dry land were often reconstructed of concrete blocks. Access is by narrow, meandering lanes and plank walkways. In one area, a vigorous community organization, with outside assistance, has recently constructed a community center, plaza, and full size basketball court. Otherwise, recreational and open space is limited to alleyways, sea-walls, and small irregular lots and basketball courts. In a survey¹¹⁴ of a recently settled area, electricity was found to be available to thirty percent and piped water to twenty percent of the houses; seventy percent of the people did not have a toilet in their house and used vacant lots, the sea, or the "wrap-and-throw" method. Roughly two-thirds of the

112. The main sources of this account are A. LAQUIAN, *supra* note 1; REPORT OF SPECIAL COMMITTEE ON SQUATTING AND SLUM DWELLING IN METROPOLITAN MANILA (1966), reprinted in A. LAQUIAN, *supra* note 1, at app. B; ZOTO PUBLICATION; B. Etherington, *Chronicle of the Tondo Fire, 1971* (unpublished master's thesis, on file at the University of the Philippines Institute of Planning); clippings from the Manila Times in 1970-71; authors' visits to the site.

113. The figure is a guess based on a variety of population and area estimates provided in the sources cited in note 9 *supra*.

114. See A. LAQUIAN, *supra* note 1.

families had monthly incomes in the range of ₱ 50 to ₱ 200. (The rate of exchange at that time was approximately ₱ 4 to US \$1). Considering that more general surveys of squatter settlements in Manila disclose that electricity is available in seventy percent of the households,¹¹⁵ it seems probable that electricity is more commonly available in older areas of the Foreshore Land. For those houses without piped water, clean water is usually available at a nearby community faucet.

In 1950, the squatters organized the Tondo Foreshore Land Tenants Association and persuaded congress to enact a law to grant them title to the land they occupied. The statute, Republic Act 559, directed the Director of Lands, "without delay and without public bidding," to sell to "lessees and bona fide occupants" all of the foreshore land except such portions as might be reserved for port facilities, roads, and other public uses. It created a commission, made up of the city assessor, a representative of the Bureau of Lands, and a representative of the Tondo Foreshore Land Tenants Associations, to fix the price for the land within a range of ₱ 5 to ₱ 10 per square meter. The purchase price was to be payable over a ten year term with interest at four percent per annum. Alienation within five years after issuance of a certificate of title was prohibited, and any subsequent conveyance was to be subject to the right of the original purchaser to repurchase within five years. Any violation of the restriction against alienation would cause the property to be forfeited. On the same day that he approved the Act, President Quirino issued a proclamation reserving a portion of the land for low-cost housing projects under the administration of the People's Homesite and Housing Corporation.¹¹⁶

In 1953, the Act was amended to include a boundary description of the Tondo Foreshore Land.¹¹⁷ When the Act still had not been implemented in 1956, the Tenants Association induced congress to enact a new law, the Tondo Foreshore Land Act of 1956.¹¹⁸ The new Act directed the Director of Lands, notwithstanding President Quirino's proclamation of 1950, to subdivide immediately all of the Foreshore Land, except areas reserved for port facilities, roads, and other public

115. See REPORT OF SPECIAL COMMITTEE ON SQUATTING AND SLUM DWELLING IN METROPOLITAN MANILA, *supra* note 112.

116. Proclamation No. 187, June 17, 1950.

117. Republic Act No. 907 (1953), *amending* Republic Act No. 559 (1950).

118. Republic Act No. 1597 (1956), *amending* Republic Act No. 559, (1950) *superseding* Proclamation No. 187, June 17, 1950.

uses, into lots "in such manner that every lessee or bona fide occupant of any parcel will not be deprived of any part of the same." It provided that existing streets and alleys were not to be changed unless the public interest so demanded. Occupants displaced by the opening or widening of streets were to be given preference in the sale of vacant lots or, if there should not be enough vacant lots in the Foreshore Land, in the sale of lots in a nearby area or in the sale or rental of houses to be constructed in Tondo by the People's Homesite and Housing Corporation. The Act ordered completion of a survey and subdivision plan within one year after approval of the Act and directed the Land Tenure Administration thereafter to sell lots to the occupants without delay. The selling price was fixed at ₱5 per square meter, not to be increased by reason of the costs of roads, sewers, surveying or subdivision. The purchase price was made payable in monthly installments over fifteen years, with interest at four percent per annum. Except for mortgages, alienation was prohibited within fifteen years. The Land Tenure Administration was required to implement the Act upon "proper consultation" with the Federation of Tondo Foreshore Land Tenants Association. The sum of ₱400,000 was appropriated to carry out the Act.

