REPORT OF THE CONFERENCE ON THE COMPARATIVE STUDY OF THE LEGAL PROFESSION WITH SPECIAL REFERENCE TO INDIA

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SESSION I THURSDAY A.M., AUGUST 10

Agenda

The Lawyer and the Legal Culture

A. The historical setting
predecessors of the contemporary lawyer
growth of the profession
distribution of lawyers

B. The legal culture
professional norms
style of work
self image
distinctive life-style
characteristics of the legal milieu
conceptualism
legalism
popular attitudes toward lawyers
declining role and prestige

Report

Discussion in the first session focused particularly on a number of issues raised by Mr. Rocher and Mr. Cohn in their introductory remarks. Mr. Rocher's conclusion that ancient India lacked any group identifiable

as a legal profession was followed by Mr. Cohn's highlighting of the remarkable changes of the 19th and 20th centuries, which included the accelerating flood of litigation from the rural population, the stunning rise to prominence of Indian lawyers (Schmitthener), and their loss of prestige following independence (Bastedo). These observations led to two main lines of discussion: 1. What factors can be identified as contributing to the pattern and magnitude of these changes? 2. What definition of "the legal profession" is most suitable to the kinds of issues being raised at the conference?

Much of the discussion revolved around the issue of continuity between the ancient practices described by Mr. Rocher, the traditional Indian culture as it had developed before the arrival of the British, and the changes of the British period as described by Mr. Cohn. Mr. Rocher suggested, for example, that the success of Indians in the British legal structure might be due to their familiarity with the traditional pattern of Hindu classical learning—*i.e.*, a system of instruction, based on dialogue, which led to both keen skill and pure pleasure in argumentation. Rejecting the idea of a "rights consciousness" as a reaction to British domination (an alternative suggested by Mr. Cohen), Mr. Rocher attributed the success of Indian lawyers primarily to this traditional love of argumentation.

Mr. Cohn suggested that, in addition to a love of argumentation, traditional Indian culture appears to include a love of "putting others down." Citing evidence of extensive resort to violence in dispute settlement before the imposition of British rule, Mr. Cohn suggested that the resort to courtroom settlement was simply a nonviolent substitute for a well-established pattern of shifting rivalries, and that the rhetoric of legal principles and compromise merely clouded the traditional issue of victory and defeat. He pointed out the Indian villager's unusually high level of awareness of ground rules for dispute settlement regardless of the particular arena.

Mr. Srinivasa Rao modified comments by others on "litigiousness" by emphasizing the breadth of factors included in the concept of *dharma*. Thus a village dispute might include aspects of *dharma* which could be only partially settled by a British-style court decision. Such a settlement might thus be seen as only a poor substitute, or partial victory, compared to the ideal settlement within the village itself.

Mr. Friedman called attention to the fact that traditional Hindu methods of dispute settlement developed through interpretations of the sacred law of the scriptures. This suggests that if grievances were

referred by a litigant to an expert on "*the* Law" who would hand down "*the* answer", "litigiousness" might not be defined as antisocial, since it was part of the process of "discovering" the truth. The gains of litigation would, therefore not be offset by negative social sanctions applied for "stirring up trouble," since the "winner" was declared right by reference to divine laws.

Mr. Cohen contrasted this kind of legitimation of litigiousness (by reference to sacred law) with the Chinese paradox of highly legalistic Emporer's law intermingled with a Confucian antilegal tradition valuing harmony and compromise. He observed that, although the Confucian ideal was apparently strong in traditional China, and has carried over into present-day Communist Chinese attitudes toward the pursuit of individual rights, an observer should not be misled into believing that this ideal was necessarily borne out in practice. Overt gestures of compromise and harmony could serve to mask issues of victory and defeat, as they perhaps do in India.

A basic problem with this historico-cultural type of analysis, particularly in the Indian case, was pointed out by both Mr. Friedman and Mr. Rocher as being the great cultural schism that separates ancient from modern Hindu culture. Although, as Mr. Cohn pointed out, the Moghul rulers employed Hindu advisers in caste disputes, and although the British judges referred frequently to pundits for advice on Hindu law, Mr. Rocher stressed the great gap which separated the application of ancient Hindu codes between the Muslim invasions and the system devised by Hastings in 1772. This gap undermines any attempt to relate "litigiousness" to ancient Hindu legal practices, since it cannot reliably be shown that ancient practices survived Moghul-period changes. Mr. Galanter added the observation that whereas the use of Hindu pundits between 1790 and 1860 allowed considerable flexibility in the interpretation of ancient texts, the switch to English translations and application by common law judges in 1860 had the effect of freezing into law a limited and conservative interpretation of those texts, bypassing a whole body of more contemporary custom that had arisen in the interim.

Structural approaches to the problem of litigiousness were suggested by Mr. Henderson and Mr. M. S. A. Rao. Mr. Henderson noted that the traditional Japanese pattern of "instructive" conciliation (*i.e.*, the use of persuasion by the feudal administrator to convince the people of the wisdom of an administration-determined solution to a dispute) operated only within the fief, whereas open, aggressive contentious litigation was the rule between members of different fiefs. Mr. Henderson

suggested that Indian litigiousness might be a similar case of lack of organized settlement mechanisms. Mr. Galanter strengthened this argument by noting the striking fragmentation of Indian society, with its infinite subdivisions and unclear (or nonexistent) chain of command.

Mr. Rao further supported this analysis by arguing that as long as the dominant castes were able to maintain their traditional strength in communities, they could dictate settlements without resort to the courts. But the growth of factions within the dominant castes undercut their authority and power, with the result that disputes, especially among themselves, formerly settled within the community could no longer be resolved without some outside judgment such as the courts could provide.

Mr. Koppell offered a structural explanation for the ascendency of Indian lawyers under the British, and their decline after independence. Prior to independence, the Indian lawyer was the only individual who could serve as an intermediary between the colonial and indigenous cultures, since he was the only one with extensive experience and training in both. But this unique demand for services was maintained only as long as British domination lasted. Upon independence, the government came into the hands of persons equally capable of relating traditional and modern sectors, and therefore capable of eliminating the lawyer's special advantage.

Mr. Levy raised a number of questions of both fact and interpretation. He first challenged Mr. Cohn and Mr. Bastedo over their suggestion that recent land reform legislation might be largely responsible for the legal profession's loss of prestige. They had implied that such reform had eliminated a large percentage of the lawyers' bread-and-butter cases. Mr. Levy argued that land reform, on the contrary, had created a larger number of landowners, and should therefore be expected to create more, rather than fewer disputes. In addition, citing Schmitthener's evidence that most of Katju's income was not from rent-suits, Mr. Levy questioned the whole theory that rent-suits were the foundation of the profession. In this he was supported by Messrs. Merillat and Morrison who pointed out the striking increase in suits over intravillage property disputes, and over issues concerning Constitutional Fundamental Rights.

