

## Lessons Spurned: Legal Education in the Age of Democracy Promotion

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### A. Introduction

According to the second inaugural address of President George W. Bush, the United States has embarked upon a renewed effort to promote democracy and the rule of law around the globe. Establishing the rule of law in the world's trouble spots is viewed as essential to combating a whole host of global problems, including terrorism, corruption, poverty, and conflict. It is also seen as being fundamental to building democracies and successful free market economies in transitional countries.<sup>1</sup> For the United States, the belief that democratic reforms will erode support for Islamic fundamentalism means that the primary target for this renewed effort is the Muslim world.<sup>2</sup>

This, of course, is not America's first attempt at promoting the rule of law abroad. The law and development initiative of the 1960s and 1970s sought to bring legal reform to Latin America and other "Third World" regions. Since the dismantling of the Berlin Wall in 1989, U.S. government support for the rule of law has formed an important part of its efforts to build democracies in Eastern Europe and the former Soviet Union, an effort which continues today.

A review of these prior (and ongoing) efforts at promoting the rule of law shows that the United States has been inconsistent in integrating legal education reform into its overall legal reform initiatives. Legal education was at the core of the earlier law and development initiative, but has constituted at most a tangential part of ongoing legal reform projects in Eastern Europe and the former Soviet Union.

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This article argues that the failure of reformers and donors to emphasize legal education reform in their programs constitutes a major mistake, critically undermining the effort to establish the rule of law in the developing world. The inability or unwillingness of donor organizations in the United States to tackle legal education in a meaningful way also tells us something about America's overall approach to promoting the rule of law: that we are often myopic, looking only for short-term results in an area where long-term vision and commitment is necessary, and where change is likely to be generational. As America tackles legal reform in the even more complex and daunting context of the Muslim world, this is an error that it cannot risk repeating.

## **B. Legal Education Reform is Fundamental to Promoting the Rule of Law**

Improving the quality of legal education in emerging democracies is fundamental to promoting the rule of law. The reasons why donors and reformers must address legal education are myriad – and yet simple.

First and most fundamentally, law schools provide the human capital that feeds into the courts, bars, prosecutorial bodies, ministries and other agencies that administer the law.<sup>3</sup> Although most donor assistance programs emphasize the institutional reform of the judiciary or the bar, which is of course necessary, they tend to gloss over the fact that institutions consist of the people who work within them. Moreover, successful and sustainable institutional reform is dependent upon the hiring of leaders and employees who are aware of, comfortable with, and willing to promote new approaches and ideas. If, in other words, the external shell of an institution is reformed but the personnel within it are not, the structural reforms have little chance of success. Although almost all reform programs include significant training components, the training typically targets current rather than future employees. In the judicial context, the donor community has helped to create judicial training centers in almost all of the former Soviet bloc countries. By the time judges obtain training at such centers, however, they are already graduates of the local law schools and may already have been sitting on the bench for an extended period. As one commentator has stated, “the preference for investing in judicial training over legal education is a bad choice. Many of the judges who take part in training activities are mid-career and often have had a woefully inadequate formal legal education . . . A more strategic intervention would address legal education first. Legal education, quite simply, is the foundation of development in the formal justice system as well as in ancillary institutions.”<sup>4</sup> The bottom line is that the education that judges receive at the judicial training centers, while no doubt useful, may come too late to change fundamentally the way they think and act.<sup>5</sup>

Habits and customs, both for good and ill, are introduced to future lawyers while they are still in school. The interest in becoming a strong advocate for justice should be sparked at an early age. Contrariwise, if law students rely on corrupt practices to enter or graduate from law schools, there is no reason to expect them to change previously successful habits when they become lawyers or judges. The importance of legal education is magnified by

the fact that in most civil law countries, including throughout the former Soviet Union and much of the Muslim world, a law degree is obtained at the undergraduate level. In some countries, graduates may start to represent clients or be appointed to the bench directly out of law school, with few if any additional licensing requirements.

Legal education reform is necessary from another perspective: law professors should play a leading role as critics of the system, and promoters of reform.<sup>6</sup> Academics, for example, played an important part in promoting successful judicial reforms in Chile.<sup>7</sup>

Law professors wield particularly great influence in civil law countries, where they are frequently the drafters and key interpreters of legislation.

Despite the importance of legal education to the overall development of the rule of law and democracy, neither the donors nor the countries themselves have placed a significant effort on reforming or improving the status quo. A review of current conditions in the former Soviet Union and the former communist states in Central and Eastern Europe (CEE) demonstrates a continued need for strong intervention in this area, and reflects problems in legal education that are all too common in other regions of the developing world.

### **C. Corruption and Incompetence: Legal Education in the Former Soviet Union and CEE**

The system of legal education in the former Soviet Union and much of CEE is riddled with deficiencies, ranging from how schools are accredited to how classes are taught to how examinations are administered. As a result, many students graduating from law schools in the region are ill-prepared to become the fair-minded and capable judges, lawyers, and prosecutors these countries need if democracy and the rule of law are to take root in them.<sup>8</sup>

#### *Insufficient and Corrupt Licensing and Accreditation Processes*

The collapse of the Soviet regime heralded a fundamental shift in the educational system in Russia and the other former constituent states. Previously, engineering, medical, and other more scientific degrees were the most highly sought after, but with freedom came a greater interest in law, which many saw as a means towards attaining a higher income. The end of the Soviet era also saw a loosening of the licensing regimen in the education field. Private schools sprung up, and many former State institutions that previously did not teach law suddenly created law faculties.<sup>9</sup>

While indeed more democratic countries working towards free market economies needed more lawyers, they did not need as many as the schools were churning out.<sup>10</sup> Moreover, there was no check on the quality of the education that these students were receiving, and many graduates were able to start practicing at least some form of law without passing any licensing requirement. The problem is that there was little real accreditation process to ensure that the schools actually had the capacity to teach law, and that their students were obtaining a meaningful legal education.