In 1959, the Tondo Foreshore Land Act, which still had not been implemented, was amended to enlarge the area to be conveyed to the Foreshore Land residents by moving the western boundary closer to the piers, thereby reducing the area set aside for port facilities.¹¹⁹ In 1961 President Macapagal issued a proclamation reserving a site of nine hectares for a stadium planned by the City of Manila.¹²⁰ In 1963, the Federation obtained passage of an act¹²¹ appropriating an additional ₱300,000 for implementation of the Tondo Foreshore Land Act of 1956. Just before the expiration of his term of office at the close of 1965, President Macapagal revoked his earlier proclamation reserving a site for a stadium and declared the site available for disposition to the residents.¹²²

Meanwhile, late in 1963 the mayor of Manila initiated a sweeping program of squatter clearance. Relying on earlier rulings by the

119. Republic Act No. 2439 (1959), *amending* Republic Act No. 1597 (1956).

120. Proclamation No. 788, Sept. 22, 1961, *revoked by* Proclamation No. 515, Dec. 26, 1965.

121. Republic Act No. 3794 (1963).

122. Proclamation No. 515, Dec. 26, 1965, *revoking* Proclamation No. 788, Sept. 22,

supreme court that squatter settlements on public land constitute a public nuisance, which municipal officials are empowered to abate summarily, without judicial proceedings, the Mayor set out to clear Intramuros, the ancient walled city of Manila.¹²³ Representatives of the squatters sued for a preliminary injunction against clearance, but the court denied their application. The next day, the squatters and whatever they could salvage of their dwellings were loaded into garbage trucks. The remaining structures were razed, and the people were transported to Sapang Palay, 35 kilometers away. Sapang Palay was a 752 hectare tract of rural land owned by the People's Homesite and Housing Corporation. Although it had previously been proposed as a squatter resettlement site, no real planning had been done. When the squatters arrived from Intramuros, the site lacked shelter, water, sanitation facilities, adequate public transportation to Manila, and means for the squatters to make a living. During the following weeks, as 20,000 people were trucked in from Manila, responsibility for their food, shelter and resettlement shifted from one official, agency, or committee to another. None possessed the political authority and economic resources required to bring order to the confusion and establish a tenable community. Wells were drilled, but some ran dry. Food and medical services were distributed by welfare and relief organizations. People constructed makeshift shelters wherever they found unclaimed space and with whatever materials they had brought along or could find on the site. Speculators staked claim to lots. Six months after settlement began, a typhoon destroyed ninety percent of the houses that had been built. A master plan was drawn up but never implemented. A special coordinating committee, headed by the Chairman of the National Economic Council, proposed that Sapang Palay be developed as an agro-industrial estate, but failed to indicate how this was to be accomplished. As the inherent difficulties of the Sapang Palay project became more and more imposing, official interest waned. Eventually about two-thirds of the people transported to Sapang Palay resumed squatting in Manila, many in the Tondo Foreshore Land.¹²⁴

Initially, the press gave the relocation program extensive coverage and expressed mixed reactions of satisfaction at the clearance of public lands and sympathy for the displaced squatters. In January 1964, the

123. This account of the clearance of Intramuros and the Sapang Palay resettlement are drawn from A. LAQUIAN, *supra* note 60, at 143-69.

124. Estimate in 1968 by public officials. Cf. A. LAQUIAN, *supra* note 1, at 24.
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mayor, having cleared Intramuros, shifted his attention to other squatter settlements, including the Tondo Foreshore Land. In one area the residents organized quickly to secure the support of a congressman and other politicians. As a result of this political intervention, eviction was not attempted in that area.¹²⁵ In another, less fortunate area, all but five large houses were razed, and the residents were transported to Sapang Palay. When they returned to Tondo a year later, they found that their former home sites had been claimed by city policemen and political favorites. The former residents, therefore, were forced to squeeze into whatever space they could find remaining in the Foreshore Land.¹²⁶

In April 1971, a fire swept through 15 blocks of the Tondo Foreshore Land, leaving more than 8,000 families homeless.¹²⁷ Firemen were unable to fight the fire because the lanes among the houses were too narrow for their equipment. As in the case of the Sapang Palay resettlement project, public and private officials and agencies responded with a bewildering array of uncoordinated plans, promises, press releases, and ad hoc relief efforts. The president ordered the National Housing Corporation and the People's Homesite and Housing Corporation to prepare a housing program for the victims. The mayor announced plans to construct apartment buildings in the razed area and pledged ₱ 2 million to start the program. The Chairman of the National Housing Corporation announced that within two weeks emergency housing would be constructed for 600 families and that permanent four story condominium apartments would be constructed in the area

125. A. LAQUIAN, *supra* note 1, at 98-99.

126. ZOTO PUBLICATION 5. Even today, several large, expensive houses and an attached row of apartment units, reputedly owned by city policemen and politicians, can be seen in the area. One other massive relocation project has since been attempted. In 1968, a large tract of public land was cleared. Originally laid out as the "East Triangle," the national capitol complex in Quezon City, the tract had long since been occupied by squatters, many of whom had built relatively large houses constructed of concrete blocks. Relocation was provided in Carmona, a site about thirty-five kilometers and two hours away by public transportation. Although management of the Carmona project represented a great improvement over the original Sapang Palay resettlement project, there was no way for most of the squatters to make a living at the relocation site. Consequently, during the weeks prior to the scheduled clearance of the East Triangle, many of the squatters moved their houses and belongings, often at night, to nearby public and private sites where they again squatted.

