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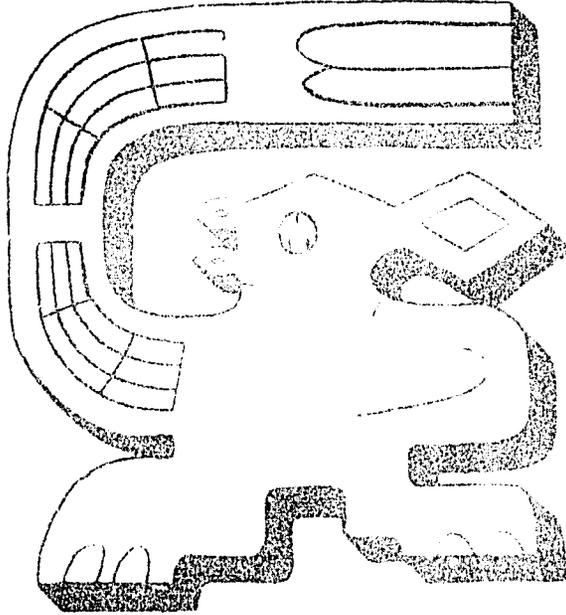
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Land Reform: Latin America's Challenge

Sol M. Linowitz

The Process of Land Reform in Latin America

Joseph R. Thome

LAND TENURE CENTER

University of Wisconsin
Madison, Wisconsin 53706

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LAND REFORM: LATIN AMERICA'S CHALLENGE

INTRODUCTION

SOL M. LINOWITZ*

The articles that follow deal with vital aspects of problems that now grip Latin America—problems not too widely or well understood in our country. In carrying them, the *Wisconsin Law Review* performs a service not only to students and practitioners of the law but to all Americans—North and South—in government and out.

Today Latin America is a troubled continent in which two-thirds of the people are ill-fed, ill-clad, sick, and illiterate. As the wealthiest and most powerful nation in the world, we do not discharge our responsibility to them merely by helping build a factory in Latin America, nor do we discharge it by learning the statistics of Latin America's gross national product. More, much more, is involved. The people of Latin America are involved, and unless we understand the human factor and the crises that threaten their welfare, we will fail in our undertaking.

These articles are no superficial scanning of the problems involved, but are, rather, thoughtful and informative expositions that offer considerable insight into questions frequently consigned to the murky limbo of disinterest and even ignorance. But disinterest and ignorance can no longer be our response. Just as we are learning in the United States that long ignored social wrongs of the past can erupt into economic wrongs of today—that while desperate acts demand a firm response in upholding the law, they demand equally firm measures to correct the cause of the ills—we are learning that if we want to help democracy fulfill its destiny in Latin America, we must help the people break out of their vicious circle of poverty, sickness, lack of sufficient education, lack of job opportunity, underdevelopment, and poverty again.

Yet I have been greatly disturbed since becoming the United States Representative to the OAS to discover that all too many Americans are either not interested in Latin America or are bored with its problems. I am particularly dismayed that this should be true when we are at the critical moment in our relations with Latin America—a moment when we have embarked on a new and pivotal epoch in inter-American relations—when more than ever before we should have a deep awareness, particularly in the university community, of what is truly at stake.

But even today, nearly seven years after the Alliance for Progress began, there are only a small number of academic centers for the

* United States Ambassador to the Organization of American States.

study of Latin American affairs, and American college students perhaps can name one or two Latin American composers and painters and writers, but how many can name a single poet or even a president? Yet this cultural ignorance has been more our loss than theirs, for the people of Latin America are members of one of the wealthiest cultural civilizations this earth has produced.

But there is another reason that goes well beyond the cultural responsibility of educated people. Greater cultural understanding is essential, in my judgment, to the ultimate success of the Alliance for Progress, one of history's great social experiments and the catalyst for a massive revolution of peaceful change. If the Alliance is to succeed, however, it must take root not only in the hearts and minds of the people of Latin America but also in the hearts and minds of the people in our own country. It must become our joint symbol of aspiration for human dignity and worth.

This in particular means the support of university students in all the Americas—North and South—the young people who have been and are such vital features of this hemisphere's cultural, social, and political development.

It must be recognized, of course, that even as lack of knowledge about Latin America is one of the great gaps in our culture, Latin Americans, too, have a cultural gap in connection with knowledge about us. And just as we must spread in the United States an image of Latin Americans that is one of dignity and purpose, so must an image of the United States be spread in Latin America that will realistically describe our conviction that social progress is the heart and soul of democracy. The university is an ideal place for such an effort—one that will at the same time, tie the Americas closer together in the realms of culture and education and that, at the same time, will show us all the infinite possibilities for meaningful friendship throughout the Americas.

Clearly, such an effort alone will not eliminate all of the feeling against the United States that is still much too evident among many student groups in Latin America. But I am convinced that this sentiment is not a reflection of majority opinion. I am also convinced that it can and will disappear as more and more of the people there learn we stand with the men of vision of their hemisphere, with those who believe that hunger and disease and illiteracy can be ended, with those who are convinced that the entrenchment of the oligarchies and the privileged can be modified peacefully, with those who know there is a future in a unified continent dedicated to democracy, reform, and progress.