Mr. Levy then challenged the idea that the legal profession, as a whole, has lost prestige. He noted that lawyers still dominate the Parliament and other significant realms of Indian public life, and cautioned that statements about decline must be qualified.

Similar caution was offered by Mr. Galanter concerning data on "litigiousness." He gave the example of the use, made by some dis-

putants, of the threat of court suits as a means of proving one's seriousness and thereby securing action from a village tribunal. Thus, some court action represents merely the attempt by one party to stimulate other dormant or reluctant community dispute-settling mechanisms into action.

The problem of defining "the legal profession" arose during this first session and continued to crop up throughout the remainder of the conference. Mr. Cohen first raised the issue in response to Mr. Rocher's conclusions about the absence of lawyers in ancient India. He pressed the possibility of functional equivalents, proposing that present-day Western criteria for identifying a legal profession should be subordinated to a search for individuals performing similar functions. Both he and Mr. M. S. A. Rao challenged Mr. Rocher's conclusion, pointing out that there were experts in the kings' courts who could identify and interpret relevant portions of the *dharmasastras*.

Mr. Rocher agreed that the courts required experts to assist the judge, but emphasized that such legal assistance was available only to the court, leaving the defendant or litigant to fend for himself.

Mr. Cohn and Mr. Ziadeh illustrated the problem of definitions by pointing out the complexities of meaning attached to the word "vakil." Mr. Cohn referred to the blunder made by the British in assuming that the vakil in Moghul courts was the same thing as their "advocate." In fact, the vakil was originally a personal diplomat sent by a ruler to a rival neighbor's court as a kind of peace-keeping hostage. The vakil in Egypt, however, was much more like a British pleader, according to Mr. Ziadeh.

Many examples were given of individuals bearing different titles, but serving, to greater or lesser degrees, the functions normally associated with the legal profession today. The Egyptian mufti and the Japanese innkeeper both performed lawyer-like functions in the course of their other duties. Labor arbitrators, mukhtars, touts, and District Congress Committee workers were all mentioned as serving some of the lawyer's functions. Yet, as Mr. Skolnick pointed out, by focusing on all of the roles that are associated with the Western lawyer's occupation, attention becomes so diffused that interesting questions about certified Indian lawyers and their profession remain unanswered.

Mr. Cohn expressed his preference for a narrow definition of terms, in order to focus on the emergence of the Indian lawyer and the problem of the unique content of his role, both under the British and after independence. Mr. Skolnick then proposed a definition of lawyer as:

"anyone who makes most of his living from activities identified as lawyers' activities in the West."

But Mr. Levy quickly challenged the utility of such a definition on the grounds that there are various levels of practitioners in India, and a large number of individuals with law degrees who join such peripherally related fields as the civil service.

Mr. Damaska warned against deriving definitions without reference to the particular procedural context. He cited the Eastern European example of lawyers used only as skilled expounders of the facts, since only judges are deemed competent to rule on the law. Similarly structural limitations in India might have helped shape the role of the lawyer, and made it significantly different from that of a Western lawyer.

Although no final agreement was reached on a working definition of the legal profession, the discussion did help to clarify the possibilities and alert the participants to a possible source of confusion.

SESSION II THURSDAY P.M., AUGUST 10

Agenda

Recruitment and Socialization

Topics

who become lawyers
relation of lawyers to traditional elites
legal training, formal and informal
entry into the profession
mobility within the profession
law as a channel of mobility
the "law trained" outside the profession

Report

The second session began with brief résumés by Messrs. Bastedo, Gadbois, and Henderson on aspects of recruitment and socialization as described in their papers.

Discussion then narrowed to consideration of Mr. Bastedo's conclusion that a general decline in interest in law as a career in India is associated with poorer students in the law schools, depressed educational standards (especially the deterioration in command of English), a general decline in the prestige of the legal profession, and a marked shift in the caste complexion of law school student bodies. On the whole,

participants directed their attention to the following general problems: 1. Is Mr. Bastedo's portrayal of a downward spiral accurate? 2. If so, what is its significance? 3. What are the causes of this trend? 4. What could be done to reverse the trend?

The questions of fact and significance were intermingled. Mr. Schwartz, for example, noted that absolute numbers of law students have quadrupled in ten years and suggested that the top quarter of this larger group might still be of the same quality as the earlier smaller group, expanded facilities accounting for the greater number of mediocre students. Mr. Bastedo reemphasized, however, the scarcity of "First Class" examinees choosing law as a career, and the evidence that well-educated parents (even well-placed lawyers) are pushing their sons away from law toward medicine and engineering.

Mr. Damaska noted that the Indian pattern was by no means unique. For instance, there is also a strong preference for science and technology among young Europeans, so perhaps India is merely wrestling with a basic dilemma of the mid-20th century.

Mr. Friedman challenged the general tendency to regard this decline in standards as harmful to Indian society. He argued that American experience in the 19th century showed that lowered standards of recruitment to the profession open the field to many talented, inventive individuals from less privileged backgrounds. The definitional limits of lawyers' activities are then expanded by this large pool of trained persons who are forced to create roles for themselves based only on their skills. The flexibility gained by openness becomes lost in professions that are able to maintain high standards of recruitment, and the effect is to rigidify both the profession and the legal system due to a lack of innovative generalists.

Throughout the discussion in this session, much comparative information was presented which tends to confirm Mr. Friedman's thesis. A pattern of lowering standards and increasing reliance on the legal profession as a device for upward mobility seems to prevail in many areas. Mr. Bastedo's evidence of the rural-sector dominant castes looking to law as a means of retaining influence in a changing society parallels Mr. Henderson's description of the make-up of the Japanese Legal Training Institute's student body. In Japan, as in India, a job in the bureaucracy has been preferred to private practice, and most of the students come from rural backgrounds and less prestigious universities with the hope of bettering their social positions through success in one of the law-related fields. (An important change in recent years, how-

ever, has been a reversal of Japanese preferences, so that private practice has become more attractive in relationship to bureaucratic positions.)

A very similar pattern was described by Mr. Cohen for the Taiwanese legal profession. The best students prefer science and technology, but since competition for upward mobility is so keen, many less successful students rely on law, hoping at least for a place in the bureaucracy. Communist China differs from this pattern only in the greater prestige and attractiveness of police careers.

Mr. Damaska speaking on Europe, Mr. Ziadeh on Egypt, and Justice Suffian on Malaysia all presented notably similar descriptions of the situation in those areas.