127. This account of the Tondo fire is drawn principally from E. Etherington, *supra* note 112, supplemented by clippings from the *Manila Times* of that period and recollections from the authors' visits.

thereafter. While the Red Cross was distributing galvanized sheeting to enable the squatters to rebuild their houses, the Department of Social Welfare proposed that they be returned to their original home provinces or resettled outside Manila. The Cardinal joined with the mayor in announcing a plan to construct prefabricated two story condominium houses, but the Manila Municipal Board refused to appropriate the money requested to start the project. A senator and a congressman proposed redevelopment of the area with an adequate infrastructure system and in accordance with a rational plan. The president created a special steering committee and announced that parts of the area would be reserved for construction of a government housing project and extension of a major highway. The National Planning Commission called for the construction of a complex of high-rise apartment buildings and community facilities, together with the industrial and port facilities originally planned for the Foreshore Land. The squatters objected to their exclusion from the planning, reiterated their demand for title to their lots, and proceeded to reconstruct their houses. When the mayor ordered demolition of dwellings rebuilt in the fire area, the squatters put up human barricades to stop the demolition squad. In the ensuing confrontation, a fifteen-year-old boy was shot and killed by police. The mayor stopped further demolition. By the end of the month, nearly the entire area had been rebuilt. Three years later, twenty apartment units were completed and occupied; a small number of barracks-like, temporary units built by the army appeared to have become permanent; and the area had otherwise returned to normal.

In the meantime, the Federation of Tondo Foreshore Land Tenants Association had become defunct and a new organization had been formed to represent the 60,000 residents of Zone One, an area of fifty hectares of Foreshore Land.¹²⁸ The Zone One Tondo Temporary Organization (ZOTTO) was created with the assistance of a community organization staff provided by the Philippine Ecumenical Council on Community Organization. Its purpose was to establish a permanent

128. In January 1969, another organization, the Council of Tondo Foreshoreland Community Organizations, had been formed by surviving member organizations of the defunct Federation. Implementation of the Tondo Foreshore Land Act of 1956, Republic Act No. 1957, was its main issue. The Council soon fell apart in internal conflict involving charges of corruption against its leaders. ZOTTO, later renamed ZOTO, was formed by a group of organizations dissatisfied with the Council's leadership. ZOTO PUBLICATION 9. The account of the Zone One Tondo Organization in the following text is drawn from ZOTO PUBLICATION.

community organization on the principles developed by Saul Alinsky and the Industrial Areas Foundation. ZOTTO was formed in October 1970. A year and a half later, it held its first convention, elected officers, dropped the word "Temporary" from its name, and became a permanent organization, ZOTO.

Shortly before ZOTO's inaugural convention, the Bureau of Public Works started construction of a warehouse and depot on a vacant parcel in Zone One known as the Farola compound. ZOTTO quickly executed the first organized squatter invasion in the Philippines. Access lanes were laid out in a gridiron pattern; lots measuring six by six meters were staked out and registered in the organization's records; and, in order to establish possession, construction of houses was at least started on most lots.

In the two years between the organization of ZOTTO and the declaration of martial law, the organization successfully confronted and negotiated with a remarkable variety of private, national, and international officials and agencies involved in plans for development of the Tondo Foreshore Land. These included congress, the president, the People's Homesite and Housing Corporation, the Bureau of Customs, the Department of Public Works and Communication, the mayor of Manila, the San Miguel Corporation (the largest business enterprise in the country), the Cement Association of the Philippines Corporation, the Catholic church, a German international development agency, and the United Nations Development Program. In the process, ZOTO and its predecessor employed tactics such as picketing, rallies, marches, and mass demonstrations. It also secured the support of sympathetic individuals and organizations, appealed publicly to the consciences of its adversaries, and looked ultimately to negotiation and agreement to resolve issues.