In most countries of the former Soviet Union, accreditation is handled by the ministry of education.<sup>11</sup> On paper, the process for institutions of higher education to become licensed and then accredited can appear objective and rigorous (if somewhat vague), but in practice the requirements can be easily circumvented by paying a bribe.<sup>12</sup> Given the amount of money that the “rector” or manager can make from running a law school, the bribe is well worth paying.<sup>13</sup>

In contrast, in the United States, where the American Bar Association (ABA) is the accrediting institution, law schools are required to attain 53 well defined standards, covering issues such as organization and structure of the school, the curriculum, the size and qualifications of the faculty, admissions, and library and other facilities.<sup>14</sup> Each applying law school must submit a self-study to the ABA that addresses each of the standards. The ABA then assigns a team of outsiders, usually consisting of a dean and professors from other institutions, as well as a practitioner, to conduct a site visit of the applying law school, and to prepare a report recommending whether accreditation should be granted.<sup>15</sup>

#### *Corruption in Admissions and Grading*

Corruption is reported to constitute a significant problem in the admissions and testing processes at the law faculties in the region.<sup>16</sup> Unlike in the United States and some other Western countries, there is no standardized admission examination, but rather each law school administers its own admissions test. This is frequently an oral examination. It is reported throughout the region that corruption and nepotism play a large part in the admissions process. The oral examinations are particularly susceptible to manipulation, either through subjective grading or through the selection of easier questions for “favored” applicants.<sup>17</sup>

Corruption is also reported as a problem in course grading, the examinations for which are likewise generally oral. As others have noted, “oral examinations teach broader lessons to law students that are destructive of the rule of law. An 18 to 23 year old student is still impressionable enough to get the message that the world works just like their law school – that advancement of one’s own or a client’s interests depends not on merit, but on appearance, connections, and bribes.”<sup>18</sup>

#### *Little Practical Training and other Curricular Deficiencies*

Perhaps the most pervasive criticism of legal education in the region relates to the teaching methodology. This consists typically of the professor standing in front of the room lecturing to students, who are then tested on their ability to remember what was in the lecture (or what they have memorized from the notes taken by the few students who actually attend all the lectures). One critic has referred to this as “the method by which the teacher’s notes become the students’ notes without passing through the minds of either.”<sup>19</sup> Although many courses also include seminars at which the lecture material is supposed to be reviewed in a more analytic and interactive fashion, it is reported that many of these seminars are taught by graduate students, that little real discussion of issues takes place, and that overall they are

not taken seriously.<sup>20</sup>

A related issue, of course, is that as a result of this methodology, students do not acquire sufficient practical skills. The passive nature of legal training means that students are taught neither to analyze and “problem solve” nor to act as advocates on behalf of clients or causes. Only a relatively few schools offer courses on “lawyering” skills, such as trial advocacy, interviewing, drafting, etc.<sup>21</sup> Some schools, with international donor assistance and as described below, have introduced clinical legal education into the curricula. The impact of these clinical legal education programs is important but limited, due largely to the fact that clinical education generally has not been subsumed into the overall and ministry-sanctioned curricula. Indeed, the curricula in most former Soviet countries continue to place too great an emphasis on legal theory and history. Clinical legal education in the region is also limited by the fact that legal education is an undergraduate degree, and so the curriculum must cover much more basic education than in American law schools, for example. In addition, students are younger than in the United States and are therefore not as prepared to represent clients. Moreover, many of the organized bars oppose the introduction of “live client” clinics, fearing as a result an erosion of their client base. Some professors in the region argue that students receive their practical training through externships (“practicums”), although most students advise that these brief periods of assignment to government offices (such as with the prosecutors) are devoid of any educational value, and that they frequently consist of the supervisor simply signing the requisite form and sending the student on his or her way.<sup>22</sup>

Other important topics also receive minimal coverage in the curricula. Thus, although many countries profess to be engaged in anti-corruption crusades, few if any mandate or even offer courses on legal ethics, although some teachers claim to cover ethical issues in the substantive courses. In any event, ethics does not receive the emphasis it should, considering the low opinion that the public generally holds of lawyers and judges in the region.

In addition, even 15 years after the fall of communism, few courses are offered in the former Soviet Union and CEE on important commercial law topics, such as bankruptcy or competition, or on international and comparative law topics. A better effort also needs to be made to ensure that human rights issues are covered in the law schools, in particular concerning the European Convention on Human Rights, to which almost all of the former Soviet countries have acceded.

The challenge with curricular reform, again, is that changing the curricula generally requires the participation and approval of the ministries of education, which have not shown themselves to be proponents of reform. On the other hand, they have also not been subjected to very much donor pressure and lobbying either. In any event, ensuring suitable coverage of the above topics, as well changing the way the law is taught, would require changes to the core curricula as approved by the ministries of education, an undertaking that has not been tackled by either the countries or the donors.

*Not Enough Professors and Modern Teaching Materials*

One of the reasons for the lack of adequate coverage of emerging and practical topics is the paucity of qualified professors. Because of the low level of salaries in the law schools, many qualified professionals elect to go into private practice, or must teach at several institutions. In the latter case, this means that professors do not have time to develop teaching materials or act as social critics, as law professors frequently do in developed democracies. The lack of funding to create innovative teaching materials (and to publish them) contributes to the reliance of teachers and students on the lecture method described above.

*Shortcomings in Infrastructure*

Finally, many law faculties work with insufficient infrastructures. They lack the library resources to enable professors and students to engage in scholarship, the computer equipment needed to facilitate research and international communications and to prepare teaching materials, and the moot courtrooms and accompanying equipment necessary for offering improved advocacy training. Some schools, either on their own or with donor support, have constructed computer labs and moot courts, but these schools are in the minority.<sup>23</sup>