Knowing this, they will know too that our policy is a positive one and not a negative anti-Castro, anti-communist commitment; that we know a man is not a communist just because he longs for change and supports social progress; and that we know the possibility of

insurgency and violence exists in every village, every community, every phase of life where the heritage of neglect is greater than the effort to bring about a better life for the people—where the disease of poverty goads desperate men to desperate acts.

There are, of course, those who are afraid of change, who fear that rocking the boat can only lead to communism in a region so mined with misery, poverty, and special interests. I believe precisely the contrary. The sure way to communism or any extreme of the right or left is not to change, not to understand the needs of the people, not to give them their fair opportunity to share in life's blessings.

We cannot, of course, elbow our way into other people's social systems and lecture them on the need for reform. We can make certain, however, that we aim the Alliance at the right policies and the right politics. Above all, we must show we mean what we say when we speak of support for democratic institutions, for our actions will speak louder than any words or slogans.

And here we must not forget that Latin America is a land where young people make up a majority of the citizenry, and their numbers keep growing. It will not be the politicians or government leaders in North or South America but these young people—the restless youth of Latin America now searching to express themselves in a revolution for social justice—who will make or break the Alliance. It must therefore become their personal revolution. Only when it does, if it does, can we say there will be a true chance of success.

Articles such as these that explain and educate, that point up the crisis in the areas of inter-American concern, improve that chance. For to understand the problems is to understand how urgent it is that they be approached with a clear eye and cool mind. These have long been regarded as the characteristics of a true lawyer—characteristics that, when applied to the problems of Latin America and, indeed, everywhere, will help us preserve the values of the present and nurture within the corpus of law itself the seeds for future growth and peaceful change. This is the great need of today, and your charge for tomorrow.

THE PROCESS OF LAND REFORM IN LATIN AMERICA

JOSEPH R. THOME*

I. THE NEED FOR LAND REFORM

Although the need for land reform has long been expressed in Latin America,¹ its adoption has not been easy. It took a bloody 10 year revolution (1910-1920) to get the first meaningful land reform legislation passed and implemented in Mexico. And the Mexican experience was to a certain degree repeated in the other two Latin American nations that have enacted and carried out "radical" land reform programs—both the Bolivian and Cuban reforms were the result of social revolutions.

Once considered somewhat suspiciously as Marxist or revolutionary, the new pattern of property rights that has developed since the enactment of the Mexican land reform—that property has a social function that limits individual rights—has gradually attained recognition and respectability throughout the Western Hemisphere and is at least paid lip service by most governments. In 1961, for example, the American Republics, through the Charter of Punta del Este, agreed to work toward the achievement of the following fundamental goals:

[T]o encourage, in accordance with the characteristics of each country, programs of comprehensive agrarian reform leading to the effective transformation, where required, of unjust structures and systems of land tenure and use, with a view to replacing latifundia and dwarf holdings by an equitable system of land tenure so that, with the help of timely and adequate credit, technical assistance and facilities for the marketing and distribution of products, the land will become for the man who works it the basis of his economic stability, the foundation of his increasing welfare, and the guarantee of his freedom and dignity.²

These principles were reasserted in the second Punta del Este conference held in April 1967.³ Moreover, 14 countries in Latin America have enacted land reform legislation since 1960: Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, and Venezuela.⁴

* Assistant Professor of Law and Associate of the Land Tenure Center, University of Wisconsin. B.A., 1958, University of California, Los Angeles, LL.B., 1961, Harvard University.

¹ See *AGRARIAN REFORM IN LATIN AMERICA* (T.L. Smith ed. 1966).

² Inter-American Economic and Social Council, Special Meeting at the Ministerial Level, Punta del Este, Uruguay, O.A.S. Doc. OEA/Ser.tt/XIII, at 11 (1961).

³ See *N.Y. Times*, April 13, 1967, § 1, at 14, col. 1.

⁴ Department of Economic and Social Affairs, *Progress in Land Reform* (Fourth Report), ST/SOA/61, at 6, U.N. Doc. E/40201 Rev. 1 (1966).

It is not the purpose of this article to examine the effectiveness or impact of these various land reform programs nor the problems they seek to remedy.⁵ Nevertheless, these programs indicate the seriousness of the land tenure problem in Latin America. In recent years, no other area of the world has been as active in the field of planning for land redistribution.⁶

According to a United Nations report, several factors account for this recent attention to the land problem.⁷ The ideological influence of the Cuban revolution, for example, cannot be ignored, however unmeasurable its impact. Perhaps related to this is the increasing activity and political strength of peasant organizations. Pressure from these organizations has been instrumental in convincing governments to push ahead with land reform programs. Land invasions have often preceded the land reform laws, particularly in the case of Mexico, Bolivia, and Venezuela. Other factors include the recognition by the United States government of the need for social reforms in Latin America, as indicated by the Punta del Este agreement and the Alliance for Progress program; the emergence of a yet small but increasingly influential class of professionals and "technocrats" with a more modern and nationalistic outlook than that traditionally held by the landlords; and the increasing awareness that industrial growth and the overall economic and social development is very dependent on a solid agricultural base.

