

AGENCY FOR INTERNATIONAL DEVELOPMENT  
WASHINGTON, D. C. 20523  
BIBLIOGRAPHIC INPUT SHEET

FOR AID USE ONLY  
*Batch # 38*

1. SUBJECT CLASSIFICATION	A. PRIMARY	TEMPORARY
	B. SECONDARY	

2. TITLE AND SUBTITLE  
Program of law and modernization; annual report, 1969/1970

3. AUTHOR(S)  
(101) Yale Univ. Law School

4. DOCUMENT DATE 1970	5. NUMBER OF PAGES 11p.	6. ARC NUMBER ARC
--------------------------	----------------------------	----------------------

7. REFERENCE ORGANIZATION NAME AND ADDRESS  
Yale

8. SUPPLEMENTARY NOTES (*Sponsoring Organization, Publishers, Availability*)  
(Activity summary)

9. ABSTRACT  
(Social sciences R & D)

10. CONTROL NUMBER PN-AAC-115	11. PRICE OF DOCUMENT
12. DESCRIPTORS	13. PROJECT NUMBER
	14. CONTRACT NUMBER
	15. TYPE OF DOCUMENT <i>CSO 2/85 211(d)</i>

## ANNUAL REPORT

(July 1, 1969 - June 30, 1970)

### Program in Law and Modernization

Yale University Law School

In recent years faculty and students at the Yale Law School and in other departments of the University have become interested in the relationship between law and change in developing countries. Backed by a grant of \$1,000,000. made by the Agency for International Development in late June, 1969, these discrete interests are being transformed into a coordinated program which includes a sequential curriculum, a series of visiting appointments and research fellows, deliberate library acquisition schemes, theoretical and empirical research projects, inter-University law and modernization conferences and a reprint series. This report outlines the achievements of the first year and plans for the second year of this effort.

### Objectives of the Program

The long-term goals of the Program are to:

- (a) Develop and conduct courses of study to enable prospective teachers of law and social science and law students to explore the relationship between legal systems and modernization. This curriculum should include the study of theoretical constructs which seek to illuminate relevant relationships between law and change, the study of specific legal cultures to enable investigators to test plausible hypotheses and develop useful data as well as the study of specific institutions which play important roles in the interaction of law and change.

- (b) Develop hypotheses which attempt to explain the characteristics of law, and its relationship to change, in societies in varying stages of development.
- (c) Conduct empirical research and other case studies which will test such hypotheses, increase the understanding of the operation of specific legal systems or the operation of specific institutions in various legal systems.

### Curriculum

The courses in law and modernization offered at Yale in 1969-70 were planned before there was a program and before special resources for a program were available. They were what one would expect in this context: that is, teachers tended to teach their current research interests or most recent research or operational experience without any major effort at coordination. Catalogue descriptions of courses which were offered are attached as Appendix 1. Law School staff were assisted by Professors Cohen of the Economics Department, Foltz of the Political Science Department, Hambly of the History Department and Steiner of the Harvard Law School in conducting these courses.

A substantial effort to decrease the degree of random curricular growth and to develop courses which would build upon prior offerings was made during the past year. The courses offered in the past tended to include both general theoretical material and specific studies of countries, regions or problems. Next year theoretical issues will be consolidated into one course which will serve as an introduction to more advanced work. Such a change should permit more efficient use of teaching time, should lead to a more explicit and coherently theoretical basis of study, and should allow instructors in advanced courses to probe more deeply into specific problems of the legal systems of specific countries.

The basic course, called "Introduction to Theories of Law in Society", will be offered in the fall of 1970 and will be designed to provide a general theoretical background. It will examine the literature of law and social science to investigate theories of law which attempt to explain its characteristics in, and relationship to, societies whether traditional or modern, static or rapidly changing. In the first year, the introductory course will be based on a survey of theories of law in legal history, anthropology, philosophy, sociology and economics.

An advanced theoretical seminar is scheduled for the spring term to permit Law and Modernization Fellows and a few advanced students to pursue theoretical issues in greater depth. Six members of the faculty will teach a seminar on the role of the legal profession in social change, contrasting the work of lawyers in the U.S., England, East Africa, India and Brazil.

