Introduction: Law, Socialism, and the Human Right to Development in Third World Countries

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The comparative study of law and social change in third world countries has become a subject of growing interest to legal scholars throughout the world. Even in North America (where some in this particular scholarly community once engaged in a species of unedifying but seemingly endless inter-necine warfare) there seems to be a revival of interest in the more systematic study of law in different political economies of development and underdevelopment. In January 1980 a group who share that interest, and who hoped to nurture contacts with networks in other parts of the world, took steps to organize what has now become the International Third World Legal Studies Association. At this inaugural meeting I was privileged to chair a panel where Professors Brietzke, Hazard, and Marasinghe presented country-focused reports (published here) on the subject: what happens to law in third world countries whose governments not only declare themselves to be socialist but undertake serious steps along a socialist road of development.

Of course, like the concept "third world", the category of "socialist" countries within it is elastic. Many governments have claimed the label and proclaimed a socialist ideology; and no doubt many different essays could be written on appropriate criteria to evaluate the purity of such claims. But we were more interested in comparing changes in legal phenomena in several very different countries where each regime in power had clearly attempted some major transformations in the social base of the societies governed, pursuant to a genuine commitment to a socialist ideology.

The importance of this subject seems obvious even if the quantity or quality of literature on it is scant. Many governments in Africa have now claimed socialism and are attempting socialist programs. The socialist period in Sri Lanka is of major interest and importance to many progressive leaders and scholars concerned with problems of development, not only in Asia but elsewhere. Moreover, during the 1970s, if not before, an increasing amount of writing about the workings of law in the third world began to reflect more systematic Marxist critiques: legal systems were analyzed more carefully as products of the political economy of their particular environments, and they were increasingly portrayed as vehicles for the creation or maintenance of ruling classes and exploitative
relations. Presumably, a task for lawyers serving socialist governments is to help change these conditions. Yet surprisingly few writers attempted much systematic examination of the problems of designing, in third world settings, a legal order geared to a socialist program.

The papers which follow present three “country studies” depicting what has been done to change laws and the legal order in three quite different socialist polities. There are many questions one might ask after reflecting on these provocative reports. Scholars of socialism and socialist law may want to compare the legal changes described in these reports with a “model” of legal development drawn from European—or perhaps Chinese—socialist experience. But obviously that task must be approached with caution. Third world countries may often provide a peculiarly unique and procrustean environment for the imposition on people of any predetermined form of socialism and socialist law. As these reports suggest, a careful analysis of the particular conjunctures of events and social forces which enable a particular regime claiming socialism to take power may also reveal limitations on that regime’s capacity to transform the society it purports to govern. A wide variety of constraints are often peculiarly significant. In many countries, particularly in the countryside where most people live, there exist profound, historic social gaps between governments and the governed. Traditions and perceptions of political participation may be lacking. While some socialist measures (e.g., land reform) may generate popular support among the intended beneficiaries, the desire for other measures (e.g., communal production, state regulated collectives) may be limited at best. In many countries, regimes may seek to work through parties which may be weak in numbers, commitment, unity, or discipline; often the party becomes a vehicle for dispensing patronage and public largesse, another bureaucracy, perhaps closely integrated with the government. In some countries (Ethiopia is an example), socialism must be pressed without any party at all—indeed the formation of a party has been a major problem there. In others where a mass party exists, the penetration of official ideology may still be limited: President Nyerere enjoys the backing of such a party, but he has often adverted to the difficulty of creating “socialism without socialists”. In some countries, historic ethnic tensions and historic political loyalties of different people in different regions create serious problems of unity. In most countries, the inherited bureaucracy is extensive and enjoys economic rewards and legal powers which bestow a special social status and an historic lack of social accountability to the clienteles it is supposed to serve. The existence of or threat of spawning a “bureaucratic bourgeoisie”, and the implications of this, have been revealed in several different kinds of interesting studies, and, indeed in the speeches of socialist leaders. Similarly (depending on the conjunctures producing socialism), the military may stand as a special kind of powerful social group which must be reckoned with as well as governed.

Third world countries—whether socialist or otherwise—face problems of