These factors, of course, did not arise in a vacuum. They are the symptoms of the economic and social malaise which has long afflicted the agricultural sector in Latin America. Essentially, this malaise arises from an extremely unequal distribution of land—3 to 8 percent of the total number of farms in Latin America occupy 60 to 70 percent of the productive land, while 75 to 80 percent of the total number of farms, each smaller than 12 acres, cover only 5 to 10 percent of the suitable land.⁸ Moreover, hundreds of thou-

⁵ Among the more important analyses of land tenure problems and land reform programs in Latin America are *LAS REFORMAS AGRARIAS EN LA AMERICA LATINA* (O. Delgado ed. 1965); Carroll, *The Land Reform Issue in Latin America*, in *LATIN AMERICAN ISSUES* 161 (A. Hirschman ed. 1961); Barraclough, *Agrarian Structure in Seven Latin American Countries*, 17 *LAND ECON.* 392 (1966); and UNIVERSITY OF WISCONSIN LAND TENURE CENTER, *ANNUAL REPORT 1966* (1967), as well as the other numerous publications of the Land Tenure Center of the University of Wisconsin. For an excellent bibliography, see T. CARROLL, *LAND TENURE AND LAND REFORM IN LATIN AMERICA: A SELECTED ANNOTATED BIBLIOGRAPHY* (2d rev. ed. 1965).

⁶ Department of Economic and Social Affairs, *supra* note 4, at 5.

⁷ *Id.* at 6.

⁸ United Nations Secretariat of the Econ. Comm'n for Latin Am., *An Agricultural Policy to Expedite the Economic Development of Latin America*, 6 *ECON. BULL. FOR LATIN AM.*, Oct. 1961, at 4. [The United Nations Secretariat of the Econ. Comm'n for Latin America will hereinafter be referred to as UNSECLA]. In Ecuador, for example, 100,000 farms, each smaller than one hectare (2.5 acres) represent only 1% of the total amount

sands of these smaller farms are exploited with no title whatsoever.⁹ While many of the farmers who operate them may have a legal right to obtain a clear title either through adverse possession or homestead rights, more often than not they do not have the knowledge or economic means to enable them to assert their rights, even assuming the availability of fair judicial or administrative proceedings. In fact, most of the titleless farmers face the constant danger of eviction and can seldom, if ever, obtain agricultural credits or loans.¹⁰ Nevertheless, they are generally in a better situation than the majority of *campesinos* (peasants), totally landless and forced to work as day-laborers or sharecroppers under archaic and sometimes feudal-like labor arrangements.¹¹

One of the major consequences of this unequal distribution of land is the stratification of the rural population of Latin America into closed class systems with little or no social mobility.¹² The small farmer and landless rural worker, who represent approximately 90 percent of the rural population in Latin America,¹³ are therefore permanently subjected to poverty. As indicated by the United Nations' fourth report on the progress of land reform, this is a major cause for

hunger, malnutrition, illiteracy, disease, squalor, lethargy and discontent. Agricultural production stagnates because the owners of the under-utilized estates have no incentive to develop them and the owners of small properties (*minifundia*) have neither the resources to invest in them nor, often, the knowledge to prevent their being eroded away.¹⁴

The magnitude of the problem can best be demonstrated by citing a few statistics. The population of Latin America is approximately 200 million. It is increasing at an annual rate of 2.5 to 2.6 percent a year. It doubled from 1928 to 1960, and it will double again in the next 25 to 30 years. By the year 2000 it is forecast that it will reach 600 million.¹⁵ Meanwhile, agricultural production, increasing at only 2.5 percent a year,¹⁶ is barely keep-

of agricultural land, while 700 farms, each larger than 1,000 hectares, represent 1/3 of all the land. *VISION*, Jan. 1966, at 43 (Spanish Edition).

⁹ de Debuyst, *Tipología Socioeconómica de los Países Latino Americanos, El Variable Social*, 2 REVISTA INTERAMERICANA DE CIENCIAS SOCIALES 162-63 (1963).

¹⁰ Thome, *Title Problems in Rural Areas of Colombia: A Colonization Example*, 19 INTER-AM. ECON. AFFAIRS 82, 86-87 (1965).

¹¹ In Ecuador, for example, the base wage for workers is about 15 cents (U.S.) a day. Griffin, *Reflections on Latin American Development*, 18 OXFORD ECON. PAPERS 1 (1966).

¹² Cepal, *La Reforma Agraria*, in REFORMAS AGRARIAS EN LA AMERICA LATINA, *supra* note 5, at 29.

¹³ *Id.* at 30.

¹⁴ Department of Economic and Social Affairs, *supra* note 4, at 5-6.

¹⁵ UNSECLA, *The Demographic Situation in Latin America*, 6 ECON. BULL. FOR LATIN AM., Oct. 1961, at 13-16

¹⁶ UNSECLA, *supra* note 8, at 1-4.

ing up with population growth. While some observers contend that per capita output is higher than it was 10 to 15 years ago,¹⁷ the Economic Commission for Latin America (ECLA) of the United Nations reports that per capita agricultural production is less than it was before the Second World War.¹⁸ Moreover, much of the absolute growth was in such export commodities as bananas, coffee, and cotton, while the importation of basic foodstuffs has been steadily increasing.¹⁹

Despite the structural defects and lagging production, agriculture continues to be the most important economic activity in Latin America. Its contribution to the total gross national products of the area—24 percent—is the highest of any single economic sector. Approximately two-thirds of the total value of Latin American exports are agricultural products and over 50 percent of the economically active population is still engaged in agricultural activities.²⁰

At the same time, Latin American cities have been experiencing a rapid and almost explosive growth during the last 20 years. In the 1950-1960 period, for example, the urban population increased by about 33 million—almost twice as much as the increase in rural population.²¹ Between 1955 and 1960 the average urban rate of growth was 4.7 percent a year, as compared to a 1.6 percent rate of growth for the rural population during the same period.²²

This urban growth is mostly due to a very high rural to urban migration, as *campesinos*, dissatisfied with their low standard of living in the countryside, move into the large cities seeking higher wages and better services.²³ Unfortunately, innumerable problems

¹⁷ M. Yudelman, *Agricultural Development in Latin America: Current Status and Prospects*, Oct. 1966 (Paper on file at the Inter-American Development Bank, Washington, D.C.).