Finally, the two area seminars offered last year by Mr. Abel (on Kenya) and Mr. Felstiner (on India) will be given again in the spring. Both instructors hope to use empirical and historical materials to evaluate some of the theoretical hypotheses developed in the introductory course.

Initial attempts to stimulate a series of joint offerings (and to engage in joint research) with social scientists have produced few concrete results. It is hoped that the formal association of Professors Apter and Patrick with the Program will facilitate these efforts.

Faculty salaries attributed to teaching in the law and modernization field in 1969-70 were charged to the AID grant.

#### Fellows

No fellowships were granted in 1969-70.

Senior Fellowships, which are faculty and Corporation appointments at Yale, have been granted in 1970-71 to Professor Marc Galanter of the Sociology Department of the University of Chicago and to Mr. William L. F. Felstiner, formerly Associate Dean of the Law School and sometime Assistant Director of the AID Mission to India. Fellowships in Law and Modernization have been awarded to Professor Yash P. Ghai, formerly of University College, Dar es Salaam, to Mr. Francis G. Snyder, a graduate of the Harvard Law School and a Ph.D. candidate at the Faculté de Droit et des Sciences Économiques de Paris, and to Mr. Thomas C. Heller, a graduate of the Yale Law School who is currently teaching at Los Andes University in Bogota, Colombia. A Senior Fellowship for 1971-72 has tentatively been accepted by Professor Laura Nader of the Anthropology Department of the University of California, Berkeley.

In addition to teaching in the Program, Professor Galanter will be completing a manuscript on legal efforts in India to eliminate caste and tribal disabilities and Mr. Felstiner will be preparing to conduct empirical research on the relationship between official and extra-official dispute resolution in urban Indian contexts. Professor Ghai

will be studying the role of law in specific development programs (e.g. cooperatives, land tenure reforms, public corporations) in Tanzania. Mr. Snyder will be continuing his work on the relationship between land law and economic and social change in the Basse-Casamance region of Senegal while Mr. Heiler will be preparing to teach in the law and modernization field, probably at Indiana Univ.

Fellows are selected on the bases of the insights their previous work should provide to others working in the Program, the research (and in the case of Senior Fellows teaching) they propose to conduct at Yale during their fellowships, the ability of others at Yale to contribute to that research, and the Fellows' commitment to teaching and scholarship in the field of law and modernization.

The salaries or stipends of all fellows will be charged to the AID grant, except while they are engaged in research outside the United States.

#### Research

No major research projects were carried on during the first year of the Program. Small research grants were made to three students, one member of the Yale Economics Department and two law teachers during the year. Dr. Boaventura Santos of the University of Coimbra, Portugal, who has just completed his work for an LL.M. at Yale and is now enrolled as a doctoral candidate, has been preparing to study the manner in which legal assistance programs in Rio de Janeiro have altered the attitudes of poor people towards judicial administration in that city. Dr. Santos will conduct the empirical phase of this research in Brazil during the summer of 1970. Mr. Duncan Kennedy, a 1970 graduate of the Law School, is working on a utilitarian model of the role of private law in economic change. Mr. Norman Singer, a Research Associate at the Law School and a SJD candidate at Harvard who spent four years teaching at Haile Sellassie I University in Addis Ababa, received a grant for four months work on the legal role in Ethiopia of persons possessed by spirits. The Program has provided partial support of Professor Hugh Patrick's studies of the role of financial institutions in the development of capital markets in developing countries. In addition, small grants for research assistance were made to Professor Robert Stevens for his work in social-psychological aspects of dispute settlement in Africa and to Professor David Trubek to assist his study of the development of capital markets in Brazil.

The total amount allocated by the Program to this research is about \$9,000.: the overseas components are not, of course, chargeable to the AID grant.