Soon after the declaration of martial law in September 1972, several ZOTO leaders were arrested and detained for several days. Although ZOTO was at first brought to a standstill, it soon regained enough confidence to enlist the aid of the sympathetic Catholic Bishop of Manila in a moderately conducted protest against the squatter clearance program initiated by President Marcos after the declaration of martial law. The Bishop appeared to play a decisive role in a series of negotiations that resulted in an agreement between ZOTO and the government. According to the agreement, clearance of the Tondo Foreshore Land will be deferred until a 300 hectare resettlement site is ready on

land to be reclaimed at Navotas. Navotas lies to the north of Tondo and is reasonably accessible to the harbor area and its opportunities for employment in fishing, port work, and hawking. The World Bank is considering a loan request for the Navotas project. Whether the project will be successfully implemented remains to be seen.

5. Conclusion

It is difficult to predict how squatters will fare under martial law. Two of the early acts of the president following the declaration of martial law have already been noted: the creation of the Citizens Legal Assistance Office and the order to expropriate and redistribute the Tatalon Estate to its occupants and other low-income families.¹²⁹ At the same time, however, the president ordered the clearance of squatter housing along the railroad tracks and esteros of Manila and in certain parts of the Tondo Foreshore Land. Although clearance was stopped in the Foreshore Land as the result of successful representations to the president by ZOTO and the Bishop, it has proceeded in other areas. It appears that the administration may be able to clear existing squatter settlements and implement land redistribution and sites-and-services projects more effectively than in the past.

Squatters have lost a considerable part of their former political bargaining power. While martial law continues, they will no longer be able to prevent eviction by obstruction of judicial process or negotiation with elective office holders. Militant protest tactics of the kind developed by ZOTO will no longer be tolerated. Rather than lawyers and politicians, the most effective representatives of squatters may now be clergymen and church organizations, and perhaps other influential individuals and institutions not perceived as a political threat to the regime. It is not clear whether, in respect to their immediate environmental needs, the urban poor will gain or lose from martial law and the resulting shift of power from elective politicians to appointed technocrats. It does seem clear that the role of lawyers has been greatly diminished. With the abolition of congress, suspension of elective politics, and concentration of power in the executive, the fate of squatter settlements

129. See notes 91, 92, 104 *supra* and accompanying text. Social justice has been one of the themes of the martial law government. Land reform appears to have been intensified. On the other hand, critics of the government feel that it is essentially reactionary in character.

will no longer be determined in the judicial, legislative, and political arenas, in which lawyers and legal processes played such a significant part in the past.

III. THE POLITICAL CONDITIONS OF EFFECTIVE LEGAL SERVICES TO THE POOR

At the risk of oversimplification, two distinct approaches to legal service programs can be identified: a service approach, which attempts to provide to the poor the legal advice and representation they need to identify and enforce rights embodied in existing law; a policy approach, which attempts to change governmental policy and bring into being basic, new legal rights for the poor. The distinction is not clear cut, and the differences are of degree. There are intermediate possibilities for creating new rights by elaboration of more fundamental and incompletely defined rights, and any program will represent both approaches to some extent.

It seems clear that a service approach would be essentially misdirected, if not entirely irrelevant, to the problems of the urban poor in the areas of housing and environmental conditions. As squatters and pavement dwellers, without legal claim to the space they occupy, the poor lack legal recognition of their right even to live or exist in the cities. There is no stock of conventional housing that can be made available to the poor through the "trickledown" effect of regulatory or market intervention techniques directed to the private sector. Housing codes and rent controls can have no application in such a situation. Nor are there constitutional or statutory rights that the poor can invoke in judicial proceedings to require affirmative governmental action to provide land, housing, and urban services. It is often assumed by proponents of legal service programs that the interests of the poor are best secured by effective and uniform enforcement of the law. For many problems, such as the implementation of social reform legislation and restraint of abuses of official authority, that assumption is plainly correct. In order for many of the urban poor to maintain their homes and communities, however, the law must be frustrated rather than enforced. Consequently, legal services predicated upon existing rights at most can confer upon the poor a sort of negative power—the ability, through procedural delays and the like, to obstruct the enforcement of substantive law.

If what the poor need is the creation of effective new legal rights

in the urban development process rather than the improved administration of existing law, a policy approach designed to assist the poor in obtaining those rights would be logically relevant to the problem. Such an approach, as the label suggests, would be fundamentally political in nature. The problem is to induce government to adopt and effectively implement urban development policies favorable to the poor. The possibility of developing an effective legal services program directed toward a meaningful urban development policy would seem to depend upon certain fundamental characteristics of the political system in which the program would operate. A priori, three essential political conditions can be identified: a compatible ideology; a secure legal base for advocacy of the interests of the poor; and a government capable of implementing urban development plans.¹³⁰

The idea that the position of the poor can be significantly improved through legal advice and representation is closely associated with certain assumptions about political ideology and the role of law. Under these assumptions, politics is seen as a process of pluralistic contention among a variety of individuals, groups, and legitimate interests. The role of law is to provide a neutral vehicle for such contention, with fixed rules of procedure and jurisdictional limitations, but highly differentiated from the broader political system of which it is a part. In addition, it is often assumed that the development of a formal, highly differentiated legal system is associated with economic modernization as a necessary condition, an inevitable consequence, or both. Those assumptions, though deeply imbedded in the western countries, are not universally held.