Mr. Skolnick addressed himself to the problems of fact, significance, and cause by making comparisons to the legal profession in the U.S. He noted first that the percentages in various tables of Mr. Bastedo's paper were not meaningful until compared to percentages in other countries. He suggested that the responses of Indian students to questions about their career plans were not especially surprising and that American law school students might have indicated similar occupational preferences if questioned. This comparison is important, because before drawing conclusions about the importance of these phenomena, one must consider the occupational opportunity structure of the society. If the abilities of a generalist find extensive occupational outlet in a society, then interest in the relevant training should be high, as in the U.S. But if the functions of the profession, as in India, are narrowly circumscribed, and other professions offer greater opportunities, then a decline in interest in the legal profession should be neither surprising nor alarming. Mr. Skolnick cautioned against measuring the Indian legal profession against an American model which might be comparable in legal training requirements but not in opportunity structures.

Mr. Shils supported this argument by noting the uniqueness of the American pattern. Whereas in Europe and other areas law practice is a unilinear career, in the U.S. it branches out into a wide range of other occupations.

Mr. Damaska challenged the notion that this branching is unique to the U.S., pointing out the great array of occupations entered by jurists in Italy, where training in law is looked upon as good general preparation for many careers outside the legal profession.

Both Mr. Henderson and Mr. Swan countered that the difference in the U.S. is that the law-trained generalist retains his identity as a lawyer,

seeing himself always as an expert bringing the insights of his profession to bear on related problems.

Mr. Damaska replied that this is also true of European practitioners, but that the difference lies in the fact that the codified law of European countries requires fewer practitioners than the more complex body of U.S. law.

Regardless of the significance of changes in Indian legal education, however, Mr. Bastedo's data called for explanations and many were forthcoming. Mr. Schwartz noted the covariant shift in socioeconomic backgrounds of the students and asked whether part of the decline in the "quality" of student might be due to the presence of greater numbers from culturally and intellectually poorer environments. Mr. Bastedo replied that one informant—a law school dean—had described these lower S.E.S. [socio-economic status] students as the hardest working, most serious students in the school. Mr. Cohn pointed out that "lower S.E.S." does not necessarily mean "poor" in this context, since groups that are now becoming involved are predominantly landowning rural-based castes who see law as a means of regaining their former prominence, which has crumbled in the face of reform legislation.

A number of dilemmas were identified as obstacles to the improvement of law schools. Mr. Lazaroff cited evidence that professors of law are considered "not really lawyers" by practicing members of the profession. This view fits well with Mr. Bastedo's observation that law school is looked upon simply as a barrier, or at best a supplement to "real" legal education (*i.e.*, experience gained through actual practice, and contact with practitioners). The law school is, then, more a kind of initiation ritual, to which, as Mr. Merillat pointed out, students and prospective students feel entitled. This makes reform of the system politically dangerous, and, since the system is not respected by practitioners, reform is not pressed by the better talents in the profession.

Contributing comparative information, Justice Suffian described the predominantly negative reactions of the peasantry in Malaysia to the legal profession. Because of bad experiences with opportunistic practitioners, peasants adopted the view that lawyers were predominantly exploiters.

Mr. Ellis argued that this type of peasant reaction is common to most rural-dominated societies, including early post-Revolution America. His thesis was that the religious and economic values of a rural population conflict with the values that foster the legal profession. Desiring as little government as necessary, the peasant values independent hard

work and simplicity. The lawyer, by contrast, produces nothing and is constantly associated with dispute and disharmony, from which he derives a high standard of urbanized living. Mr. Ellis concluded that a legal profession gains prestige and influence only as the society becomes urbanized and its economy commercialized.

Related to this type of thesis was Mr. Shils' point that, since the legal profession is closely related to the political profession, the prestige of the two tends to rise and fall together. A look at recent events in many of the developing countries shows an apparent sharp decline in the popularity of parliamentary government and the politicians associated with it. Mr. Shils suggested that the legal profession's loss of prestige is simply a part of this process—a kind of guilt by association and involvement.

As Mr. Lazaroff pointed out, however, this thesis appears to be contradicted by Braibanti's evidence of continued law-school popularity in Pakistan. Indeed, the Pakistan pattern posed problems for several of the hypotheses offered during the conference.

Mr. Chaturvedi reminded the conferees that, in looking at patterns of occupational choice, it should be remembered that fathers, not their sons, make the decisions concerning the son's future, and that fathers are guided almost solely by the criteria of good pay and security. Thus, they are almost invariably attracted to the money, prestige, and security guaranteed by medical or engineering training, and are repelled by the uncertainty and risk in law.

Mr. Rowe called attention to the fact that the descriptions by both Messrs. Ellis and Shils and Mr. Chaturvedi corresponded closely to two of his own lawyer-respondent types: the "Gandhians," who dislike their profession because it conflicts with their ideals of service and sacrifice, and the "Materialists" who dislike it because of the lower-than-expected standard of living it provides. Significantly, though, the "Gandhians" tend to be the Brahmins and Kayasthas who have the longer tradition of familiarity with Western values and practices and the longer tradition of involvement in the legal profession.

In the course of this discussion, several suggestions were made reflecting diverse views on what could be done to improve Indian legal education. Mr. Merillat proposed that, since change in the present curriculum faces such great opposition, schools might add an extra year of study as an option, creating a new degree to signify successful completion of advanced study.

Justice Suffian, on the other hand, implied that law school facilities can be taken as relatively fixed during the next few decades, since science and technology are the more pressing needs of these countries.

Mr. Henderson expressed his belief that active intervention in the legal profession's development can aid not only the profession but also the whole society. He noted as an example the imposition of American standards on the Japanese bar and legal education program after the war. The development of a body of generalists in Japan can be viewed as a healthy trend worthy of emulation in countries like India which need creativity and flexibility.

Further suggestions were forthcoming in the fifth session, after the conferees had had an opportunity to digest the many ideas and facts discussed during the conference.

SESSION III FRIDAY A.M., AUGUST 11

Agenda

The Structure of the Profession

Topics

stratification
specialization
networks of communication
associations
relations to clients
use of intermediaries
the lawyer as advocate, counselor, business adviser, mediator
partnerships, firms, etc.
availability of legal services
performance of "law jobs" by other occupational groups

Report

Division of a subject into analytically useful categories sometimes obscures important aspects of the subject. This dilemma was well illustrated by the fact that much of the third session's focus on the structure of the profession resulted in extensive new conclusions about the second session's subject, recruitment and socialization. In fact, much of the discussion about informal intermediaries in the legal system made it apparent that, as Mr. Skolnick put it, if one wants to know how the

Indian lawyer learns his trade, or if one wants to make comparative studies of legal education, the worst thing he can do is to focus strictly on law schools and their problems.

Discussion in the second session referred frequently to the young Indian law graduate's "real, practical" training as opposed to the relatively useless ritual of law school. But detailed consideration of this apparently crucial phase appeared only after Mr. Chaturvedi's description, during the third session, of the role of touts in the Indian legal system.