### Conferences

Formal conferences sponsored or initiated by the Program were held in Cambridge, Princeton and New Haven. The session in Cambridge, conducted with faculty from the Harvard Law School and Harvard sociology department, was devoted to problems in teaching in the law and modernization field, the role of lawyers in the study of law and society, the relevance of law and modernization to the curriculum of U. S. law schools and research problems in developing countries. At the session at Princeton, Professors Black, Falk, Massell, Levy, Arthur Lewis, John Lewis and Morse of the Center of International Studies joined with Professor Trubek and Dean Felstiner to consider those dimensions of political science and sociological theory which might be relevant to the relationship of law to change in late modernizing countries. The New Haven conference was focused on papers written by Professor Trubek, Mr. Kennedy and Dr. R. Mangabeira Unger of the Harvard Law School on theories of law in economic change, formal models as a technique in theory building and general problems of theory in law and modernization. In addition, participants in the Program attended conferences on the non-economic dimensions of economic development at Northwestern University and on African law studies in the U. S. in New York. Formal discussions were conducted with Professor Joseph LaPalombara of the Political Science Department on the uses of sociological theory in the study of political development and with Professor David Apter of the same department on formulating development oriented constitutions.

Except for the Northwestern session, all conference costs assumed by Yale were charged to the AID grant.

### Library

More progress has been made in improving the usefulness of the anglophonic African collection than with the Latin American or Indian materials. A comprehensive survey of the Law Library's African holdings was conducted in the fall of 1969. Upon completion of the survey purchasing priorities were established and Dr. Andrew Onejeme, who has a JSD from Yale and has taught law at the Universities of Lagos and Nigeria (Nsukka), was employed as a consultant to the Law Librarian to conduct the purchasing program. As a consequence, about 500 volumes of African materials have been ordered since March 1970 -- several times the normal number for such a period.

Attempts have been made to bring Yale's extensive holdings of Indian law reports up to date by canvass of relevant U. S. dealers. Catalogues of U. S. and British booksellers have been searched for historical and social science materials. No attempt has, however, been made to rationalize this collection by comparison with the holdings of libraries in the U. S. or England with special competences on India. Nor has a grand design for purchasing Latin American materials so far been developed. As a consequence, books have been purchased as their relevance and availability have become known. The first step in systematic acquisition of Latin American materials will be the development of a working collection on Brazilian law. Such acquisition, which is underway, will facilitate gauging the cost of expanding the collection to other Latin American jurisdictions.

The Foreign Law Librarian has recently announced his resignation from the faculty and a search for his successor is underway. The school has decided that such a person should have a background in the legal materials of developing countries, particularly in Latin American law. Implementation of effective purchasing policies will depend upon his efforts and are not likely to precede his appointment. During the year, however, 1,100 volumes for the developing countries collections were acquired at a cost of \$15,000, which is approximately five times the amount spent in the previous year. Two-thirds of such acquisitions were supported by the Ford International Legal Studies grant.

#### Publications

The Program has instituted a reprint series titled Studies in Law and Modernization. Numbers 1 and 2 are Professor Abel's papers "A Bibliography of the Customary Laws of Kenya" and "Customary Laws of Wrongs in Kenya: An Essay in Research Methodology." (Both pieces were completed before the inauguration of the Program.) Copies of those numbers are attached as Appendices 2 and 3. Tentative arrangements have been made with the Yale University Press for publication of monographs produced in the Program. The Press has just published Professor Stevens' work in "Resolving Conflict in Africa."

#### Administration

Direction of the Program has been exercised by a Steering Committee composed originally of Professors Abel, Lipson, Stevens (Chair-

man), Trubek, Wheeler (law and sociology), and Dean Felstiner of the Law School, Mr. Joseph Goldsen, Executive Director of the Council on International and Area Studies at Yale and three students -- two LL.B. candidates and one foreign graduate student. More recently, Professor Quintin Johnstone of the Law School, Professor David E. Apter of the Political Science Department and Professor Hugh T. Patrick of the Economics Department have been added to the group. Day to day decisions have been made by Dean Felstiner, the Program's Director, in consultation with Professors Abel, Stevens and Trubek, the faculty members most active in the field. Students are excluded from discussions involving faculty appointments, fellowship applications and faculty research grants. Administration during the first year of the Program necessarily involved a substantial ad hoc element. More regular procedures should produce less erratic operations. The Steering Committee continues to debate the utility and functions of an Advisory Group, contemplated in early draft applications to AID, which might include members beyond the Yale community.

All administration costs of the Program were charged to the AID grant: all direct overhead was assumed by the University.