Roberto Unger has identified three kinds of political development: (1) liberal capitalist, (2) traditionalist, and (3) revolutionary socialist.¹³¹ The role of law in the ideology of liberal capitalist society, ex-

130. The immediate concern of this Article is with legal services in relation to urban environmental conditions. As already noted, our analysis and conclusions are determined and limited to a great extent by the condition that squatters, by definition, do not have a legal right to the land they occupy. Moreover, effective urban planning is one of the most politically difficult of all governmental functions. To a degree, however, the political conditions discussed here have broader implications for legal service programs where, as is often the case, the problems of the poor, urban or rural, can be identified with a lack of sufficient legal rights or the basic political inability of government to give effect to existing legal rights.

131. R. Unger, *The Place of Law in "Modern" Society: Sketch for an Interpretation* (undated, unpublished paper on file in Yale University Law Library). This classification is not intended to be exhaustive.

emplified by Western Europe, conforms roughly to the above-mentioned assumptions. In accordance with that ideology, legal services can be viewed as a means to enable the poor to compete effectively within a neutral legal system and perhaps even as a means of assuring the neutrality of the system itself.¹³²

In traditionalist modernization, exemplified by Japan, economic development is directed by the elite in conjunction with an effort to maintain traditional social values, practices, and hierarchical structures. Government is not constrained by and does not operate through a formal legal system. Rather, it supports and is supported by traditional social groups and structures. Issues are resolved by informal, traditional structures and processes rather than by a differentiated, formal legal system. To the extent that a society embodies this ideology, legal professionals, relying upon explicit formal norms and adjudication, may be neither welcome nor effective in advancing the interests of the poor.

In a revolutionary socialist society, for example China, individual interests are viewed as subordinate to collective goals. The central government and the new social organizations it creates are fused. Together, they serve to effect comprehensive changes in all areas of society. Law functions, not as a neutral, differentiated, and autonomous vehicle for the accommodation of conflicting claims, but as an instrument to carry out a political program. Such a society will offer little place to legal professionals invoking distinctly legal rules and independently representing the poor before specialized tribunals.

Even in societies that do not conform to the pure revolutionary socialist type described by Unger, socialist ideology may be unreceptive to the concept of legal services to the poor. Neelan Tiruchelvam has analyzed the ideology and institutions of popular justice in a number of countries, including the Soviet Union, Cuba, Tanzania, India, and Burma, as well as China.¹³³ The popular justice programs of those countries manifest considerable divergences, especially in the way they resolve the fundamental ambiguity between the conflicting objectives of granting or restoring political control to local popular groups, and of extending the norms of the central political order into areas of social life not previously regulated by the state. Nevertheless, they have in

132. It should be noted, however, that Unger believes this ideology to embody certain fundamental contradictions; to the extent that such contradictions are effective, they might negate effective legal representation of the poor.

133. N. Tiruchelvam, *supra* note 29.

common the objective of deprofessionalizing some aspects of the administration of justice. To that extent, the familiar objective of bringing the problems of the poor more fully within the operation of the formal legal system would conflict with the ideology of popular justice.

The second and third political conditions for an effective legal services program (that is, a secure legal base for the advocacy of the interests of the poor and sufficient governing capacity to implement urban development plans) can be phrased more generally in Madison's formulation:

In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place, oblige it to control itself.¹³⁴

This, of course, reflects the ideals of constitutional democracy, or, in Unger's terms, liberal-capitalist society.¹³⁵ But a declared commitment to those ideals, even in the national constitution, is not sufficient. The ideals must be supported by institutions. It is the weakness of the necessary political institutions, not the lack of suitable constitutional language, that most impedes the attainment of prosperity and social justice in the poor countries.¹³⁶

134. S. HUNTINGTON, *POLITICAL ORDER IN CHANGING SOCIETIES* 7 (1968) quoting *THE FEDERALIST*, No. 51, at 123 (A. Hooker ed. 1964) (J. Madison).

135. See also *THE FEDERALIST*, No. 10, at 17-20 (A. Hooker ed. 1964) (J. Madison):

As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions, and his passions will have a reciprocal influence on each other, and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights to property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors ensues a division of the society into different interests and parties.

.
If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private right against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed.

Washington University Open Scholarship The statement in the text also applies to social justice in the rich democracies.