Touts, in his view, perform a dual function. Their better known role is that of providing the link between clients in need of legal advice and the appropriate legal expert. Though illegal, their practice of referring clients to lawyers for a fee goes unpunished, because neither client nor lawyer has alternative means of establishing the link. The lawyer, especially the struggling junior, needs the business. The client, especially the villager unfamiliar with, and often afraid of, urbanized officialdom, needs encouragement and an introduction. The senior lawyer continues to rely on this service because he recognizes the tout's ability to channel business elsewhere.

In addition to this mediating role, however, the touts are the real law "professors" of India, according to Mr. Chaturvedi. With only a high school education, the skilled tout is able to transform his years of practical experience at a particular court into a valuable commodity. The young lawyer needs not only clients, but advice on how to proceed in a particular case before a particular judge. Since the law schools provide only theoretical orientations, and since senior lawyers refuse to tutor juniors (both out of suspicion of competition, and out of reluctance to verbalize the unethical practices which they know to be necessary), the junior is forced to rely on the tout's knowledge of such necessities as professional witnesses, propriety and timing of bribes, judges' moods and biases, etc.

Thus the tout receives payments both for his mediating role and for the education provided. Mr. Srinivasa Rao added that the junior lawyer is more often in contact with the tout, since one of the junior's ways of winning favor from the senior is to bring in many clients, and the tout is crucial in accomplishing this. Mr. Rao also gave insight into the way individuals become touts—the vendor of court fee stamps, for instance, because of his crucial position in the process of litigation, gains contacts with persons in search of legal assistance. Touting then becomes

a second line of business for him. Junior touts, according to Mr. Chaturvedi, must go in search of clients. But the better established upper echelon can wait for clients to come to them. Mr. M. S. A. Rao added that an experienced litigant often acquires tout-like roles, since his repeated contact with the courts makes him something of an expert in his village.

Mr. Cohn pointed out one other function that touts have acquired. Political parties find it necessary to solicit votes in the villages, and rely heavily on information given by touts to avoid the pitfalls of factional rivalry in proceeding to contact local influentials.

Needless to say, this description of touts in the legal structure drew considerable attention and some dissenting opinion. Mr. Morrison, recalling his inability to find any evidence of touts, despite repeated attempts in the Punjab villages he studied, cautioned against imposing Western categories on the Indian system. He argued that, in the rural situation at least, even the distinction between lawyer and client may disappear in the convoluted course of disputes. Thus, "tout" may be a misleadingly simple term for a complex of roles and processes in which the actors flow into and out of the tout role, while others carry on a mixture of roles, one of which might include touting.

Mr. Srinivasa Rao lent support to this view by noting that the stamp vendors may not be entirely "professional" in their mediating function, since they often exchange favors, rather than money, as "payment" for their service.

An important point raised by Mr. Koppell is that intermediaries pervade all aspects of Indian life, not only the legal system. Market transactions have mediators linking customer and seller, as Mr. Morrison showed. Marriage arrangements frequently depend on a broker. Mr. Galanter cited the "quack" in one area, whose role is to bring patients to the doctor. Mr. Koppell even found mediators who made their living buying bus tickets for customers too impatient to wait their turn in the queues. It is not surprising to find, then, that the villager, intimidated by a lawyer made arrogant by his ability to speak English, seeks out a trusted adviser to guide and reassure him.

The predicament of the junior lawyer was discussed further, with Mr. Rowe contending that Mr. Chaturvedi's description of senior-junior relationships was overstated. Mr. Rowe cited many cases where the junior worked closely with the senior, especially where some structural

factor lowered the likelihood of the junior's competing for the senior's clientele.

Mr. Bastedo supplemented this qualification of Mr. Chaturvedi's description by calling attention to the practice, particularly among junior lawyers, of taking extensive notes on cases and arguments presented at their courts. Mr. Galanter confirmed this observation from his own experience, and Mr. Friedman pointed out the similarity of this practice to the Medieval Year Books and to developments in colonial America.

Nevertheless, Mr. Chaturvedi's description appears to have much basis in fact and opinion in light of the evidence given by Mr. Merillat and Mr. Galanter. Mr. Merillat referred to Madras State's attempt to establish a one-year apprenticeship system for law degree candidates. The chief reason for its failure has been the senior lawyer's general tendency to use the apprentice for only the most menial tasks. Apparently, law students in Delhi heard similar stories which, according to Mr. Galanter, prompted them to defeat similar apprenticeship proposals through strikes.

This discussion led to an awareness of the paucity of information on intermediaries in Western legal systems, and an exploration of the broader significance of intermediaries in legal systems in general. Mr. Cohen and Mr. Cohn warned against the tendency, in comparative studies, to measure Indian reality against an idealized version of the Western system, as it appears in theoretical volumes. Before drawing conclusions about particularism as a distinguishing feature of the Indian system, an observer would be wise to examine more closely actual practices in American lower courts.

Numerous examples were cited of informal intermediaries serving the socializing function in American courts. Mrs. Henning spoke of having witnessed new municipal court judges in Chicago asking the court clerk about procedure, even while court was in session. She indicated that the clerks' experience made them indispensible to lawyers and judges alike in these courts. Mr. Skolnick suggested that the British barrister's clerk plays the same role, and that a functional vacuum might have been created when the British legal system was imposed on India, since only the formal institutions would have been transferred.

Mr. Damaska described how European lawyers-in-training rely on personnel in the court clerk's office for advice on the "human side" of the court's operations, if the senior lawyer who normally gives this training is too busy or jealous to help.

The managing clerk in many larger U.S. law firms has become a regular instrument of the new lawyer's socialization, according to Mr. Swan. These clerks have a certain amount of legal training, but not enough for a degree. They teach the young lawyer in the firm the techniques, formal and informal, required for successful completion of necessary tasks at court.

According to Mr. Howard, this same process is accomplished in Tanzania through a national service program which amounts to a year's apprenticeship program affiliated with legal aid agencies. Thus Tanzania has attempted to gain some control over this process of socialization to practical procedures.

There seemed to be little information about informal referral procedures in the U.S. Mr. Schwartz mentioned an indirect reference to the issue in questions asked in the Missouri Bar survey. Mr. Skolnick recalled that one study found pharmacists to be extensively involved in referring clients to lawyers.

Speaking of the connection between "rights consciousness" and intermediaries, Mr. Schwartz stated that efforts to suppress the ambulance chaser, the ward heeler, or the bail bondsman in their mediating roles result in de facto denial of legal services to the poor, since without a trustworthy contact who can inform him of his rights and of effective methods of defense, the lower class person remains completely out of touch with the legal system which could protect his rights (or which may be violating his rights). The Neighborhood Law Office movement is one attempt to alleviate this problem. But Mr. Schwartz illustrated the complexity of the problem from his own experience in running an experimental program of defense counseling in juvenile court cases. Using formal techniques of a letter and call, the experimenters could achieve only 50% response. When they employed "ropers" (persons with the same racial and socioeconomic characteristics, who were employed to contact the experimental group of juvenile accuseds) they were able to raise the response level to almost 100%.