**D. Donor Efforts at Legal Education Reform Have Been Minimal**

Despite the vital importance of legal education to the development of democracy and the rule of law and the sad state of affairs in the former Soviet Union in particular, donors have not sought to tackle legal education reform in Eastern Europe and the former Soviet Union in any systematic way. A database search on “legal education reform” in USAID’s Development Experience Clearinghouse (DEXS) found only four entries – all papers from the 1970s. Similar searches on the European Union’s websites for its TACIS and Phare programs turned up no results.<sup>24</sup> A recent publication by the World Bank on judicial reform barely mentions legal education.<sup>25</sup> Few USAID programs in Eastern Europe or the former Soviet Union currently include legal education as a primary focus, the exception being in Central Asia, where in four countries (Kazakhstan, Kyrgyzstan, Tajikistan, and Turkmenistan) USAID funds a Legal Education Reform Project implemented by ABA/CEELI. In these countries, CEELI and USAID are introducing new courses on human rights and legal writing and reasoning, and law students are being trained in practical skills through moot courts, mock trials and legal clinics. Throughout Eastern Europe and the former Soviet Union, ABA/CEELI programs (funded by USAID) include clinical legal education components, but these are not typically the centerpiece of reform efforts.<sup>26</sup> The World Bank included legal education reform as one of the primary components of its loan to Russia, but that project is likely ending, and it is unclear what will happen to the legal education reform piece.<sup>27</sup> It is impossible, moreover, to determine how much funding these organizations have allocated to legal education reform because their reports do not provide a break out in this area.

Despite this lack of concerted a concerted effort in the area, it should be emphasized that the work that has been done has shown some promise, resulting in important changes

in the way law is taught in at least some law schools.

### *Clinical Legal Education*

Perhaps the most wide-spread reform in Eastern Europe and the former Soviet Union has been the introduction of clinical legal education.

Clinical legal education has its roots in the United States where it was introduced in an effort to overcome the frequent criticism that American legal education was too theoretical and that graduates from American law schools were ill-prepared for the actual practice of law.<sup>28</sup> Today, almost every law school in America offers clinical programs. These can take a variety of forms, ranging from externships with cooperating governmental and non-governmental organizations to classroom simulations to live client representation. Although clinical legal education is primarily a pedagogical tool, it also brings the benefit of providing legal representation to needy members of the community in which the law school is located.

USAID (through ABA/CEELI), the Open Society Institute, and the Ford Foundation have worked hard to introduce clinical legal education to law schools in Russia, as well as in other countries in the region. The response to these initiatives has been very positive indeed, in particular among the law students, who hunger for new and more practical pedagogical experiences. Nevertheless, one or two cautionary notes about clinical legal education in the context of international development are in order.

First, it is more difficult to provide law students in civil law countries a meaningful clinical experience because, as law is generally an undergraduate pursuit, they are younger than their American counterparts and so have less training and experience to bring to clients and courts. The relative youth of law students in the region also means that they require closer supervision, but there is a deficit of sufficiently trained and qualified indigenous law professors capable of providing the requisite supervision.

Second, live-client clinics require very close supervision over the students by experienced professor-practitioners, with a very low student-professor ratio. It is accordingly a very labor intensive and expensive undertaking, meaning that it can be difficult to sustain in developing countries with scarce resources.

As noted above, although law students in the region (and some professors as well) have embraced clinical legal education, the education establishment has not. For the most part, clinical legal education exists at the outskirts of legal training: it has not generally been included by the ministries of education into the official curricula, and the schools, ministries, and bars, in many instances, seem to merely endure its presence rather than embrace its benefits, placing the sustainability of clinical initiatives in the region in doubt. If clinical education is to succeed in emerging democracies, it will need to be tailored to the specific context of the country in which it is being introduced.<sup>29</sup>

*Linkages and Partnerships*

The other most common form of donor support for law schools has been to promote linkages between law schools in the region and law schools in the West. These typically consist of law faculty exchanges, and the provision of limited equipment.

One of the earliest examples of a linking program was the Sister Law School Initiative of ABA/CEELI, funded by the now defunct United States Information Agency (USIA). Under that program, several law schools in Eastern and Central Europe were matched with law schools in the United States, leading to exchanges of professors for relatively short periods (less than a semester). Unfortunately, for the most part these linkages withered away when the funding dried up.<sup>30</sup> The European Union has likewise fostered “twinning” projects between law schools. Some East European law faculties also offer West European law degrees. At the Law Faculty in Bucharest, for example, students can participate in a French-speaking program (including a period of study in France) which results in obtaining a French law degree.

*Other Initiatives*

Donor organizations have also implemented a variety of other programs in coordination with law schools and students. These include the following:

- Street Law programs, under which local law students visit high schools to talk about the legal system. These programs have two immediate benefits: they provide law students with an opportunity to actively participate in talking about the legal system, and the high school students they are working with enjoy an enhanced civic education;<sup>31</sup>
- The creation of associations of law schools, analogous to the American Association of Law Schools (AALS). These were promoted in Ukraine and Russia, but little impact resulted;
- Associations of law students have been created in a number of countries, but the impact of these associations remains unclear, although they have helped law students participate in a number of international moot court competitions. These moot court competitions, in particular the Jessup International Moot Court Competition administered by the International Law Students Association (ILSA), provide valuable training and experience to law students from emerging democracies, in particular through their exposure to fellow advocates from around the world, with schools from the former Soviet bloc doing remarkably well in recent years;<sup>32</sup>
- Under various government-supported educational fellowships, such as the Fulbright and Muskie programs, limited numbers of law professors teach for a year or two overseas, or foreign law students are brought to the United States to obtain graduate law degrees. These programs have a tremendous salutary effect on the individual participants, but again do not address the systemic problems with the way the law is taught and learned in the partner countries.

Other than the foregoing, donors have not made significant inroads in legal education reform. Moreover, these efforts have rarely addressed the core problems of accreditation, corruption and antiquated curricula and teaching methodology. As admirable as the above efforts are, they have had an impact on only a relatively small number of professors and students, rather than on the system as a whole.

### *The Globalization Movement*

Although not a donor supported initiative, it is worth noting that legal education has not been left behind from the broader globalization movement.<sup>33</sup> Most American law schools now offer LLM programs to foreign law students (frequently in international or tax law) and many American law schools also provide opportunities for American students to study overseas, albeit typically in more developed countries. Some schools, such as New York University, have created “Global Law Schools,” which support larger international student and faculty bodies, and hold frequent colloquia on international law issues. As already noted, some schools in developing countries are affiliated with and offer law degrees from West European universities.