Gunnar Myrdal has asserted that the poor countries are all "soft states," characterized by social indiscipline manifested in pervasive disobedience of laws, rules, and directives—on the part of public officials as well as private citizens.¹³⁷

[T]here is little hope in South Asia for rapid development without greater social discipline, which will not appear without legislation and regulations enforced by compulsion. All these countries, independent of their type of government, have in general placed many fewer obligations much less effectively upon their peoples than have western countries.

. . . .

In principle, social discipline can be effected within the framework of whatever degree of political democracy a country can achieve; in the end nothing is more dangerous for democracy than lack of social discipline. But the political and social conditions in these countries block the enactment of regulations that impose greater obligations. Even when laws are enacted, they are not observed and cannot easily be enforced. This is ultimately what I mean by the term "the soft state."¹³⁸

To explain the ineffectiveness (or "softness") of government in the poor countries, Samuel P. Huntington has conceived the theory of political decay.¹³⁹ He takes rationalized authority, differentiated structure, and mass participation as the criteria of political modernity, but he rejects the common notion that the process of modernization, as it is actually occurring, represents a movement from traditional to modern polity, with concurrently increasing rationalization, differentiation, and participation. Viewing the experience of the countries of Asia, Africa, and Latin America since World War II, he finds "a shortage of political community and of effective, authoritative, legitimate government,"¹⁴⁰ as well as

a decline in political order, an undermining of the authority, effectiveness, and legitimacy of government. There was a lack of civic morale and public spirit and of political institutions capable of giving meaning and direction to the public interest. Not political development but political decay dominated the scene.¹⁴¹

137. G. MYRDAL, *THE CHALLENGE OF WORLD POVERTY* 208 (1970).

138. *Id.* at 216 (emphasis original).

139. S. HUNTINGTON, *supra* note 134.

140. *Id.* at 2.

141. *Id.* at 4.

Huntington's explanation of political decay is that modernization, through social mobilization and economic development, brings new social forces into existence more rapidly than political institutions can be developed to accommodate their demands. Political institutions are necessary to give effect to public interests. In order to "impose political socialization as the price of political participation"¹⁴²—to limit the means that may be employed in politics and to establish a civic polity—a modern polity requires a high level of institutionalization. The criteria of political institutionalization are the adaptability, complexity, autonomy, and coherence of its organizations and procedure. The key institution is the political party. In most of the modernizing countries, however, the political parties are weak; they are often denigrated and opposed by those in power. As modernization mobilizes new social forces without a corresponding development of political institutions, traditional systems of authority are impaired, but not replaced, by effective new systems. The result, in Huntington's terms, is not political development, but political decay.

Both Myrdal and Huntington emphasize the ability of government to control the governed, as distinguished from the other feature of the Madison formulation, the obligation of government to control itself.¹⁴³ Both features are dependent upon a common base of strong political institutions. Lacking such a base, government may be ineffective in the performance of legitimate functions, as well as arbitrary in its rela-

142. *Id.* at 83.

143. Professor Huntington is concerned primarily with the extent and degree to which government is able to exercise effective authority, and not with such issues as who governs for whose benefit, or with the values of limitation of government and of consent and participation on the part of the governed. It is submitted that, within a framework embracing the values of constitutional democracy, those issues must be considered in assessing political conditions. Nevertheless, Professor Huntington's position is not necessarily anti-democratic. Rather, he may be saying that although effective government alone is not a sufficient condition, it is a necessary condition for the implementation of substantive public values, including those of liberty. The inadequate realization of this necessary condition is the critical problem to which he has chosen to direct attention.

Men may, of course, have order without liberty, but they cannot have liberty without order. Authority has to exist before it can be limited, and it is authority that is in scarce supply in those modernizing countries where government is at the mercy of alienated intellectuals, rambunctious colonels, and rioting students.

Id. at 7-8. On the other hand, it should be noted that insufficient limitation of authority can be as significant a problem as insufficient authority. We reject Huntington's identification of the public interest with the interest of public institutions. *Id.* at 24-32.

tions with the weak. As Madison's phrasing suggests, however, the two objectives also exist in a state of tension; the obligation of the government to control itself necessarily limits the ability of government to control the governed, even in pursuance of legitimate ends.

There are in the world today a number of modernizing countries that cannot be considered "soft" in their ability to control and impose obligations on the governed. Singapore and South Korea are examples. There are also a number of countries in which government is legally obliged to control itself insofar as the exercise of official authority is concerned.¹⁴⁴ India is one; until martial law, the Philippines was another.¹⁴⁵ Few governments, however, are sufficiently able to control the governed *and* obliged to control themselves; few of the poorer countries have realized balanced political development on both sides of the Madison formulation.