The discussion thus led into a more general consideration of the formal vs. the informal, the legitimate vs. the illegitimate in legal systems. Mr. Friedman emphasized that the lawyer himself is an intermediary between the government's forms of social control and the client's needs and desires. The legal profession has been given a monopoly on this role in return for a promise that it will uphold standards set by the society through its government. But since government regulation is

such a ponderous, slow-acting form of social control and adjustment, the rules must inevitably be subverted to some extent under certain conditions. Someone must, then, fulfill this function of subversion which has been shown to be necessary in all social systems. Friedman cited Carlin's study of Chicago lawyers as evidence that, to some extent, the lower levels of the U.S. legal profession perform this service.[1]

Mr. Swan then suggested that this apparent bifurcation in the American legal profession is due to the problems of professional self-respect mentioned during Session II. The clash of prestige with openness in the profession, and the problem of being associated with contentiousness and conflict, were resolved in the U.S. through the growth of all-inclusive bar associations with considerable power to regulate their own ethics. The split between "respectable" and "unrespectable" practice followed the lines of division between "establishment" practice and practice among the rest of society. Techniques used by "respectable" lawyers (*i.e.*, those in the large firms doing counseling work for the large corporations) became defined by the bar associations as respectable, whereas practices necessary at the "unrespectable" level were officially denounced. Professional socialization now includes strong informal pressures toward conceiving of the American legal profession in this dichotomized, moralistic way.

Mr. Henderson suggested that Indian touts could be licensed as the Japanese have done with practitioners such as the judicial and administrative scriveners. But, as Mr. Skolnick pointed out, the illegitimate group is capable of a much greater variety of behaviors precisely because it remains outside the formal system's control and is, therefore, more agile in responding to new problems or in providing new solutions to old ones. The problem is not to gain control of these individuals, but rather to examine their operations carefully, since they represent a sub rosa, particularistic legal system which has significant consequences for both the formal legal system and the whole society.

As far as adherence of Indian legal personnel to the terms of their formal contract with society is concerned, almost no hard evidence was available. There was, of course, Mr. Chaturvedi's evidence that even senior lawyers make extensive use of touts, seeking to prosecute them only when they attempt to siphon business away to rivals. Both Mr. Chaturvedi and Mr. Bastedo agreed that there was very little bribing

1. JEROME CARLIN, LAWYERS ON THEIR OWN (1962).

of judges from the District Court level up. On the other hand, only the subordinate judiciary is structurally free from political influence in recruitment and promotion opportunities. Though Mr. Bastedo had no evidence of an actual spoils system in operation, he suggested that upper level courts are more subject to political pressure because of the appointment procedure. Mr. Bastedo also suggested that the growing percentage of lower caste members in the judiciary would increase the incidence of bribing because it would raise the number of judges with no other source of income besides their salary. Formerly, judges were frequently able to supplement salaries with income from land holdings.

Mr. Cohn pointed out that corruption in Indian courts should be seen in the context of the whole process of local dispute settlement. Since courtroom confrontation is only one episode in the course of a dispute, litigants tend to be cynical about it. They see the court as just another arena of battle where "anything goes," since the opponent cannot be expected to change his "corrupt" tactics simply in deference to a few rules.

Mr. Ellis then related the whole issue of the profession's ethics to the historical development of the profession's structure. Referring to Mr. Swan's discussion of the "respectable" and "unrespectable" branches of the profession, and to Mr. Skolnick's question about the extent to which lawyers should become involved not simply in giving technical assistance but in helping to determine the society's values, Mr. Ellis argued that specialization and the circumscribed role as technician rather than determiner of values was the price the profession had to pay for its monopoly on the intermediary function. The development of an independent bar, and of the highly specialized law firms could proceed with relative immunity from outside control only as long as the profession refrained from disputing the value decisions of the rest of society.

Ethics in the Indian legal system, then, need to be related to a general discussion of the structure of the profession. As Mr. Galanter pointed out in his introductory remarks, the Indian profession lacks specialization or division of labor. Law firms similar to those in the U.S. have not developed, and even in "lawyer-families" there are no brother-brother partnerships. The Indian profession is characterized by stratification only in the sense that practice in the high court carries more prestige and pay than lower-court practice. The type of work done, however, is more or less the same throughout all levels of the profession. One prominent type of mobility is the movement from one level of court

to a higher one, but this occurs less in the same generation than between generations as, for example, where a high court lawyer accepts the son of a district court lawyer as a return favor for years of clients referred by the father.

The professional structure is closely related to the structure of the court system. Rather than serving to eliminate most cases and issues from higher court consideration as in the U.S., the lower courts in India serve more as a conduit through which all types of cases and issues flow to higher level decision. Instead of delegating authority of final decision on pettier issues and questions of fact, the higher courts undertake to decide almost all questions. Thus, both the profession and the legal system are characterized by a lack of division of labor.

It is worth noting that the tout system is structured in exactly the same way, with both wealthy and poor touts doing essentially the same work.

Mr. Henderson proposed that the difference between Indian and U.S. structures is due largely to the much greater amount of law requiring interpretation in the U.S. Messrs. Rowe and Merillat agreed that the counseling function of the large law firms in the U.S. was closely associated with the growth of corporations in the large urban areas. Mr. Friedman pointed out that large American firms appeared only at the end of the 19th century, and that even today they exist as units of specialization only in the larger cities. Smaller cities have only "office-sharing" partnerships at most.

Messrs. Rocher and Damaska warned against assuming that the American model is "normal." They pointed out that law firms are the exception, not the rule, throughout most of Europe. While lawyers may specialize, they do so as individuals, not in collective units, or legal "supermarkets."

As can be seen, more questions were raised by this session's discussion than could be answered. That lawyers' ethics, prestige of the profession, structure of the profession and the legal system, and overall social structure are significantly interrelated seems to be a valid conclusion. But until more is known about the parameters of the "informal" legal system, not only in India, but in other systems, the significance of studies of the legal profession for more general social theories will be limited, and policy proposals will lack adequate empirical foundation. It is also clear that comparative studies are useful only if the analyst confines himself to comparable levels of analysis, avoiding the tendency to idealize his base point.

