

“Law and Development” in Latin America, 1965-1979

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In the context of the “Decade of Development,” and as part of the non-military strategies of containment of communism, different public and private US institutions turned their attention to projects of technical assistance in Asia, Africa, and Latin America that sought to modernize the legal systems of the countries of the Third World. In the Inter-American context, several initiatives were promoted under the label “Law and Development” (LD). Financed mostly by the Ford Foundation and USAID, they were conceived and implemented in the 1960s and the 1970s by those institutions, in cooperation with US law schools (Harvard, Stanford, Wisconsin, and Yale, among others) and local universities in Brazil, Chile, Colombia, Costa Rica, and Peru. The common purpose of these programs was the transformation of the national legal systems following the US model. The effort centered on removing obstacles to development attributed to obsolete legal structures and a conception of the role of the law and lawyers incompatible with the challenges of modernization.

The main concern of LD projects in Latin America laid consequently in the reform of legal education through (1) the introduction of new teaching methods (the case method and the Socratic method); (2) a greater emphasis on the practical aspects of law; (3) the substitution of legalism and formalism with legal instrumentalism; and (4) the reform of institutional structures to increase the number of full time teachers and set the foundations for research. The introduction of these reforms was supposed to be the task of young Latin American lawyers trained at US law schools, who would go back to their home countries, modernize legal education, and educate a new breed of modernizing “legal engineers.”

Despite apparent affinities with already existent reform initiatives in Latin America and the promising results of the first years, the LD programs could not fulfill the expectations neither of the US side nor of the Latin American partners. The transformation of deep-rooted legal cultures through the export/import of key features of US law proved to be a considerably more complicated than originally foreseen. The new role of lawyers as “legal

engineers,” the solution-oriented didactical tools, and legal instrumentalism were, at best, only partially adopted. Moreover, the adoption of any of these elements implied its adaptation to the local legal culture, the structure of the national legal system, the interests of the dominant professional groups, and the political conjuncture. By the first half of the 1970s, the modest achievements of the respective LD projects led to their closure. LD, in the opinion of the many institutions and individuals that brought them into being, had failed.

My three-week research agenda, conducted at the Rockefeller Archive Center between September and October 2016, focused almost exclusively on the Ford Foundation Archives. It is part of my research project which deals with the history of the LD movement in Latin America, more specifically in Brazil, Chile, and Colombia. Rather than finding out the reasons for the alleged failure of the programs carried out in these countries, the main purpose of my project is to take a closer examination of these initiatives in order, first, to grasp their complexity and their multilayered structure. Second, it is to try to understand how the interaction between various actors, in different spaces and with different interests and expectations, shaped the conception, formulation, and implementation of the LD projects in Latin America.

In the following pages, I will try to illustrate partially these aspects, focusing on the early stages of LD in those countries.

The documentation related to one the first meetings concerning LD in Latin America, held on September 9, 1965 at the Ford Foundation offices in New York City, provides a good idea of the variety of actors involved, from the very beginning of the initiative. According to the summary notes taken by one of the attendants, John C. Honey from Syracuse University, the meeting brought together members from different universities, from the US government, and of course, from the Ford Foundation. Besides Honey, who was at the time a consultant to the Ford Foundation, Bayless Manning, Dean of the Stanford Law School, and Milton Katz, Director of International Studies at Harvard University, participated in the meeting. The State Department was represented by Thomas L. Farmer from USAID. Another attendant with close ties to that office and very familiar with Inter-American cooperation was William Rogers, “formerly Deputy Coordinator, Alliance for Progress.” From

the Ford Foundation staff, three representatives were in the meeting: John Howard, Director of International Training and Research who would become one year later the director of the International Legal Center; Harry Wilhelm and John Hilliard, director and associate director of the Latin American Program of the Ford Foundation respectively.¹

This short list of attendees anticipated the basic constellation of institutional actors who would later work together in the LD projects in Brazil, Chile, and Colombia. It also announced the diversity of perspectives within this joint endeavor led by the Ford Foundation in the following decades. The synergy that gave these projects the initial boost was the product of the strategic articulation of complementary interests, perspectives, and capacities that would define the spirit of LD in Latin America. The combination of technical assistance—a strategic tool in the non-military front of US foreign policy towards the Third World—educational reform, and modernization that had already proved successful in the natural and the social sciences and had begun to expand its scope to the legal field, would gain particular relevance in the new phase of Inter-American relations opened by the Alliance for Progress. It also coincided with the recent but rising interest of the Ford Foundation in Latin America.