Expenditures of the Program during 1969-70 were:

	<u>Allocated to AID Grant*</u>		<u>Allocated to Overseas Research Fund***</u>
	<u>1/1/70-6/30/70</u>	<u>Cumulative</u>	<u>Cumulative</u>
Salaries**	\$ 37,161.31	\$ 64,907.64	\$ 2,283.00
Travel	1,361.56	1,361.56	2,162.00
Acquisition of books****	11,772.49	11,772.49	
Other			
telephone	222.24	222.24	
office supplies	202.50	202.50	
publications (reprints)	1,121.82	1,121.82	
TOTAL	\$ 51,841.92	\$ 79,588.25	\$ 4,445.00

\*No international travel was charged against the grant nor was any equipment purchased costing in excess of \$100.00.

\*\*\$3,625.00 of this amount was in the form of research grants.

\*\*\*Balance was \$39,414.00 as of June 30, 1970. All expenditures were in period 1/1/70-6/30/70.

\*\*\*\*Includes library salaries

Expenditures of the Program during 1970-71 are projected to be:

	<u>Allocated to AID Grant</u>	<u>Allocated to Overseas Research Fund</u>
Salaries	\$ 135,000.00	
Travel	5,000.00	\$ 1,000.00
Acquisition of books*	23,000.00	
Other		
telephone	1,000.00	
office supplies	400.00	
conferences/ meetings	<u>500.00</u>	
TOTAL	\$ 164,900.00	\$ 1,000.00

\*Includes library salaries

#### Related Activities

Law School faculty active in the Program were involved in the following related activities during the year.

Professor Abel directed a program of assistance to African law students in the preparation of teaching materials at Columbia University. Mr. Felstiner participated in a SEADAG conference on the relevance of foreign assistance experience to domestic poverty programs. Professor Stevens served as a constitutional and legal adviser to the East African Community in connection with the applications by Somalia, Ethiopia, Burundi, Zambia and Swaziland for membership in the Common Market and Common Services Organization. Mr. Trubek advised CEPED on the conduct of policy-oriented research on law in Brazil, served as adviser to a group in Brazil which is trying to establish a center for the study of the role of law in capital market development, and conducted a short program on research in law and development for ILC fellows.

Relations with Academic Institutions in Developing Countries

The Program is attempting to develop informal working relations with institutions in the LDCs. A number of preliminary soundings have been made along these lines. In July Professor Trubek visited the Catholic University of Rio de Janeiro (PUC). PUC has established a new social science center, which includes law, economics and sociology, and is contemplating an advanced interdisciplinary program which would include studies on law and modernization. A number of possible forms of informal cooperation between PUC and Yale were discussed and these conversations will be continued during the next year.

Contribution of the Section 211 (d) Grant

The AID grant has enabled the University to transform a wide range of individual scholarly interest in law and modernization into a coordinated program of teaching coupled to a major research and library acquisition potential. Although the extent of teaching in law and modernization and its rationalization in the absence of the AID grant is problematic, it is not unlikely that without such support:

- teaching of a not too dissimilar nature would have been undertaken last year and for an additional year or two, but
- without the ability to support major and varied research overseas which the University can now finance as a result of the AID support of teaching and without the ability to embark upon a major library acquisition program which the Ford International Legal Studies and AID grants have made possible,

the University could not have provided the research and library funds for an extended period necessary if teaching about law and modernization is to continue as a creative enterprise at Yale and if a contribution to a better understanding of the role of law in development is to be made at Yale.

SUBJECTS OF INSTRUCTION

1969 Fall Term

Seminars:

ANTHROPOLOGY 119a, ANTHROPOLOGY OF LAW. 2 units. A critical inquiry into the anthropological and sociological theories of law and informal social control, supported by empirical data drawn from primitive as well as civilized societies. The following topics are especially stressed: form of law (a methodological inquiry: abstractions from actual behavior; ideal rules for behavior; legal codifications; abstractions from legal decisions). Attributes of law (authority; intention of universal application; obligatio; sanction). Problems of "justice" (factual justice; legal justice; etc.). Legal levels and the multiplicity of legal systems in a given society. Legal dynamics. Customary and authoritarian laws. Relativity of law. Mr. Pospisil.