Oddly, despite this trend, few international development programs take advantage of the globalization of law schools. Although a number of American law schools provide some support to USAID-funded projects, few take the lead on the implementation of such projects.<sup>34</sup> There is little effort to take advantage, in the development context, of the growing international presence – among both professors and students – at law schools in the United States. There are some exceptions, of course, such as the Public Interest Law Initiative (PILI) at Columbia. Several law schools, including NYU and Fordham, also house clinics on international human rights. But the role of legal education in international development has not yet found a place in academia.<sup>35</sup>

### **E. Why Donors Have Not Done More**

While the interventions that have been described above are certainly commendable and useful, in particular for those individuals who have participated in them directly, they nevertheless have tended to nibble around the edges of legal education, leaving unaddressed the central problems of how schools are accredited, corruption in admissions and grading, and a stagnant mandatory curriculum. The question then is why have donor programs not sought to address legal education reform in a more meaningful fashion? Three cross-cutting phenomena are to blame.

One reason is that legal education is essentially beyond the usual rule of law reform paradigm, which takes a top-down, government-focused, institution-building approach.<sup>36</sup> This means that most current reform programs seek to change how institutions, such as courts, prosecutors, and bar organizations, function, or they seek to change the legislative framework under which the system operates. Although most such projects include strong training components (including creating judicial training centers and continuing legal edu-

cation projects), they tend to ignore the earlier molding of the human capital that will need to work within the reformed institutions.

A second reason for the failure to tackle legal education is a concern that there will be no immediate impact. As one leading commentator has put it, US donors have not emphasized legal education, “believing it to be too indirect a way to effect change.”<sup>37</sup> Although one of the most frequently stated “lessons learned” amongst donors is that legal reform is a long term process,<sup>38</sup> it remains a lesson that donors continue to fail to take into account in their planning and programming. Placing a greater emphasis on legal education reform would be one important step towards actually changing programmatic emphasis as a result of a “lesson learned.” Finally, although USAID frequently requires short term impact, it (and other donors) inevitably remains in countries longer than initially planned. Reform in the former Soviet Union was expected to be a relatively short process, but more than a decade later USAID is still at work trying to promote democracy and the rule of law there. A stronger focus on legal education would likely have resulted in a greater multiplier effect with better impact than the many hundreds (or thousands) of training programs that have been conducted for judges and lawyers throughout the region during this period.

It must be recognized, on the other hand, that addressing the core problems of legal education described above means taking on the entrenched political interests at the law schools and ministries of education. The level of resistance from rectors and deans to the introduction of new approaches and methodologies has been high.<sup>39</sup> The few attempts to address legal education reform in the region in a more holistic fashion, moreover, have not resulted in great successes.<sup>40</sup> But some law schools, such as St. Petersburg State, have shown an interest in reform, and some World Bank projects have had at least some success in this area.<sup>41</sup> In addition, although the problems and challenges have been different, some successes have been reported in other regions.<sup>42</sup>

A third reason for the lack of emphasis on legal education reform is a misunderstanding of the problems associated with the law and development movement, which, because it did include a focus on legal education, has tainted other efforts at legal education reform.

The law and development movement of the 1960s and 1970s sought, with funding from USAID, the Ford Foundation, and other donors, to use the law as means to promote development in the “Third World.” American law professors traveled to Africa, Asia, and Latin America to support efforts to use legal processes to provoke societal change, as had occurred in the United States (through decisions such as *Brown v. The Board of Education*). The movement placed an emphasis on “the reform of legal education, which some of the [Ford] Foundation’s advisors saw as the key to long-term change within the entire legal system.”<sup>43</sup> Efforts at changing the legal education system focused on introducing the “case method” of instruction to the law schools and providing fellowships for professors and students to study at American law schools.<sup>44</sup> The Ford Foundation ultimately concluded that the law and development strategy was not successful, and “several American law professors,

as well as former administrators of the program, criticized the law and development movement for its reliance on a liberal American model alien to the local legal culture.”<sup>45</sup> A World Bank review summarizes the views of the programs’ critics, who

“contend that the movement lacked any theory of the impact of law on development, and practitioners thus had no way to prioritize reforms or predict the effects of various measures. A second failing, they argue, was too little participation by the lawyers and others in the target country who would either have to carry out the reforms or who would be affected by them. Foreign legal consultants, through a combination of expertise and access to funding, were often able to dictate the content and pace of reform. A third problem was that the movement focused on the formal legal system to the exclusion of customary law and the other informal ways in which many in developing nations order their lives.”<sup>46</sup>

The most fundamental criticism, however, is that the premise of the law and development movement – that judges and lawyers could drive reform agendas in developing countries – was essentially wrong, and sought to replicate the model of American judicial activism in countries with differing legal traditions: “In the United States, judges play a significant role in policymaking, and as a result, lawyers are often able to engineer significant changes in policy through litigation. This is not true in civil law systems or indeed even in the United Kingdom and other nations that share the same common law background as the United States.”<sup>47</sup>

These criticisms are no doubt well-founded: the law and development movement was clearly over-ambitious and based on faulty assumptions. Nevertheless, by focusing on the systems of legal education, the law and development movement was on to something. As argued above, legal education reform is critical to the promotion of democracy and the rule of law, a point that the Ford Foundation and others in the law and development movement generally understood at the time.<sup>48</sup> Justifying a lack of emphasis on legal education in current legal reform programs on the failure of the laws and development program is to misunderstand the goals and faults of the earlier era’s efforts.<sup>49</sup>

One commentator has summed up the situation as follows: “Although donors are fond of training programs, they are reluctant to allocate resources to legal education. There seem to be two primary reasons for that reluctance. The first is a simplistic understanding of the controversy over the [law and development] programs . . . ; the second is concern that legal education demands the sustained support of both donor and government, support that can be difficult to marshal.”<sup>50</sup>

What all of this tells us about U.S. donor efforts more broadly is neither surprising nor reassuring. It would indicate that in our planning and implementation of legal reform programs:

- 1) We are insufficiently reflective, unwilling to take the time to understand whether prior efforts at legal reform were successful, and if not, why not; and
- 2) We are insufficiently prospective, incapable of taking a long view into the future, or

to have the patience to implement projects that will be unlikely to show an impact in the near term.<sup>51</sup>

Others have called for a longer term view towards legal reform, as well as a greater emphasis on legal education, and in at least some regions (those where funding is plentiful) that call is being heeded.<sup>52</sup> But much more can and should be done, both in the former Soviet Union and for the next wave of legal reform projects, now starting to be implemented in the Muslim world.