¹⁸ UNSECLA, *supra* note 8, at 3.

¹⁹ *Id.*; Yudelman, *supra* note 17, at 20-25. In Peru, for example, agricultural imports in 1966, in the amount of \$140 million (U.S.), accounted for 17% of its total imports for that year. *El Tesoro de Atahualpa Puede Rendir Frutos*, 1 *THE ECONOMIST*, June 16, 1967, at 13 (Spanish Edition). And President Eduardo Frei of Chile, in his message to Congress explaining the need for a new land reform bill, stated that "in the last 14 years, Chile spent over one billion dollars in importing agricultural products which could be grown in its own soil." (Writer's translation). Frei, *Comision de Agricultura y Colonizacion: Establece Normas Sobre Reforma Agraria*, PRESIDENCIA DE LA REPUBLICA, BOLETIN No. 1053, at 3 (1965).

²⁰ UNSECLA, *supra* note 8, at 3. The urban population, however, will soon overtake the rural population, as it already has in Argentina, Chile, Uruguay, and Venezuela. In 1950, only 39% of the total Latin American population was urban, but in 1960 this figure had increased to 46%. UNSECLA, *supra* note 15, at 26.

²¹ UNSECLA, *supra* note 15, at 26-27. Mexico City, for example, increased from 3,050,000 to 4,829,000 in the period 1950 to 1960. *Id.*

²² M. Yudelman, *supra* note 17, at 40.

²³ UNSECLA, *supra* note 15, at 29-30.

have been created as a result of this migration. First of all, the urban population influx greatly exceeds the rate of growth in industrial employment.²⁴ And while many people seem to be gainfully employed, their employment is often a mere disguise for a serious problem of widespread underemployment.

[T]he growth of the cities has multiplied considerably the unsalaried sector of the urban lower class: poor artisans, [small] shopkeepers . . . , hawkers and workers, many of whom have occupations that constitute incredibly poorly paid forms of under-employment. As in other less-developed regions, there has been a transfer of rural under-employment to the cities, where it may be statistically disguised under services or activities not defined.²⁵

In addition, the rapidly increasing population has greatly strained the abilities of municipal governments to provide such basic services as public transport, education, potable water, and sewage disposals. Municipal budgets are insufficient to meet the rising costs, and there exists little prospect of raising additional tax revenues from the new mass of unskilled and illiterate peasant migrants.²⁶

As a result, living conditions for these migrants are hardly better or perhaps worse than in the rural areas from which they moved. The *favelas* of Rio, *callampas* of Santiago, and *barriadas* of Bogota—hastily assembled shanty towns and slums that surround the major cities—are a clear reminder of the migrants' desperate situation. In 1959, for example, it was estimated that 4.5 million housing units had to be built in the cities of Latin America to meet the housing needs of the families living in the slums or "belts of misery."²⁷ But "every indication is that construction has lagged behind population increase since 1950."²⁸

In short, the land tenure or land reform problem is not confined to the agrarian sector. It affects industrialization, urban growth, political stability, education, and almost all the elements that are involved in the development process. It is perhaps the vital issue in Latin America today.

What is land reform? Generally, it means change and access: changing those elements in the economic and social structure of the agrarian sector that perpetuate an inequitable land tenure system, and providing the rural poor with access to land, water,

²⁴ *Id.* at 33.

²⁵ J. ITURRIAGA, *LA ESTRUCTURA SOCIAL Y CULTURAL DE MEXICO* 40 (1951).

²⁶ UNSECLA, *supra* note 15, at 31.

²⁷ *Id.* According to the Inter-American Bank, 35% of Caracas' inhabitants live in the slums, 38% (900,000 people) of Rio de Janeiro's population live in the *favelas*, and similar conditions are found in the other major cities. Socio-Economic Progress in Latin America, Social Progress Trust Fund, Sixth Annual Report, 1966, at 10-11, Feb. 28, 1967 (Paper on file at the Inter-American Development Bank, Washington, D.C.).

²⁸ Socio-Economic Progress in Latin America, *supra* note 27, at 11.

credit, security, and the other means necessary to improve their standard of living. Basically this requires the redistribution of land for the benefit of those who work it and a restriction of individual rights over land resources including water. Such a redistribution of wealth will in turn basically alter the existing patterns of social status and political power.²⁹ Drastic land reforms, then, are required, but they are very difficult to implement within the existing political structures in Latin America.³⁰

Land reform is thus as much an instrument of social change as it is of economic progress. In fact, social objectives are often the primary motivation for land reform programs, without too much consideration being given to agricultural production. Nevertheless, the change in the social structure brought about by a sweeping land reform may be a mandatory step for creating the new conditions or institutions necessary for a modern economy. Thus, a temporary drop in agricultural production in the first few years after the land reform may be outweighed by long-run effects.³¹ Apparently, this was true of the Mexican land reform. According to a leading Mexican economist, land reform must be considered principally as a strategic measure for bringing about development.