DEVELOPMENT PROJECTS. 2 units. Capital projects in developing countries financed by foreign governments require complex planning, evaluation, coordination, organization, and execution. The seminar will investigate the programs and techniques used to identify, promote, and finance, to provide technical assistance to and to measure the political and social impact of such projects, and will evaluate the applicability of such techniques to community development corporations and similar institutions in United States cities. Mr. Felstiner.

THE TRANSFORMATION OF CUSTOMARY LAW IN A MODERN AFRICAN LEGAL SYSTEM: A CASE STUDY OF KENYA. 3 units. The new nations of Africa each inherited a multiplicity of systems of customary law from their pre-colonial past. These laws continue today to regulate relations among the vast majority of Africans. Central governments, both colonial and independent, have had to deal with three basic problems. First, that of recognition - what kinds of judicial institutions should be developed to administer these rules. Second, that of unification - should the diversity of tribal laws be preserved or altered; how are customary and received European law to be reconciled; how are problems in conflict of laws to be solved. Third, that of modernization - should customary law be preserved unchanged, can it be altered to meet modern conditions, or must it be eliminated altogether or replaced by some new system.

Kenya has experimented with various answers to each of these problems. Having begun by recognizing indigenous judicial bodies, it has progressively sought to assimilate them to the model of English courts. Although tribal laws still prevail, the government currently has under consideration two bills which would go far to unify the laws of marriage and divorce, and of succession and inheritance. Customary criminal law has been abolished and customary land law is increasingly being replaced by a modified English system of tenure. This seminar will study this process of transformation, using as its materials anthropological monographs; government reports, legislation, and court cases. Mr. Abel.

1970 Spring Term

Seminars:

GROWTH OF THE INDIAN LEGAL SYSTEM. 2 units. An examination of the displacement of traditional law by a British-based legal system in India. The roles of customary Hindu law and Dharmasastra before the Mughuls, the juxtaposition of Muslim law administered by the Mughuls and traditional Hindu law, the gradual expropriation of law by the British after Hastings' reforms, the code consolidations following Crown rule in 1858 and the constitutionalism of the post-independence period will be reviewed. Particular attention will be paid to the transformation of traditional tribunals, the search for indigenous law, the role of textual law, the rigidification of sastric law and the impact of the contemporary legal system on Indian society. Mr. Felstiner.

LAW AND MODERNIZATION. 2 units. Current theories of social, economic, and political development and change give scant attention to the role of law and legal systems in this process. As lawyers, we may feel that this omission is an error. This seminar will attempt to determine what role law and legal systems have played in the process of social change generally referred to as "modernization", and to explore the relevance of legal systems to a general theory of social change. The seminar will begin with the examination of a series of case studies, and then explore current theories in light of these studies. The major case studies will be drawn from contemporary Brazil; approximately half of the sessions will be devoted to understanding the reaction of the Brazilian legal system to the rapid industrialization of the country since 1930. Other case studies from the United States and Burma will be considered, largely to highlight the Brazilian material. Mr. Trubek.

PLANNING FOR UNDERDEVELOPED AREAS. 2 units. This seminar will deal with means available to upgrade the standard of living in underdeveloped areas and the influence that law can have in this process. Emphasis will be on problems encountered in some of the newer nations, but attention will also be given to comparable problems in more backward areas of the United States. Stress will be placed on what the underdeveloped areas can do for themselves, rather than on foreign or outside aid. Increasing agricultural and industrial output, controlling adverse consequences of urbanization and financing government action programs are illustrative of problem areas that may be dealt with. The enrollment will be restricted so as to permit adequate class discussion by all students. Mr. Johnstone.

THE ROLE OF LAW IN DEVELOPING SOCIETIES: A CASE STUDY OF EAST AFRICA. 2 units. The political history of East Africa in the colonial period; ethnic divisions and customary law; customary law and the common law; the role of legal systems in East Africa; law and social change; the modern politics of Kenya, Uganda, and Tanzania; the economics of these three countries; the attempt to federate and its failures; the role of constitutional law in this; the East African Community; the EEC, the EAC and Zambia, Ethiopia, Somalia, and Burundi. The first part of this seminar will be taught in cooperation with Professor W. Foltz of the Political Science department. Professor B. Cohen of the Economics department will also participate. Mr. Stevens.