SESSION IV FRIDAY P.M., AUGUST 11

Agenda

The Economic, Political, and Social Roles of the Lawyer—Part I

A. The role of the lawyer in economic enterprise
in day-to-day operations
devising new forms of economic action
articulating interests
mediating conflict

B. The role of the lawyer in government
political
administrative
day-to-day operations

Report

Discussion during the fourth session remained remarkably close to the agenda, due both to the scope of the subject and to the comprehensiveness of the introductory remarks by Mr. Swan and Mr. Damaska. In both the governmental and economic spheres, parallel developments in the role of lawyers were examined in an effort to determine: (1) the contributions, both actual and potential, of lawyer-participation; (2) changes in the use of lawyers' skills, and reasons for those changes; and (3) the effects of government and economic institutions upon each other, and their joint effects on the legal profession.

In his discussion of United States governmental house counsel, Mr. Swan described them as filling three crucial functions, which they are able to do because their professional self-identity, and recognition by administrators of this special identity gives them an independence and aura of objectivity unavailable to the administrators. First, house counselors serve as an institutionalized check on the administrator's activist tendency to overreach his legislative mandate. By restraining the administrator to the intent, as well as the letter, of the law, the counsel becomes a semi-independent agent of control in the bureaucracy.

Second, through his role as guardian of precedent, the house counsel forces the agency to decide consciously whether, and to what extent, to depart from precedent on a particular decision. Related to this is his third function of maintaining a standard of evidence that might, under

the pressure of daily decision-making deteriorate into subjectivity. All three functions are possible because of the delicate balance the house counsel maintains between devotion to the agency's goals and independent objective evaluation of means chosen to reach those goals.

Mr. Swan observed that the apparent lack of house counsel in the Indian governmental apparatus might be responsible for the enfeebling reluctance to bestow real administrative power on the central government. Problems of modernization and economic development require coordinated leadership, yet Indian governmental agencies do not receive confidence or support from state administrations, perhaps partly because of this lack of "devil's advocates" in the agencies. Having no such creative tension within administrative units, the central government looms as a monolithic tactical unit using law only to justify decisions already made. Hence, unless it develops totalitarian control, it becomes shackled and impotent in an atmosphere of mistrust.

Mr. Merillat confirmed this analysis by pointing out that the Law Ministry is the only pool of lawyers available to the government, and their function is simply to examine any proposal and pronounce it "in conformity," or "at deviance" with the law. Thus, legal opinion is brought to bear in a vacuum, since the lawyers are given no background on the issue, and only two alternatives are considered: legal or illegal.

Seeking explanations for this difference between American and Indian structures, Mr. Shils noted that the practice of early recruitment by the civil service might be responsible. The Indian civil service takes the most ambitious individuals at an early age when they lack experience, self-confidence, and a sense of purpose tempered by practice. In the U.S., the ambitious young man goes into law first, gains experience and self-confidence, and then joins government service with an aggressive energy that can be put to work for creative innovation.

On the matter of institutional checks on executive power, Mr. Shils observed that American practice differs also from European patterns. Since European governments, and particularly the British system, arose from monarchy, there has always been a tendency to ignore checks on the executive. As long as a given party has power, it is quite free to overstep any legislative mandate, risking only the wrath of the electorate. Since the Indian Government was patterned after the British model, it would be natural to expect a similar lack of institutionalized caution. Indeed, America's unique pattern of house counsel use really dates only from the New Deal explosion of agencies, when the pressure of undefined

roles and the need for results produced a variety of new institutional patterns.

Mr. Merillat differed with Mr. Shils on the importance of the British model, pointing out that a variety of "un-British" modifications had been written into the Indian Constitution, including a federal structure and a bill of rights calling, among other precautions, for judicial review. Thus the Indian Government is subject to restraints which never existed before independence, and has become a regular target of litigation.

Mr. Skolnick referred to Schmitthener's description of independence leaders renouncing their legal practice, and suggested that this renunciation might have negated the established conception of lawyers as rulers. Mr. Chaturvedi countered that Nehru and Gandhi would have given up any profession for their political activity, and pointed out that law was important primarily because of its financial independence from the British. Mr. Levy added that the renunciation referred to was part of a strategically planned boycott of the courts, and that most lawyers returned to the legislature during the twenties and thirties. The legal profession was, as Mr. Shils pointed out, less reviled by Gandhi than was the Indian Civil Service.

Searching for functional equivalents to the house counsel, both Mr. Lazaroff and Mr. Levy suggested that the permanent secretaries, and even lower level secretaries in Indian governmental agencies, frequently have legal training and might be providing at least some of the "dynamic tension" referred to by Mr. Swan.

In keeping with the unique and unsettled relationship between the public and private sectors of the Indian economy, the discussion of lawyers in government led quite naturally into the question of lawyers in the economy. Mr. Cohen pointed out the effective way in which Taiwan has utilized its legal talent in writing economy-boosting legislation and assisting in the attraction of large-scale foreign investment, and asked about similar efforts in India. Mr. Merillat replied that American investors have been unable to find Indian lawyers willing to advise them on procedures, and have therefore found it necessary to deal directly with bureaucrats in the relevant agencies. While some business can be accomplished this way, the frustrations involved have had incalculable effects on India's ability to attract foreign capital.

Mr. Damaska noted that house counsel cannot be assumed to be an innovative force in the economy. In civil law countries in Europe, they are a conservative force, since they function mainly to review proposals to determine which ones fit into a relatively closed system of laws. Mr.

Lazaroff added that the Korean economy has boomed ahead with no reliance on the legal profession, and that lawyers are just now trying to catch up with the changes.

Mr. Henderson suggested that the dearth of Indian lawyers in this kind of activity might be due to the heavy stress put on public sector action so that bureaucrats, with their conservative tendencies, have preempted the knowledge and power necessary for investment activities. This would imply that lawyers will assume this role of innovation and counseling in economic matters only as the private sector develops.

In fact, India does have an extensive private sector which, according to Mr. Srinivasa Rao, is undergoing important changes in its use of the legal profession. In general, until about five years ago, corporations hired fresh law graduates mainly to fill clerical positions, relying on outside professional lawyers for advice on a strictly ad hoc basis. In the last three to four years, however, there has been a growing trend to hire lawyers with about seven years of litigation experience to head several departments, such as corporation contracts and labor relations. In addition, many corporations have begun to employ house counsel in place of ad hoc retainers. There appears, then, to be a growing number of lawyers who are moving, as lawyers, away from the older reliance on episodic cases of litigation.

Yet the picture is by no means clear. Mr. Cohn described a large Bengali business family which has, for five generations, relied on some family member to obtain legal expertise and provide all necessary legal service.