## **E. Recommendations**

We present two preliminary recommendations, and one core recommendation.

The first preliminary recommendation is that donors should continue to support the work on legal education reform that is currently being implemented. Although the programs described above do not necessarily tackle the hard issues of accreditation, corruption, and curriculum reform, they do (and in particular the clinical legal education programs) offer some practical training to students and may also cause law students to act in a more proactive manner – as true advocates – after they graduate. They also provide a “foot in the door” that eventually may lead to further innovations and reforms.

The second is that, in particular as the Arab and Muslim worlds attract more of the available rule of law funding, donors conduct thorough assessments so that they acquire an in-depth understanding of how legal education serves or fails to serve the citizens of the countries they are working in. In other words, we need to understand better what problems in the system or the personnel can be addressed at the level of legal education. We also need to be careful not to “throw out the baby with the bathwater,” and to preserve those methods and traditions in the educational system that can be harnessed to support the ultimate goal of forming a democratic society governed by the rule of law.<sup>53</sup>

But our primary recommendation is to mainstream legal education reform into the overall process of promoting democracy and the rule of law. This will require donor countries to expend some political capital, as much of what needs to be done to counter corruption and change the education system in countries in development will require a political partnership. Donors must emphasize to their counterparts in developing democracies the need to tackle legal education, including working with the ministries of education and justice that have oversight over law faculties, to ensure that reforms are introduced and implemented with the backing and support of the host governments. While the efforts that have been made to introduce clinical legal education and promote linkages and exchanges are all to the good, more substantive change is necessary: to the accreditation process, the curricula, to admissions and grading policies, etc. Donors can provide technical assistance in many of these areas, but they will have little meaningful impact without the political backing and commitment of the host country governments. An incentive-based approach -- a promise of significant donor funding for legal education (including physical infrastructure

investments) conditioned on host country progress on reform -- could be something for donors to consider.<sup>54</sup>

We are mindful of the significant challenges that will have to be overcome in mounting a major new effort to reform legal education. University law faculties and government educational bureaucracies in the developing world are notoriously conservative institutions (as they are in the West, for that matter), and political support for reform may be difficult to muster. Commenting nearly 30 years ago about the poor state of legal education in his country, a prominent Brazilian law faculty dean reflected on the powerful incentives that reinforced the status quo: "The traditional model is perpetuated because it is consistent with the interests and immediate possibilities of the actors. Student, professor, law school, state, and market all want something from teaching . . . Traditional teaching is precisely that which permits the greatest number of interests to be realized for the least cost. . . ."<sup>55</sup> Sadly, this state of affairs remains true in much of the world. For legal education reform to succeed, it must address the incentives and roadblocks that inhibit change.

Specific technical assistance initiatives, as noted above, must be contingent on country specific assessments, but it is likely that donors can support the following steps:

1) *Help introduce accreditation standards.* Many developing countries would benefit from new laws on higher education that establish more stringent accreditation standards for law faculties. These standards would set benchmarks relating to such issues as the breadth and depth of the curriculum, the number and quality of full-time faculty, admissions standards and procedures, library and information resources, and the physical plant. The standards must take account of local economic realities, and while they must be rigorous enough to ensure serious education they must not be too inflexible so as to stifle innovation. Legislation establishing accreditation standards must specify the institutions that will implement them, and donors should support such institutions in that important endeavor. By only providing its seal of approval to law schools that meet the new standards, the state can create an important incentive for reform.

2) *Stimulate innovation and competition.* The flip side of the problem of proliferating, low-quality law schools is the challenge posed by calcified and well-entrenched university law faculties. When established universities are resistant to change, donors should seek out or stimulate the creation of alternatives. The best opportunities for reform and incubators of creative thinking may be found at newer provincial law schools outside the capital, and perhaps outside the traditional university system. The premier law school in India, the National Law School in Bangalore (NLS), was founded just 20 years ago by an act of provincial legislation as an independent law school managed largely by the organized bar. Its innovative five-year course of study, with its emphasis on interactive teaching, clinical legal education and problem-based examinations, subsequently inspired the creation of five other law schools with similar approaches.<sup>56</sup>

3) *Send leading law professors and other stakeholders abroad.* For reform to take root, it must have local champions. Given the novelty of many necessary legal education reforms, perhaps no donor activity is more important than providing opportunities for law professors in the developing world to visit and study law schools in the developed world. Here we must stress that one or two-week study visits, which have characterized a number of exchange programs in the past, are simply inadequate. Real engagement and understanding can only come from more prolonged stays, preferably of a semester or an academic year. The Indian law professor most responsible for the creation of the NLS and its progeny credited his year-long sabbatical at Columbia Law School with providing him the vision and inspiration for his reform of Indian legal education.<sup>57</sup> A Chinese professor who participated in the Ford Foundation's Chinese legal education exchange program credited his visit to the United States as the inspiration for his development of the Center for the Protection of the Rights of the Socially Vulnerable at Wuhan University.<sup>58</sup> Recognizing that reform will require supporters outside of academia, donors should also seek out reform-minded bar leaders and relevant government officials for possible exposure to law schools in the develop world.

4) *Help develop new curricula.* Working with motivated local law professors, donors can help create new courses on often inadequately covered topics such as commercial and human rights law. An emphasis should be placed on developing and preparing the teachers themselves as well as training materials, so that practical information is disseminated and skills developed.<sup>59</sup> For law schools that have demonstrated a commitment to reform, donors should also consider endowing specific professorial chairs to address gaps in the curriculum.<sup>60</sup>

5) *Ensure that law schools teach ethics.* The culture of corruption that imbues the legal profession in too many countries cannot be stamped out by education alone, but if there is any hope for improvement the problem must be addressed at the earliest point in a young lawyer's career. Legal ethics should be taught as a stand-alone course and integrated into other courses of substantive law.