In the absence of balanced political development, the potential role of an organized program of legal services in bringing about improved environmental conditions for the urban poor is severely limited. Those governments possessing sufficient authority to plan effectively and manage urban development generally do not tend to place a high priority on the immediate environmental interests of the poor, as compared to competing urban development objectives of efficiency, economic growth, and national pride.¹⁴⁶ The governments of Singapore and South Korea, for example, have pursued generally equitable policies

144. Without strong political institutions, this obligation does not preclude unlawful abuse of authority.

145. Under martial law, the government of the Philippines seems to have increased its ability to control the governed at the expense of its obligation to control itself. The matter is not quite that simple, however. Its ability to control the governed is in some respects tenuous and is under challenge by armed insurrection. On the other hand, unlawful abuse of official bureaucratic authority appears to have been significantly reduced.

146. As observed by Professor Gamer in R. GAMER, *supra* note 7, at 132:

[T]his book argues that politically astute, fiscally sound, and administratively convenient activities are not necessarily beneficial to human beings. The interests of those who control resources, skills, and administrative and political capabilities often run counter to what is needed to cater to the needs of people. By enhancing the power of these individuals, massive urban development and industrialization programs may be weakening government's ability to serve human needs, rather than strengthening it as is commonly assumed. Only if means can be found to broaden the power of those who do not control resources, skills, and administrative and political capabilities, can programs be made to enhance the tone and substance of the lives of broad masses of the populace. And only with some fundamental changes in current patterns of industrialization and urban growth can one hope to broaden that power to any significant degree.

of economic and social development, with a strong commitment to health, education, employment, and higher standards of living for large and increasing segments of formerly poor populations.¹⁴⁷ The governments of both countries have developed a strong capacity for urban planning and development. In both countries, however, urban development policies have worked against the interests of the residents of slums and squatter settlements.

Regardless of whether political institutions enable government to control the governed effectively, to the extent that they are not developed sufficiently to oblige government to control itself, effective representation of the poor in opposition to official urban development policy will not be permitted. In South Korea, for example, we have seen that the Legal Aid Foundation established by the government is not authorized to handle administrative matters and claims against the government and that, when a church-related community organization program sought to organize the poor to resist summary clearance of a squatter settlement, its leaders were arrested. The arrest of the director of the Indonesian Legal Aid Bureau on charges of subversion has also been noted. Whether or not his efforts on behalf of poor communities confronted with imminent clearance for urban development had any part in the government's decision to arrest him, there is a serious risk in such a political setting that aggressive advocacy in opposition to government will be associated with subversion.

In the absence of significant legal restraints on governmental authority, lawyers are unlikely to make the most effective advocates of the interests of the poor. Not only is nonlegal advocacy outside their roles, but those roles may positively inhibit them as political advocates.¹⁴⁸ Legal aid lawyers have not been notably aggressive in representing the interests of residents of slums and squatter settlements in Singapore. In Korea, the urban poor have received more substantial representation by clergymen and elected politicians than by lawyers. Similarly, after the initiation of martial law in the Philippines, when determination of the fate of squatter settlements shifted from legislative

147. See Adelman, *supra* note 50.

148. Cf. McAuslan, *Planning Law's Contribution to the Problems of an Urban Society*, 37 MODERN L. REV. 134-53 (1974); McAuslan, *The Plan, the Planners and the Lawyers*, 1971 PUB. LAW 247; Pye, *The Role of Legal Services in the Anti-Poverty Program*, 31 LAW & CONTEMP. PROB. 211 (1966); Note, *The New Public Interest Lawyers*, 79 YALE L.J. 1069 (1970); sources cited note 30 *supra*.

and judicial processes to administrative fiat, the most effective advocacy of the interests of squatters was provided by a prominent clergyman.

In contrast are those countries in which government is obliged to control itself, but unable to control the governed. Such a government may tolerate vigorous advocacy of the interests of the poor and may adopt urban development policies more responsive to their needs. Here too, however, the potential role of organized legal services to the poor is limited. In the Philippines, for example, the dynamics of the political process provided considerable legal representation for the poor, even without the services of an organized legal aid program. More important than legal representation was the political representation squatters were often able to obtain in exchange for their votes. Also, to the extent that legal representation consists of obstruction of legal process, the propriety and practicality of an organized program to provide representation are at least open to question. More fundamentally, unless political institutions are strong enough to support effective urban planning and development, the poor can gain no more than the negative power of delaying or halting actions contrary to their interests. Positive environmental management policies that assist the poor, such as the systematic development of sites-and-services projects in the context of a coherent strategy of urban development, will be vitiated by the inability of government to execute them. The failure of the Philippine government to implement legislation providing for the development and distribution of lots to the residents of the Tondo Foreshore Land and the lack of coherent programs for the settlement of Sapang Palay and the rebuilding of the area destroyed by the Tondo fire arose not from an insufficiency of planning knowledge and technique, but from the response of a variety of actors to the conditions of a highly pluralistic political system inadequately disciplined by the political institutions necessary to give effect to broader, longer range public interests.