Mr. Morrison suggested that the size of the enterprise would determine the type of legal advice used, and pointed out that Indian business is characterized by a lack of middle-sized businesses. With only the giant corporations and the small family enterprises, there are few openings for the "unconnected" lawyer (*i.e.*, one chosen only for his skill, not his caste or family ties). As Mr. Koppell suggested, one possible factor affecting the use of lawyers as counselors is the close social interaction required. Since it entails repeated close contact, caste or class differences might constitute an important consideration in the selection or use of counsel. Mr. M. S. A. Rao confirmed that lawyers and businessmen have, until the present generation, been recruited from different caste backgrounds. Even in the large industrial estates and managing agencies, evidence was cited by Messrs. Rao and Lazaroff that communal preferences influenced the choice of counsel.

Regardless of the state of house counsel in Indian corporations, lawyers are able to play a significant role in the Indian economy, as a paper by Messrs. Schwartz, Srinivasa Rao, and Cartwright has shown. Despite official suspicion of, and resistance to, the use of lawyers in labor dispute settlement, lawyers have become an important part of the dispute settling process, at least in Mysore and Maharastra. Indeed, contrary to governmental fears, their use appears not only to have helped establish a stable balance in a precarious economic sector, but to have tipped the balance slightly in favor of the laborers' side.

Speaking of this unusual circumvention of a hostile law, Mr. Schwartz pointed out that it is especially notable in view of the fact that the field receives almost no attention in the law schools. A partial explanation for the persistence of lawyers in this field may be that the skills developed in litigation are precisely the same as the skills needed for negotiation. Messrs. Merillat and Shils added that many lawyers got into positions of relevance to labor negotiation when large numbers joined the labor movement during the struggle for independence. So many union secretaries are law-trained that lawyers are actually more involved than even Mr. Schwartz' findings would indicate, since the court records on which the study was based refer only to the use of active counsel. Except on the controversial issue of bonus distribution, then, the use of lawyers has tended to reduce labor litigation and increase plant-level settlements through negotiation. This is one area where control in accordance with the official norms of the institution has become increasingly internalized.

But, as Mr. Swan asked, is there other evidence of such internalization, either in government or in other economic institutions? External control, in the form of resort to the courts, is certainly a strong pattern in India. But the protection this affords to the individual *against* agency power, and its effects on modernization and development are debatable.

On the one hand, Mr. Galanter and Mr. Koppell pointed out, the high courts in India are heavily engaged in processing cases of civil liberties and suits against the Government's actions. Mr. Cohn argued that much of this rights consciousness is attributable to the long history of land disputes, which, in themselves, hold so little apparent promise for the development of legal skills appropriate to modern institutions.

On the other hand, however, is the problem of the effects of non-internalized controls, as Mr. Swan originally stated it. Since any government has a preponderance of power over any of its constituents, the kinds of checks on that power will affect both the constituents' actual rights and the government's effectiveness. The problem was well illus-

trated by Mr. Srinivasa Rao's description of tactics used by a state government. To prevent a certain business from operating, rulings of the High Court were effectively subverted by a series of measures—license refusal, cut in electric power, denial of natural resources and a whole host of other government-controlled necessities. Each action must then be appealed by the businessman, and the necessary time, money, and patience make this an increasingly distasteful prospect, however favorably inclined the High Court may be.

Judging from the American experience, then, legal expertise might be seen as a relatively untapped resource in India's drive toward democratic economic development. Whether the American model is relevant or applicable (or even desirable), however, is an issue that still begs for resolution.

SESSION V SATURDAY A.M., AUGUST 12

Agenda

The Economic, Political, and Social Roles of the Lawyer—Part II

C. The role of the lawyer in civic affairs
leadership in associations (reform, traditional, modernizing)
representatives and spokesmen for interests
lawyers and social legislation

D. The impact of lawyers and legal culture on Indian society
the impact of lawyers in transforming peasant social institutions
the lawyer as middleman between modern and traditional segments of society
the lawyer as modernizer/impediment to modernization
the lawyer as disseminator/evader of official norms

Report

Discussion in the fifth session narrowed down to a few of the topics raised by Mr. M. S. A. Rao in his introductory remarks. Speaking mainly to the question of the role of lawyers in social reform, Mr. Rao recalled the important presence of lawyers in 19th-century reform movements, such as the Brahmo Samaj, which sought to eliminate certain practices that they felt were undesirable.

More important, perhaps, for present-day changes are the various caste associations which have grown during this century under the instigation and guidance of "caste lawyers." These associations, such as the Yadava Mahasabha and the Justice Party in Madras, have become (or were, during their ascendency) effective vehicles for the promotion of backward-caste interests. As both Mr. Rao and Mr. Galanter emphasized, however, these associations must be seen as modernizing agents, despite their traditional base, since they represent a level of organization, interest articulation and aggregation, and use of rational devices for modern goals that was previously unavailable to the population segments involved. Gains that "caste lawyers" assist in winning include educational facilities, health care, elimination of degrading patterns of deference to "higher castes," and even protection of economic interests (including business) against Government encroachment.

Indian lawyers have also significantly filled the need for a bridge between traditional and modern culture. In terms of contact with village persons and culture, the lawyer differs from all other professionals, because his practice depends on the contacts he can nurture not only in town but among villages. The life-style of most Indian lawyers has been a striking mixture of modern, Westernized dress and manner, and traditional religious and cultural practices. Mr. Rao described the stereotype of the lawyer who spends the day doing business in suit and tie, and then returns home to sing Bhajans in the evening, or present offerings to the deities at the temple. He thus serves as a bridge not only through services rendered to the villager, but as a potential model for the synthesis of traditional and modern styles of life.

Mr. Rao reiterated his argument from Session I that the introduction of the modern legal system has been a major factor in undermining the authority of traditional hierarchical caste norms. When dominant castes ruled the villages, they maintained law and order by imposing their own judgments. But, with the courts as an additional refuge, and with the growth of factions in the dominant castes, a new authority based ideally on equality of opportunity arose as a challenge to the old norms of stratification.

Mr. Rao's comments on the adherence of lawyers to traditional religious practices evoked an extended response. When Messrs. Galanter and Rowe added the observation that lawyers have been extensively involved in temple administration both as trustees and as significant patrons, a number of conferees felt that an explanation was in order. As Mr. Skolnick put it, the conflict of rational and irrational views of

causality has, at least in the West, led most professionals away from any close ties to religion. Mr. Friedman pointed out that African lawyers have conspicuously divorced themselves from traditional practices. Similarly, lawyers in Japan, according to Mr. Henderson, tend to be urbanized, individualistic status seekers who look on traditional practices as something to be escaped in their upward mobility, especially since the lawyer role is a low-status occupation under traditional evaluative criteria. Using the Japanese Parsonian-style "wet-dry" dichotomy, the lawyer may definitely be classified as the "dry" (no saki and tears), highly rational man of principle, whose relations are strictly contractual.