[The Mexican land reform was] the catalyst which released and set in motion the multitude of complex forces to which Mexico owes its sustained rates of agricultural and industrial growth. . . . It gave the rural population an opportunity for both horizontal and vertical mobility; it destroyed the "caste" system; it profoundly affected the political environment and brought the country out of the colonial impasse; it opened it up to technological progress and paved the way for the beginning of road building and irrigation programs. . . . Land reform gave Mexico a government with a new concern for the people and the nation. It did something more. It gave to many of the

²⁹ Carroll, *supra* note 5, at 4. Some observers talk in terms of "agrarian reform" or "integral" land reform, under which they include such measures as agricultural credits, extension, rural education, and community development. There is no doubt that these and other measures are beneficial, provided they come *after* the first basic step of land redistribution. Otherwise, few of the intended benefits would actually trickle down to the rural poor.

³⁰ Among the various types of land reform undertaken, slowest progress in 1966 was in land redistribution. In Colombia, for instance, the land reform agency acquired or expropriated with compensation only 21,000 hectares . . . during the year and established little more than 2,000 families on such lands. In Chile, only 1,800 families received family-sized parcels in 1966 In the Dominican Republic, although several hundred thousand hectares [sic] of fertile land are in the possession of the Agrarian Institute, the rate of systematic settlement is currently only 1,000 families a year, or less than 0.5 per cent of the total number of farm families working on subsistence tracts of one hectare or less.

Socio-Economic Progress in Latin America, *supra* note 27, at 46.

³¹ Department of Economic and Social Affairs, *supra* note 4, at 4.

common people something they had never had: the idea of progress and personal ambition for a better future for their children.³²

II. THE PROCESS OF LAND REFORM

If a land reform is going to achieve a redistribution of land and eliminate the institutional barriers that prevent the process of social and economic development and modernization, it should be a rapid, massive, and drastic action.³³ A sweeping land reform almost necessarily involves a certain amount of instability and unrest during its initial phases. This may result in a drop in agricultural production, deterioration of natural resources, a reduced flow of investment in the industrial and agricultural sectors, social conflicts, and the like. It is logical, then, to complete the process as rapidly as possible in order to minimize these effects.

In addition, while redistribution of land may be the primary goal of a land reform, the integration of the new land owners into the social and economic life of the country—as a new market for industry, as a new political force, as a supplier of foodstuffs for a burgeoning population—may be unduly delayed unless certain complementary measures accompany the process of land redistribution. Among these are an adequate credit system, marketing facilities, extension work, and community development. But these measures will not be very effective as long as there exists a situation of insecure tenancy. Naturally, farmers are generally unwilling to invest their resources and efforts to improve their land and living conditions to the optimum desired unless they can feel secure in their legal status over the land. This usually requires a clear and secure title to their property.³⁴

³² E. Flores, *Land Reform and the Alliance for Progress*, Policy memo. No. 27, (Center of Int'l Studies, Princeton University), cited in Department of Economic and Social Affairs, *supra* note 4, at 4. See also, E. FLORES, *TRATADO DE ECONOMIA AGRICOLA*, 375-93 (2d ed. 1962). Many observers have pointed out that the Mexican land reform has not been an unqualified success. Poverty and maldistribution of income are still common in the rural areas of Mexico, although certainly not to the extent found prior to 1910. See, e.g., DE LA PENA, *MITO Y REALIDAD DE LA REFORMA AGRARIA EN MEXICO* 309-423 (1964). On the other hand, there is no denying that Mexico's agricultural situation is one of the best in Latin America. During the last 20 years, only Israel has shown a higher rate of agricultural development. *La Clave Para el Futuro de Mexico*, 1 *THE ECONOMIST*, June 16, 1967, at 11 (Spanish Edition).

³³ See President Eduardo Frei's statement before the Chilean Congress, *Primer Mensaje del Presidente de la Republica de Chile, Don Eduardo Frei Montalva, al Inaugurar el Periodo de Sesiones Ordinarias del Congress Nacional*, May 21, 1965 (Departamento de Publicaciones de la Presidencia, Santiago, Chile).

³⁴ A. MOSHER, *GETTING AGRICULTURE MOVING* 42 (1966). According to Adolfo Gilly, this phenomenon was even experienced in Cuba. Fidel Castro was forced to implement a "Second Agrarian Reform," under which the small farmers were guaranteed the ownership of their lands and the right

Moreover, the successful implantation of land reform, as in almost every case of social and economic surgery, largely depends upon momentum and surprise. If the process takes too long, the landed interests, who at first may have been resigned to the process, may regroup their extensive forces to oppose or further delay its execution. At the same time, the euphoria that initially united various groups in their political support of the reform will begin to dissipate with dissension and counter-criticism taking its place. The caretakers of the reform, usually young and idealistic, may begin to lose the social consciousness and dedication so necessary for its success and, disenchanted, begin to abandon their task. And the land reform agency may gradually become ossified into a typical Latin American bureaucracy—slow and inefficient to the point of despair, with no other interest but that of justifying its existence.