6) *Leverage the globalization of legal education.* Donors should take advantage of the current trend towards legal globalization by facilitating the teaching of international standards, and encourage and support international law schools (such as NYU) to expand their presence and interest in developing democracies. Of particular note is the booming demand for American legal education among foreigners. From 1998 to 2003, the number of foreign lawyers enrolled in LL.M. programs in US law schools more than doubled.<sup>61</sup> To meet demand, avoid immigration restrictions, and fend off competition for foreign students from less expensive European and Australian law schools, some US law schools recently have created degree programs based primarily or entirely abroad.<sup>62</sup> Donors need to tune in to these rapidly evolving market dynamics and identify innovative partnerships to serve development ends.

Distance learning in legal education is another important globalization trend. Since the ABA relaxed its accreditation restrictions on law school distance learning in 2002, some US law schools have begun experimenting with distance education and are developing some important lessons about its potential and the challenges involved.<sup>63</sup> As a vehicle for reaching underserved law students in the developing world, asynchronous distance learning from Western law schools offers intriguing possibilities that have yet to be explored.

Of course, as donors seek to re-emphasize legal education they must be careful not to replicate the excesses of the law and development era. Donors must make clear that they are not trying to graft American law and traditions onto host country education systems, but rather that they are seeking to mold more capable lawyers and advocates who will better serve local needs – leading to stronger economies, better protection for human rights, and a government based not on the whims of autocrats but rather on the balanced application of the rule of law. First, however, donors and reformers must recognize that change begins with education – and then they must act, but with patience, foresight, and persistence.

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ENDNOTES:

<sup>1</sup> For various rationales provided for promoting the rule of law, see R. Belton, “Competing Definitions of the Rule of Law: Implications for Practitioners,” (The Carnegie Endowment for International Peace, Washington, DC, January 2005). In November 2005, the American Bar Association (ABA) convened an International Rule of Law Symposium in Washington, DC entitled “Advancing the Rule of Law to Solve Global Problems” which argued that promoting the rule of law is essential to combating global poverty, terrorism, and the spread of pandemics, as well as to promoting democracy and free market economies.

<sup>2</sup> Most current funding for democratization targets Iraq, Afghanistan, and the Middle East. “Funds Scarce for U.S. to Export Freedom,” *The Washington Post*, March 17, 2005, p. 1.

<sup>3</sup> In many instances, the law schools are responsible for training the very top leaders: Presidents Putin of Russia and Saakashvili of Georgia are law school graduates.

<sup>4</sup> E. Jensen, “The Rule of Law and Judicial Reform,” in *Beyond Common Knowledge: Empirical Approaches to the Rule of Law*, E. Jensen and T. Heller, eds. (Stanford University Press, Stanford, CA 2003), pp. 359 – 60.

<sup>5</sup> H. Fix-Fierro, “Judicial Reform in Mexico,” in Jensen and Heller, supra note 4 at 275-76 (“How much do the failings of legal education affect the performance of the judiciary? We do not know for sure, but we can safely assume that a weak education does not contribute to building a more open and responsive judiciary. Although the system can use internal training to replace the outdated legal models students absorb during their stay in law school, that is at best a stopgap measure. Consequently, there are strong reasons to believe that judicial reform—and, more generally, the modern rule of law—has much to gain from reform of legal education.”)

<sup>6</sup> “[A] public policy of good quality depends on the existence of a professional academic community able to evaluate the judicial system and push for its improvement . . . . The professionals tend to act as rent seekers, and they tend to put their own interests first . . . . For that reason, the participation in reform processes of a professional and independent academic community – with interests other than those of the legal profession – constitutes an indispensable condition for the success of reforms.” C. Gonzalez, “Economic and Political Aspects of Judicial Reform,” in Jensen and Helle, supra note 4 at 229; see also Del Duca, “Symposium on Emerging Worldwide Strategies in Internationalizing Legal

Education,” 18 Dick. J. Intern’l L. 411, at 421 (Spring 2000) (“the primary task of international legal educators is not only to prepare students to practice internationally but also to prepare them to be involved in modernizing and improving their legal systems”).

<sup>7</sup> “Professional academics . . . offer the most objective criticism of the system of justice. They are more independent, which means they can question the status quo – a critical function of academics – without being compromised by loyalty to judges and the courts. This kind of academic community, virtually non-existent in the region outside of Chile, no doubt contributed to the success of the reforms in Chile.” C. Gonzalez, “Economic and Political Aspects of Judicial Reform,” in Jensen and Heller, *supra* note 4 at 229.

<sup>8</sup> These conclusions are supported by research conducted by the American Bar Association’s Central and East European Law Initiative (ABA/CEELI). According to the ABA’s Judicial Reform Index (JRI), only three out of 16 countries surveyed found that judges were well trained and prepared to handle their responsibilities. Six countries arrived at negative findings regarding judicial qualification and preparation, and seven were neutral. The ABA’s Legal Profession Reform Index (LPRI) reaches similar findings regarding the preparation of lawyers. All six countries surveyed found that law schools did a poor job of preparing future lawyers.

<sup>9</sup> “Ukraine, for example, went from having six law faculties in 1990 to over 175 by 1998; Georgia now has over 200 law faculties, even though its population is 1/10<sup>th</sup> of Ukraine’s. The United States, by contrast, has fewer than 200 accredited law schools even though its population is roughly 275 million.” “Europe and Central Asia Legal Forum,” (The World Bank, Washington, DC, July 2001), p. 32; *see also* “Law School Accreditation in the New Independent States of the Former Soviet Union: What Steps for the Future?,” CEELI Discussion Paper Series (American Bar Association, Washington, D.C., Nov. 6, 2003), p. 4 – 5 (citing additional statistics regarding the “very rapid expansion of the private education sector” throughout the former Soviet Union). The increased interest in legal education is not limited to the former Soviet Union. There were virtually no, or only a few law schools in China 15 – 20 years ago, but by 2000 there were as many as 300. Del Duca, “Symposium on Emerging Worldwide Strategies in Internationalizing Legal Education,” 18 Dick. J. Intern’l L. 411, at 413 (Spring 2000). Law is also “the most popular area of study among Mexican students: about 190,000 students in 2001, well above the numbers in accounting and business administration. The number of law schools, especially small private schools, exploded during the 1990s . . . . Although they require some sort of official recognition to issue law degrees, in truth there is no real control over the content and the quality of the education they provide. There is nothing equivalent to a bar examination in Mexico, so a university degree (and in certain cases, not even that) is all it takes to become a practicing lawyer.” H. Fix-Fierro, “Judicial Reform in Mexico,” in Jensen and Heller, *supra* note 4 at 275-76.