According to Mr. Ziadeh, the Egyptian experience has been quite similar with one important exception. An institutional split developed between those lawyers practicing under the traditional Muslim legal system and those trained in the modern, secular law of the courts. Both sides are practicing lawyers, but the modern-trained lawyer leads a basically secularized way of life, in contrast to the practitioner of Muslim law.

Why, then, the Indian lawyer's affinity to religion and tradition? Mr. Chaturvedi argued that lawyers are not unique among Indian professionals in this respect. He felt that the assumption of incompatibility between professional training and belief in God is false and the question therefore requires no answer. Mr. Levy expanded on this point, cautioning against the fallacy of equating religion with old tradition. Not only are "religion" and "Hindu tradition" differentiated complexes of practices that vary from one locality to another, as Mr. Chaturvedi pointed out, but the differences between a present practice and a past cultural phenomenon with the same name may be clouded by the semantic similarity. The caste associations mentioned above are a case in point.

Mr. Merillat took a different tack, stressing the close affinity of Indian society to its ancient texts, in which law and morality, as in most ancient religious texts, are undifferentiated. He suggested that Indian lawyers might be closer to this kind of view than Western lawyers simply because the differentiation is more recent in India. Mr. Ziadeh added that in the East generally, religion is a much more inclusive basis of identity than in the West, regardless of intensity of feeling.

A different approach was suggested by Mr. Friedman who disputed the claim that Western lawyers are less religious than their fellow citizens. Mr. Skolnick replied that whatever church-going lawyers might do in the West could be attributed largely to their need to maintain

social contacts in the community. Mr. Levy pointed out, however, that this socioeconomic function of religious participation is probably a not unwelcome windfall to the Indian lawyer as well.

An example of the confusion generated by the diffuseness of "Hinduism" was the argument that developed over whether or not India has an ethic of service, either in traditional or modern culture, which could serve as a foundation for a legal aid program. Mr. Bastedo argued that what appears to be a contemporary lack of Christian style community-service spirit can be traced back to the traditional religious texts. Mr. Rocher confirmed that classical Hindu religion is based on the concept of *moksa,* or personal attainment of salvation, which cannot be enhanced by friendly assistance.

Speaking from his own experience, Mr. Koppell observed that the Indian lawyers he spoke with apparently had only a particularistic sense of duty—that is, they were willing to give free legal assistance to fellow caste, village, or family members, where needed, but did not see this as a service to which everyone should be entitled. Mr. Cohen added that a similar pattern prevailed in China, where one's loyalty was first and foremost to the immediate community.

Two types of argument were presented against this contrast of India and the West. First, there were those who felt, with Mr. Skolnick, that the "Christian ideal of service" is a myth, or at best something quite different from an effective religious ideal. Mr. Damaska pointed out that "good samaritan" laws are almost nonexistent in Protestant countries, where they are looked upon as dangerous. He suggested that the practice of service might be more closely related to norms of individualism or collectivism in the society than to "religious" ideals. As Mr. Skolnick suggested, the ethic of individualism undercuts charity to family, etc. and may, therefore, force the development of compensating institutions.

Mr. Friedman made a similar argument, suggesting that both ethic and practice are more closely related to the economic conditions of a society. He noted that Mr. Bastedo's description of the several "gaps" existing between Indians who are able to help and Indians who need help closely resembled descriptions of 19th century Czarist Russia. Similar economies, he suggested, produce similar help patterns.

This first line of argument is consistent with the second which held that in fact there is much evidence of a "service ethic" in India. Mr. Lazaroff referred to the wide variety of service organizations he had encountered all over India. The Baroda Citizens Council, a broadly based community action organization, was just one example. Mr. Levy

noted, from his own interviews, that much of the concern of lawyers and others, in considering the merits of the Hindu Code Bill, was over the danger of losing the family service ideal that would accompany enactment of more individualist laws. The depersonalized individualism of Western-style "charity" was viewed as a feeble substitute for traditional methods and attitudes.

As the conference drew to a close, the conferees succumbed to their own service ethic in response to Mr. Cohen's call for proposals on equipping the legal profession in India for a more effective role in economic development.

Mr. Koppell suggested that, whatever India's service ethic, the Indian lawyer does not now function as an effective social or business architect, because his training instills in him only an intense consciousness of the defense of individual rights. Young American law professors, willing to teach for some time in Indian law schools, might be able to expand from this intense "rights consciousness" an awareness of the utility of law in achieving broader social goals.

Mr. Friedman broadened this proposal to include the necessity of training law students in at least the rudiments of social science, so that they will be sensitive to the dilemmas created by the grafting of one society's institution onto a different culture. This will be an especially difficult form of aid to give in view of the dearth of American lawyers with an adequate social science training. Furthermore, as Mr. Galanter pointed out, the sociological lawyer who learns to rely on the rich supply of data in America would be at a loss in India, where he would be forced to rely heavily on his own ability to generate data. Training, therefore, should include relevant methodological techniques as well.

Mr. Morrison applauded this suggestion, but cautioned that a mere smattering of social science training might be worse than none at all, since extensive training is necessary for an adequate grasp of concepts. But, as Messrs. Friedman, Skolnick, and Rocher pointed out, some training is better than none, since it at least exposes the individual to the problems and possibilities, and may whet the appetite for more thorough understanding. As Mr. Henderson said, the ideal would be a two-pronged career wherein the individual pursues study in both areas.

Mr. Skolnick raised the question of whether the legal profession is the logical institution into which development resources should be channeled at all. If it is true that the bureaucrats have predominant access to the means of development, perhaps the effort should be directed toward instilling in them the desired skills and attitudes. Mr. Henderson,

agreeing with Mr. Cohen that lawyers are able to draft better, more effective legislation, nevertheless sided with Mr. Skolnick, arguing that before lawyers can be effective as practitioners, there must be an effective administrative structure that can channel funds for institution-building without heavy losses through graft and inefficiency. The lawyers are only a second step in the process of institution-building. Therefore, some type of authoritarian regime may be necessary, such as the kind proven effective in Meiji Japan. But, as Mr. Levy pointed out, many Indians would prefer to avoid paying the price of totalitarianism, even if it meant slower development.

Mr. Lazaroff then summarized his activist approach by reminding the conferees that social change is advancing inexorably in India and that dictatorship is unlikely in the foreseeable future. Especially in some of the rapidly developing coastal areas, great changes are taking place, and positive programs started now can have at least some effect in shaping and directing these events. To desire sweeping programs which have uniformly significant effects in all parts of India is unrealistic. But, recognizing that some progress can be made, however piecemeal, friends of India could help to expand and render effective the service potential of Indian lawyers in the process of development.

While this view may not have found universal endorsement among all participants, it is clear from the exploratory work of this conference that planners of social change in India cannot afford to make facile assumptions about the significance of the legal profession, based either on misleading Western models or on outmoded Indian models of the place of lawyers and legal institutions in the society.