Although the LD projects in Brazil, Chile, and Colombia were inspired by the shared conviction in the possibility of modernizing a country's society through specific, scientifically conceived reforms, there was no unique model, no homogeneous agenda imposed unilaterally on each of these countries. The early history of each LD project shows, that the initial formulation of its scope, its objectives, and the ways those should be attained, resulted from the interaction between US and Latin American actors.

In the Brazilian case, the original initiative came from David Trubek, then a young consultant of USAID in Rio de Janeiro. Concerned by the difficulty of finding lawyers able to offer legal solutions to make financial assistance more effective, Trubek contacted several lawyers and law teachers in Brazil who shared his opinion on the need for post-graduate training in international financing. A key partner at this early stage (1965) was Luis Simões Lopes, director of the Gétulio Vargas Foundation (GFV), established in 1944 to train public and private administrators. Trubek also met with Carlos Henrique

Simonsen, director of the Centro de Aperfeiçoamento de Economistas (CAE), closely linked to the GFV and with Caio Tácito, vice-director of the law faculty at the University of Guanabara and member of the Institute of Public Law and Political Science of the same foundation.² He then had several meetings with representatives of the Ford Foundation office in Rio de Janeiro (Peter D. Bell) who had similar thoughts about the role of legal professionals in Brazil. The result of these encounters was the idea of creating a new institution in Brazil. Its basic purposes, according to the first draft of Trubek's proposal were:

[...] (i) to improve the professional capacity of judges, professors, government lawyers and private practitioners, especially in areas relating to key developmental goals and programs; (ii) to establish a research center to carry out practically oriented legal research on development related problems; and (iii) to serve as catalyst, by example and by a specific training program, for the improvement and modernization of "undergraduate" legal education"³

When one traces the origins of the Centro de Estudos e Pesquisas no Ensino do Direito (CEPED), the picture of the vertical imposition of US-American development policies becomes fuzzy. Even though the initial kickoff came from an official representative of U.S. government development assistance, the inclusion of both local and US actors from the very beginning of LD in Brazil suggests that the project of creating a new institution was the product of intense negotiations between a large number of individuals, representing institutions with their own vision of how the reforms were to be achieved. To assure the feasibility of LD, the promoters of the CEPED necessarily had to let Brazilian institutions participate in the design of the project. Its institutional setting, the successful recruitment of candidates, and the political authorization depended on the acquiescence of key local actors.

The initiative in the "Chile Law Program" came from a Chilean lawyer. Having returned from a trip in the US during which he personally met Harry S. Wilhelm, Director of the Latin American Project of the Ford Foundation, Eugenio Velasco, the dean of the faculty of social and legal sciences at the Universidad de Chile, wrote a letter to Wilhelm asking for financial support for several reforms promoted jointly with the law faculty of the Universidad de Valparaíso. The reform program included the expansion of full-time-faculty, the introduction of new curricula and teaching methods, the

promotion of scientific research, as well as the organization of the law library, the acquisition of new books, and the creation of a PhD program in Criminal Law.⁴

Between March 21 and April 1, 1966, John Howard, from the newly founded International Legal Center, and John Henry Merryman, from Stanford Law School, traveled to Chile on behalf of the Ford Foundation. The purpose of their trip was to get a closer look at Velasco's reform program and to visit other law schools interested in the Ford Foundation's support of programs related to law and development.⁵ Besides the University of Chile, Merryman and Howard talked to people from the Pontifical Catholic University in Santiago, the Catholic University in Santiago of Valparaíso, the Law School of Valparaíso, and the University of Concepción.