Politics is the major factor that can prevent a land reform altogether, or restrict it to a modest program of colonization or "token" redistribution. No government in Latin America, acting within a more or less democratic and institutional framework, can enact a comprehensive land reform law without substantial political support.³⁵ It is not within the scope of this article to examine the manner in which this political support can be generated to counterbalance, outweigh, or outmaneuver the vested interests of the country. An example, however, might be provided by the Venezuelan experience. There an alliance was forged between organized labor and *Acción Democrática*, the political party presently in power. Completed in 1948, the alliance still survives and is the main base of strength of the *Federación Campesina* (Rural or Peasant Federation). Two factors operated in favor of this process:

the political forces of Rómulo Betancourt [were] in search of an instrument of mass popular support, and the leadership of a new-born urban and rural movement in search of an instrument of political representation. In each other these two forces found the strength needed to forge a lever for political progress and socio-economic development.³⁶

Similarly, Hirschman believes that a drastic upheaval or revolution is not necessary to achieve effective reforms. He thinks that

to continue as private farmers, without having to associate themselves with cooperatives or collective farms. A. Gilly, *Inside the Cuban Revolution*, 16 MONTHLY REV., Oct. 1965, at 22-23.

[A]ccording to the government's declaration, it [the "Second Agrarian Reform"] establishes the definitive standard for land ownership in Cuba. It brings to an end the uncertain situation which led many farmers not to increase production or improve their lands, since they were afraid of eventual expropriation. *Id.* at 23.

³⁵ See Frei's statement, *supra* note 33.

³⁶ J. Powell, Preliminary Report on the Federación Campesina de Venezuela: Origins, Organization, Leadership and Role in the Agrarian Reform Program, Land Tenure Research Papers, Sept. 1964, at iv (Land Tenure Center, Madison, Wis.).

it is possible to reach the same goals within the existing institutions through a process he labels "reform mongering."³⁷ Basically, this process involves the use of controlled or "decentralized" violence. At particular places and times, pressures are applied that give rise to localized crises to which the governments are forced to provide ad hoc solutions. He cites, as an example, Law 200 of 1936, through which Colombia settled a serious land invasion and squatting problem by confirming the squatters' rights. In such situations it is possible to arrange temporary alignments or alliances to solve a particular problem, making it possible to take action against powerful groups. Thus, by increments, "reform mongering" enables a country to solve its land tenure or other social problems over a long period of time. Managing or manipulating this "controlled" violence, however, requires leaders who not only are unselfishly patriotic and have clear long-term goals, but who are extremely able in the exercise of political manipulation and have a political base from which to operate.

Even assuming, however, that a particular government has the desire, political base, and power to initiate a comprehensive land reform program, its actual scope and implementation may be affected or determined by technical, legal, or administrative factors or problems.³⁸ Common to most Latin American countries, for example, is the problem of deficient land cadastre and registration systems, making it very difficult to identify actual property rights, size of holdings, and type of exploitation.³⁹ Governments about to embark on a land reform program are thus faced with a difficult choice: Should they first establish efficient cadastre systems and land records at the expense of stopping the land redistribution process, or should they proceed at once with redistribution even though this will result in certain legal irregularities?⁴⁰

Another problem is that of establishing the criteria for determining what land is to be expropriated and redistributed.⁴¹ Among the more commonly mentioned criteria are those of efficiency of production, size of holding, and the presence of rural labor or

³⁷ A. HIRSCHMAN, *JOURNEYS TOWARD PROGRESS: STUDIES OF ECONOMIC POLICY-MAKING IN LATIN AMERICA* 255-73 (1963).

³⁸ These problems or factors are outlined by the secretariats of the United Nations, the Food and Agriculture Organization of the United Nations, and the International Labor Organization, in Department of Economic and Social Affairs, *supra* note 4, at 4-5.

³⁹ See, e.g., J. CORDOBA, *CRIMEN Y TIERRA: PROBLEMAS COLOMBIANOS* 90-153 (1962).

⁴⁰ While recent experience indicates that aerial photography might be an efficient means to establish fairly accurate land cadastre records, using these photographic records as a basis for a title registry system implies drastic amendments of existing Civil Code procedures and other legal problems which could take several years to resolve. Osterhoudt, *Land Titles in Northeast Brazil*, 41 *LAND ECON.* 387-92 (1965).

⁴¹ Department of Economic and Social Affairs, *supra* note 4, at 5.

sharecropping arrangements.⁴² While these are eminently logical and sound criteria in the abstract, their empirical definition and actual application can create exceedingly complex problems and unforeseen effects, particularly if an attempt is made to adopt them on a nationwide, a priori basis. "Efficient" agricultural production, for instance, is a very relative concept given the wide variations found within the Latin American countries in soil and climatic conditions, proximity to markets, and socio-economic infrastructure. Moreover, the application of such an index could lead to an undue increase of mechanization in areas where there already is excessive unemployment and underemployment. This could result in increased rural to urban migration, already a serious problem in Latin America. Finally, establishing these clear criteria would necessarily require a very complete and sophisticated documentation of economic and social conditions in the rural areas. Such data is not at present generally available, and its attainment would be a very expensive and lengthy procedure.