IV. CONCLUSION

The urban development policies of nearly all countries—even those pursuing general economic and social development policies favorable to the welfare of the majority of their people—are inconsistent with the immediate environmental interests of the poor, whose greatest needs are secure tenure in a location accessible to employment opportunities and essential urban services such as water, drainage, and sani-

tation. A sites-and-services policy represents a minimal approach to meeting those needs. Such a policy requires, first, a willingness on the part of the government to allocate valuable land and relatively modest financial resources to the use of the poor and to recognize that minimal standards of housing and community design can be compatible with national pride. The second requirement is an ability on the part of government to implement the necessary urban development plans and projects. A program of legal services to the poor could serve an essentially technical role in the implementation of such a policy. Nevertheless, there is little such a program could do either to induce government to adopt or to enable it to implement such a policy in the absence of a high level of balanced political development.

In most of the developing countries, the requisite political conditions do not exist to permit the successful institution of a legal services program to assist the poor in relation to urban development. Of the many nations whose professed ideologies are sympathetic to the assumptions of this kind of a program, most lack sufficient political capacity to carry out urban development policies requiring the exercise of a reasonable degree of control over urban land use, which, as experience in the United States exemplifies, is one of the most difficult tasks that government can attempt. On the other hand, those governments that do have the ability to control urban land use effectively would be unlikely to tolerate a program designed to obtain and enforce legal rights for the poor and corresponding legal obligations on the part of the government.

Assuming, however, that reasonably favorable political conditions exist, what should be the characteristics of such a program? First, it should be directed principally toward governmental planning processes rather than litigation or statutory regulation. The urban poor do not have significant rights in private or public law to decent housing and environmental conditions. The private sector in most developing countries is simply not providing adequately for the poor, and no amount of litigation or regulation will change this. Rent control and housing code enforcement are irrelevant to the condition of the squatter and cannot provide adequate housing opportunities to low income tenants. Arguably, the hypothetical program should allocate a modest portion of its resources to landlord-tenant relations, since the experience would shed some light on the nature of the urban housing problem. But it

would be a misdirection of scarce resources to give major importance to private sector relations. The need is for an adequate urban infrastructure and for more and better housing; neither litigation nor regulation can produce either. Nor are there, in the developing countries, constitutional and statutory rights pursuant to which the courts could compel government to provide sound housing and community facilities to the poor.

Secondly, the program should focus upon urban land policy rather than housing per se. With the exception of Singapore, Hong Kong, and possibly some of the Latin American countries, the developing countries are not able to undertake massive housing programs for the poor. If the urban poor are given secure tenure on small parcels of land, they will produce their own housing. The task for government is to make low cost land available at locations accessible to employment opportunities and, in accordance with minimal planning standards, to provide water, sanitation, and access.

Thirdly, the program should be established in close cooperation with the national government, particularly those agencies that make the real decisions on urban development policy and programs. The program cannot be unduly militant and must be capable of working with the decision-making agencies. Unless the government has made a political decision that the interests of the urban poor are worthy of genuine consideration, a legal services program will be either futile or vulnerable to suppression as soon as it becomes effective.

Fourthly, the program should establish close relations with the indigenous organizations of the poor. Rather than representing individuals, it should represent groups of poor squatters and tenants affected by particular development projects. It would be a delusion, however, to think that a legal services program can or should "organize" the poor.

Fifthly, the program should include engineering and urban planning expertise. Indeed, what we are describing could be viewed more as a moderate form of advocacy planning than as a legal services program. Regardless of the label, however, lawyers will be necessary or at least useful to deal with problems involving land tenure relations, administrative procedure, the drafting of laws, regulations and agreements, and, most important, negotiation with government.

If a program of this kind seems unrealistic, that is because it is predicated on the assumptions that government is willing to give significant

weight to the interests of the poor in the allocation of land and other scarce resources and that it is able to plan and execute urban development programs effectively. When those assumptions reflect reality, the most difficult obstacles to a better deal for the poor will have been realized. Although fundamentally the problem is one of political organization, lawyers do have a role to play in bringing such conditions into being. Where possible, programs of legal services to the poor should be instituted, if for no greater purpose than to clarify the issues and add to the pressures for a more effective and democratic political order. The task should be approached with careful consideration of the political conditions of the particular country and with a healthy skepticism about probable results. An organized program of legal services could play a useful part in the formulation and implementation of urban development policies more favorable to the poor; by itself, however, a legal service program can do little to enhance either the willingness or the ability of government to adopt and implement the necessary policies.