<sup>10</sup> It should also be noted that since legal education is an undergraduate degree, not all law faculty graduates in these countries become legal professionals in the Western sense. Many become police officers, or go into business, or pursue entirely non-law related professions. Nevertheless, the number of law schools and graduates is too high and unsustainable in most of these countries.

<sup>11</sup> “Law School Accreditation in the New Independent States of the Former Soviet Union: What Steps for the Future?,” CEELI Discussion Paper Series (American Bar Association, Washington, D.C., Nov. 6, 2003), p. 9.

<sup>12</sup> The process in the former Soviet Union for obtaining first a license and then full accreditation for institutions of higher education is described in “Law School Accreditation in the New Independent States of the Former Soviet Union: What Steps for the Future?,” CEELI Discussion Paper Series (American Bar Association, Washington, D.C., Nov. 6, 2003), p. 9 – 15. In Georgia, “[t]he lack of a national system for assessing institutions of higher education adds to the array of forces behind academic corruption. The Ministry of Education, responsible for licensing universities, has failed to develop quality-assurance mechanisms or objective assessment criteria.” N. Janashia, “Fighting Corruption in Georgia’s Universities,” *Academe* (Sept. – Oct. 2004) ([www.aaup.org/publications/Academe/2004](http://www.aaup.org/publications/Academe/2004)).

<sup>13</sup> Given the low expenses (at most schools in the region, little money is spent on professors’ salaries or on libraries and infrastructure) and the high student interest, opening up a law school can be a highly profitable business.

<sup>14</sup> “Standards for Approval of Law Schools,” American Bar Association, Section of Legal Education and Admissions to the Bar, July 11, 2000 ([www.abanet.org/legaled](http://www.abanet.org/legaled)).

<sup>15</sup> A full description of the accreditation process for US law schools may be found at “Law School Accreditation in the New Independent States of the Former Soviet Union: What Steps for the Future?,” CEELI Discussion Paper Series

(American Bar Association, Washington, D.C., Nov. 6, 2003), p. 18 – 21. Western European institutions do not follow as consistent an accreditation methodology as in the United States, with each country pursuing its own process, but with the methodology in each country reported to be both rigorous and fair. *Id.*, pp. 22 – 28.

<sup>16</sup> “Corruption in academic life in Georgia occurs at all levels of the university, but it does not stop there. Widespread misconduct affects the entire higher education system. Corruption influences university examinations, the conferring of academic credentials, procurement of goods and services, and the licensing and accreditation of institutions.” N. Janashia, “Fighting Corruption in Georgia’s Universities,” *Academe* (Sept. – Oct. 2004) ([www.aaup.org/publications/Academe/2004](http://www.aaup.org/publications/Academe/2004)).

<sup>17</sup> W. Burnham, “Legal Education in NIS Countries: Too Theoretical, Too Narrow, Too Passive, Too Authoritarian,” Panelist Abstract, “What Role for the West? Promoting Legal Reform in the Former Soviet Union,” Russia and Eastern Europe Law Forum, Yale Law School (April 23 – 24, 1999), p. 75. The New York Times recently reported that that “[b]ribes have become almost obligatory . . . for admission to Russia’s universities,” with students paying as much as \$ 40,000 to enter the most prestigious schools. It also reports that higher education is one of the sectors receiving the largest volume of bribes in Russia. “Pervasive Corruption in Russia Is ‘Just Called Business,’” *The New York Times*, August 13, 2005, p. A3; *see also* Janashia, *supra*, (reporting that only 15 – 20 % of the students entering Tbilisi State University do so without paying bribes, and that the price for admission can range from \$ 200 to \$ 10,000).

<sup>18</sup> Burnham, *supra* note 17 at 73 (arguing that grading should be done on a written, blind basis).

<sup>19</sup> Burnham, *supra* note 17 at 71; *see also* M. Dietrich, “Legal and Judicial Reform in Central Europe and the Former Soviet Union: Voices from Five Countries,” The World Bank (2000), p. 25 (quoting a Romanian professor as complaining that “The training is recitation back and not analysis.”).

<sup>20</sup> Burnham, *supra* note 17 at 72.

<sup>21</sup> Burnham, *supra* note 17 at 69. Similar problems abound in Arab law schools. One commentator has noted that “Arab legal education for the most part does not include critical analytical skills or broad thinking about justice; indeed, most Arab university law faculties lack prestige, sufficient teaching and economic resources, and pedagogical accountability to students.” D. Mednicoff, “Legalism Sans Frontieres? U.S. Rule of Law Aid in the Arab World,” (Carnegie Endowment for International Peace, Washington, DC 2005), p. 12.

<sup>22</sup> R. Stuckey, “Preparing Students to Practice Law: A Global Problem in Need of Global Solution,” 43 S. Tex. L. Rev. 649 at 672 – 75 (Spring 2002) (describing inadequate internship programs in Russia and Romania, but noting that they may not be the norm and that a meaningful post-educational placement system would ultimately prepare students for the practice of law better than the current U.S. system).

<sup>23</sup> Burnham, *supra* note 17 at 75.

<sup>24</sup> It should be noted, however, that in 1999, education ministers from 29 EU countries and EU applicants signed the Bologna Declaration, which aims to create a common level for institutions of higher education in Europe. The EU assists the applicant countries through twinning programs between universities in Eastern and Western Europe.

<sup>25</sup> “Judicial Systems in Transition Economics: Assessing the Past, Looking to the Future,” The World Bank, Washington, DC (2005).