A third problem that faces most land reform programs is the determination of the compensation to be paid for the lands purchased or expropriated for the purpose of redistribution.⁴³ This is an issue that is intimately related to the financial and economic conditions of the Latin American countries. For even apart from the cost of the lands themselves, land reform usually is a very expensive process. Unless it is limited to a mere redistribution of land, it will include the complementary measures and investments necessary for making possible the social and economic development of the *campesinos*. Roads and irrigation projects will have to be constructed to increase production and facilitate its transport to the centers of consumption. Extension work and educational facilities will have to be provided. Erosion control and soil improvement techniques may have to be applied. And agricultural credit will have to be made available on easy terms to provide working capital for the *campesinos*. These and other investments will be necessary because of the general absence in Latin America of an adequate economic and social infrastructure in the rural areas.⁴⁴

Given the inadequate financial resources of most Latin American countries, it is likely that many of these measures will not be applied to the fullest extent desirable even if no compensation were paid for the lands acquired for redistribution. And it follows that the larger the proportion of limited resources reserved for compensation, the smaller the share available for these necessary investments.

⁴² See, e.g., articles 5-41 of the Bolivian agrarian reform law [Decreto Leg. No. 03464 (August 3, 1953)], cited in W. DEL CASTILLO, COMPILACION LEGAL DE LA REFORMA AGRARIA EN BOLIVIA 49-59 (1955).

⁴³ Department of Economic and Social Affairs, *supra* note 4, at 5.

⁴⁴ See President Eduardo Frei's statement before the Chilean Congress, *supra* note 33.

The compensation problem is also directly related to the market values of property in Latin America. There, such considerations as social prestige, speculation, and inflation are often more determinant in inducing investments in property than is the return on capital. As a result, property usually has a market value far in excess of its true economic worth or production potential.⁴⁵ At the same time, because of the inefficient land cadastre systems, property values for purposes of real estate taxes are usually assessed by the owners themselves and are consequently far below the true market value.⁴⁶ Aside from economic considerations, then, compensation at market value would result in an inequitable distribution to landowners who have from time immemorial not paid their equitable share of property taxes. And as regards the goals of land reform, "it is readily seen that . . . compensation and increased economic equality are, to a significant degree, inconsistent."⁴⁷

As a consequence, confiscation without compensation is common in those land reforms, such as in Mexico and Bolivia, that were part and parcel of a political revolution where the destruction of the power of the landed classes was a primary goal.

Even in less revolutionary reforms, if the intention is radically to distribute wealth, too high a level of compensation will defeat that objective. At the same time, too low a level may outrage the sense of justice current in the society, intensify opposition and weaken the moral vigour of the supporters of the reform. In any case, the amount must be calculated by criteria which are simple to apply objectively.⁴⁸

Because of these considerations, recent land reform laws have opted for expropriation schemes under which the basis for the compensation payments is less than the commercial value of the property—the usual index is the self-assessed tax valuation—and the compensation is not paid in cash but at least partially in long-term bonds or installments.⁴⁹

Another major problem area that may substantially affect the implementation of a land reform program is institutional in nature and particularly relevant to lawyers involved in the process of development. This problem consists of the enforcement and review

⁴⁵ *Id.*

⁴⁶ J. Strasma, *Financial Aspects of Agrarian Reform and Agricultural Development in Latin America*, Jan. 1966, at 11 (Land Tenure Center, Madison, Wis.).

⁴⁷ Karst, *Latin-American Land Reform: The Uses of Confiscation*, 63 *MICH. L. REV.* 327, 360 (1964).

⁴⁸ Department of Economic and Social Affairs, *supra* note 4, at 5.

⁴⁹ *E.g.*, article 62 of Law 135 of 1961, *The Social Agrarian Reform Law of Colombia*, cited in *MINISTERIA DE AGRICULTURA, LA NUEVA LEGISLACION AGRARIA 63-65* (1962).

of the land distribution process.⁵⁰ For it is generally agreed that the primary functions of a land reform program—such as planning, selection of lands and beneficiaries, and technical help—should be entrusted to a single and semi-autonomous specialized agency. Experience indicates that delegating these functions to already existing bureaucratic institutions, such as the Ministry of Agriculture, or dispersing these functions among various agencies leads to conflicts, uncoordinated activity, and inefficiency.⁵¹

The problem is to devise mechanisms and procedures that will effectively, equitably, and rapidly enforce the redistribution of land and determine the substantive legal rights of all the parties affected by the land reform measures. While the land reform agency must have an inherent role in this process, questions arise as to the participation of the regular court system in it.

Traditionally, the civil courts have had jurisdiction over questions and conflicts affecting property rights. The property law principles themselves are derived from the Civil Codes, which by and large reflect 19th century liberal ideas of the supremacy of the individual and the free exercise of private property rights. In recent times, however, a growing focus on "functional" principles of law has resulted in constitutional amendments and special legislation that restrict individual rights vis-à-vis those of the community.⁵² Examples are laws regulating rural leasing arrangements, transfer of property, and, in recent years, land reform laws. Consequently, these new principles and laws are often in direct conflict with certain dispositions of the Civil Code. While land reform and similar laws, because of their "special" character and subsequent enactment, would prevail over the prior Civil Code provisions, the influence and prestige of the Civil Code cannot be overlooked.⁵³ Because of the nature of legal tradition and education in Latin America, where great emphasis is still placed on the general principles of law contained in the Civil Codes, judges are sometimes prone to interpret social reform laws in accordance with their own longheld views on what law is really about. Even more important than legal principles or theory, however, is the manner in which law enforcement institutions, including the courts, operate in rural areas or the smaller cities. Not uncommonly, judges, mayors, and police chiefs are subject to the influence of large landowners and others with local vested interests. The reasons are simple: judges, police chiefs, and other local officials in Latin America are notoriously underpaid and provided with inadequate working facilities; judges in smaller cities are usually iso-

⁵⁰ Department of Economic and Social Affairs, *supra* note 4, at 4.