The affinities between the principles inspiring the LD initiative for Latin America and the reformist spirit in three Chilean universities (the University of Santiago, the Catholic University of Valparaíso and the Universidad of Concepción) led Howard and Merryman to the conclusion that those schools were "participating, more or less uniformly, in a movement for a renaissance in legal education, and consequently in the legal process, in Chile."⁶ Among these three universities, the University of Chile was, in their opinion, "the key institution." They recommended that the Ford Foundation support Velasco's faculty in three specific fields: "Law library development [...] Training a cadre of full-time professor-scholars in legal education and research concentrating on the legal process in a rapidly developing nation" and "[s]upport for research on problems of Chilean legal development and encouragement of a reorganization of the structure of research to conform to the changed system of legal education."⁷ That way, three of the main fronts of Dean Velasco's proposal were integrated into Howard's and Merryman's recommendation. One year later, these three elements would be included in the official grant request from the International Legal Center approved on May 17, 1967.⁸ Again, the dialogue between several parties—the Ford Foundation, the International Legal Center, Stanford Law School, and the Chilean law schools, among others—determined the content of the LD project in a Latin American country. ARED, the Colombian Association for the Reform of Legal Teaching, constitutes a third variation of LD in Latin America. The idea came from the Ford Foundation itself through its representative in Colombia, William Cotter,

and Derek Bok, dean of Harvard Law School and consultant to the Ford Foundation. Both Cotter and Bok, separately, held interviews with deans and professors of several Colombian law schools in different cities in 1967.

Only four Colombian schools were selected to participate in a program devoted to the reform of legal education: the University of Cauca, the University of Antioquia, the University Externado de Colombia, and the National University.⁹ Cotter and the deans of these law schools met several times between 1967 and 1968 to express common concerns, the needs and interests of each law school, and possible ways to improve legal education. As a result of those meetings, the law faculties of the University Externado, University of Cauca, University of Antioquia, the National University and Los Andes University—which had just joined the first four law schools—gave birth to ARED, the Asociación para la Reforma de la Enseñanza del Derecho, on May 28, 1969. One month later, this association submitted the grant request approved by the Ford Foundation shortly thereafter, a request that was supposed to combine the needs and expectations of each faculty, of ARED, and of the Ford Foundation.

These brief references to the months—and years, in the Colombian case—preceding the implementation of LD projects in Latin America aimed at illustrating the intricate constellation of actors directly engaged in the conception of these initiatives. The active participation of so many individuals and institutions must lead us to consider the history of development cooperation from a different perspective and to try to determine the degree of influence and the margin of action each actor had in the design of specific projects. Without denying the fundamental asymmetry in Inter-American relations nor the particular balance of power between givers and receivers, the agency of “peripheral” Latin American partners and their role in each phase of development initiatives, including their eventual failure, deserve greater attention. The US actors responsible for those projects, as the early history of LD in Brazil, Chile, and Colombia shows, were well aware of all of these aspects.

¹ Honey, John C.: “Law and development in Latin America. Summary notes from a meeting held on September 9, 1965, at the Ford Foundation”, November 4, 1965, Ford Foundation Records, Catalogued Reports, Report 1-3254, Box 104.

² See letter from Peter D. Bell to Stacey Widdicombe, December 16, 1965, Ford Foundation records, Grants S-Thel, Grant #06600386, State University of Rio De Janeiro, Reel 3114.

³ Trubek, David: “Proposal for an advanced institute of law and economic development”, October 1965. Ford Foundation records, Grants S-Thel, Grant #06600386, State University of Rio De Janeiro, Reel 3114.

⁴ Velasco, Eugenio, Letter to Harry S. Wilhelm, July 22, 1965, Ford Foundation records.

⁵ Howard, John; Merryman, John Henry: „Report on Howard-Merryman visit to Chile. March 21-April 1, 1966“, Report #000234, Ford Foundation records, Report 1-3254, Box 14.

⁶ Howard, John; Merryman, John Henry: „Report on Howard-Merryman visit to Chile. March 21-April 1, 1966“, Report #000234, Ford Foundation records, Report 1-3254, Box 14., pp. 37-38. Summarizing their impressions of the reform program of the University of Chile they wrote: „Indigenous leadership for the kinds of reform that outsiders from the United States would probably recommend already exists.“ Howard, John; Merryman, John Henry: „Report on Howard-Merryman visit to Chile. March 21-April 1, 1966“, Report #000234, Ford Foundation records, Report 1-3254, Box 14., p. 22.

⁷ Howard, John; Merryman, John Henry: „Report on Howard-Merryman visit to Chile. March 21-April 1, 1966“, Ford Foundation records, Report 1-3254, Box 14., pp. 38-39.

⁸ See Ford Foundation records, Grants H-K, Grant # 06700273, International Center for Law in Development, Reel 1623.

⁹ Letter from William Cotter, November 10, 1967, Ford Foundation records, Grants A-B, Grant #06900672, Association for the Reform of Legal Education, Reel 3408.