⁵¹ See President Eduardo Frei's statement before the Chilean Congress, *supra* note 33.

⁵² Lopez, *Problemas Legales y Juridicos de la Reforma Agraria*, in *LAS REFORMAS AGRARIAS EN LA AMERICA LATINA*, 250-58 (O. Delgado ed. 1965).

⁵³ *Id.* at 251.

lated from each other for months or years at a time—there are no annual conferences or conventions; and finally, their tenure may well depend on maintaining their local political contacts and friendships. Not surprisingly, then, while adequate social and economic legislation (such as labor and water laws) is not difficult to find in Latin America, in many cases it is ignored, inefficiently enforced, or implemented in a manner that unduly favors a given element of society. But in any case, civil litigation is a long, drawn out, and expensive process that few *campesinos* can afford.⁵⁴

In an effort to avoid these problems, as well as to create specialized or more sympathetic quasi-judicial institutions, many countries have limited the role of the regular courts in the rural areas or eliminated them altogether from the land reform process. Special agrarian courts have been established, or the whole land reform process has been entrusted to an administrative agency, or the courts have been restricted to reviewing narrow and specifically defined questions of law. Yet, as in the case of Bolivia, many of the same problems still persist: partiality is not hard to find, and land reform cases are often as long and complicated, if not more so, than other civil litigation.

A major factor responsible for the length of land redistribution cases is the procedure adopted by many land reform laws for purposes of expropriation and title distribution. Perhaps because of political realities that forced concessions or compromises or because of the *civilista* (overly legalistic) backgrounds of the lawyers who drafted these procedural laws, they are often extremely complicated, are full of legal formalities and loopholes, and have various stages of review that may reach to the president of the nation. In Colombia, for instance, at least 12 steps are required for a full expropriation including approval by the President of the Republic and judicial review by both administrative and civil courts. Not until the initiation of the last stage does the land reform agency enter into possession of the land—usually not less than two years after the initiation of the proceedings.⁵⁵ Only then can the agency initiate the complex and also lengthy process of actually redistributing the land in question.

In short, the progressive principles and goals expressed by the preamble or initial articles of a land reform law are often frustrated by the institutions and procedures established by the same

⁵⁴ See Thome, *The Role of Law in the Agrarian Sector: Summary of Colombian Research Activity of the Land Tenure Center*, in UNIVERSITY OF WISCONSIN LAND TENURE CENTER, ANNUAL REPORT 1966, at 19 (1967). My conclusion is also based on personal observations in Colombia and Bolivia. It should be stressed that many, if not most, judges are personally honest and conscientious.

⁵⁵ Thome, *The Colombian Agrarian Reform: Legal Limitations on the Process of Expropriation*, forthcoming in INTER-AM. L. REV.

law. At the risk of overgeneralization, this is somewhat indicative of Latin American legal systems as a whole. On an abstract level, the substantive law is usually quite acceptable. But not much concern or awareness seems to be shown for the manner in which the law is going to function or be enforced.

III. CONCLUSIONS

The process of land reform is not an easy one; it resembles a difficult obstacle course. Not only must it initially clear the barrier of political opposition by the landed interests and their allies, but it must also try to reach adequate solutions to various technical, administrative, and legal problems that can vitally affect its scope and extent.

The process of title distribution, for instance, often takes too long to complete. This causes serious economic and social problems. Thus, in Bolivia, the feudal-like land tenure system existing prior to the land reform law of 1953 has been demolished, and most *campesinos* are in possession of some land. Yet, over 100,000 *campesino* families have not yet received titles to their holdings; many have been waiting for as long as 10 years.⁵⁰

New and imaginative solutions or approaches to the land reform process, then, are still required, even in those countries where vigorous land reform programs have been initiated. There is still a need for devising institutions and procedures that will effectively and rapidly carry out the land redistribution through to its completion, with clear and secure titles distributed to those eligible to receive lands.

This process would seem to particularly fall within the province of lawyers. The legal system is, after all, an inherent part of any economic and social reform. It is the instrument through which the goals are adopted (legislation and decrees), implemented (administrative agencies), and reviewed (courts). But if the legal system and its institutions are to play an effective role in the process of reform, then the lawyers who shape its form and substance must become painfully aware of the actual social and economic conditions they would change. Only then will they realize that traditional legal methods may actually frustrate the process of reform, and that the legal process, at least in this area, may have to take strange and unfamiliar but yet effective and equitable forms.

⁵⁰ Estimates derived from the Bolivian rural census of 1950 and from information provided by the Consejo Nacional de Reforma Agraria, La Paz, Bolivia, as part of a study the author made of Bolivian agrarian reform.