<sup>26</sup> USAID rule of law contracts in Russia and Ukraine in the mid-1990s also included legal education components, providing funding to leading law schools to purchase printing equipment and computers, and to establish associations of law schools. The associations never functioned as anticipated, and the projects, which did not specifically address corruption, were deemed disappointing.

<sup>27</sup> The World Bank’s Russia project is one of the few in the region that has sought to tackle legal education in a more holistic manner. The component financed significant grants for programs at eight law schools, which enabled the selected schools to produce innovative teaching materials, design new courses and seminars, and participate in teacher training, including fellowships, sabbaticals, and study tours abroad. Law schools also received equipment for the production of teaching tools and materials, books for libraries, and information technology (computers). Nevertheless, the program did not directly address the core issues of accreditation, corruption, and curricular design that continue to plague the Russian legal education system.

<sup>28</sup>For more on the genesis of clinical legal education in the United States, see A. Amsterdam, "Clinical Legal Education: A 21<sup>st</sup> Century Perspective," 34 J. Legal Educ. 612 (1984).

<sup>29</sup>Several law professors who have been involved in the process describe efforts to introduce American-style law clinics in Eastern Europe and the former Soviet Union as uneven, despite the enthusiasm of the students for the interactive approach. See L.D. Schnasi, "Globalizing Clinical Legal Education: Successful Under-Developed Country Experiences," 6 T.M. Cooley J. Prac. & Clinical L. 129 (2003); L. Grosberg, "Clinical Education in Russia: 'Da and Nyet,'" 7 Clinical L. Rev. 469 (2001); R. Uphoff, "Why In-house Live Client Clinics Won't Work in Romania: Confessions of a Clinical Educator," 6 Clinical L. Rev. 315 (1999).

<sup>30</sup>Having said that, many of the professors who participated in the program experienced enormous personal growth and continue to work as innovators in their home institutions.

<sup>31</sup> For more on Street Law, see [www.streetlaw.org](http://www.streetlaw.org).

<sup>32</sup> Mari State University in Russia took second place overall in 2003. For more on the Jessup competition, see [www.ilsa.org/jessup](http://www.ilsa.org/jessup).

<sup>33</sup> "The globalization of the world's economy makes it necessary for every country to produce lawyers with increasingly sophisticated knowledge, skills, and values." R. Stuckey, *supra* note 22 at 675.

<sup>34</sup> The Sister Law School Project, noted above, was led by the ABA.

<sup>35</sup> One reason for this may be the complicated process of obtaining and administering the government funds that generally support international development initiatives. It is surprising, nevertheless, that some U.S. government contractor or grantee has not teamed up with an American law school, or better yet a consortium of international law schools, to provide both intellectual firepower and rigorous academic review of the international development business. Such an initiative could also help to address the perceived problem of a lack of knowledge concerning how to support and promote the rule of law. See generally, T. Carothers, *Promoting the Rule of Law Abroad: In Search of Knowledge* (The Carnegie Endowment for International Peace, Washington, DC 2005).

<sup>36</sup>S. Golub, "Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative," Carnegie Endowment (October 2003), p. 5; see also Blair and Hansen, "Weighing in on the Scales of Justice: Strategic Approaches for Donor Supported Rule of Law Programs," USAID, April 1994) ("legal system strengthening is not necessarily the best place to begin a ROL development program . . . This may not be a palatable lesson for USAID or other international donors to digest, with their long experience in institution building.").

<sup>37</sup>T. Carothers, *Aiding Democracy Abroad*, Carnegie Endowment for International Peace, Washington, DC, 1999, pp. 167 -69.

<sup>38</sup>See, e.g., "Europe and Central Asia Legal Forum," at p. 48 (The World Bank, Washington, D.C., 2001).

<sup>39</sup> This should not be surprising, considering the benefits many administrators enjoy from the current corrupt system. Even in more open societies, change in legal education has come in fits and starts, as is demonstrated by the arduous process of getting American law schools to embrace clinical legal education.

<sup>40</sup> These were USAID's early efforts in Ukraine and Russia, which provided printing equipment and library support to several law schools and also sought to create associations of law schools in those countries. More recent efforts to promote reform at Yerevan State also yielded disappointing results. A comprehensive evaluation of why these projects did not succeed could provide guidance on how to implement better legal education projects in the future.

<sup>41</sup> ECA Forum, p. 31.

<sup>42</sup> "One example of the potential payoff is the National Law School of India University, in Bangalore. This school was started in the 1980s with indigenous funding and support from the Ford Foundation. It has developed into a center of excellence in legal education; and today it is as transformative an investment in legal systems reform as any in India." E. Jensen, "The Rule of Law and Judicial Reform," in Jensen and Heller, *supra* note 4 at 360.

<sup>43</sup> M. McClymont & S. Golub, eds., *Many Roads to Justice: The Law Related Work of Ford Foundation Grantees Around the World* (The Ford Foundation, New York, 2000), p. 56. An excellent summary of the law and development movement

can be found on the World Bank's website: [www.worldbank.org/publicsector/legal](http://www.worldbank.org/publicsector/legal); for a description of the initiative's efforts in Africa, see J. Widner, *Building the Rule of Law in Africa*, (W.W. Norton & Co., New York, 2001), p. 200- 205.

<sup>44</sup> McClymont and Golub, *supra* note 43 at 56.

<sup>45</sup> *Id.*; see also J. Gardner, *Legal Imperialism: American Lawyers and Foreign Aid in Latin America* (The University of Wisconsin Press, Madison, 1980); Widner, *supra* note 43 at 126 – 27 (warning against a backlash against introducing American models in developing countries).

<sup>46</sup> [www.worldbank.org/publicsector/legal](http://www.worldbank.org/publicsector/legal).

<sup>47</sup> [www.worldbank.org/publicsector/legal](http://www.worldbank.org/publicsector/legal).

<sup>48</sup> See *Legal Education in a Changing World* (The International Legal Center, New York, 1975). They also understood that how legal education worked and affected reform movements required further study. The authors of *Legal Education in a Changing World*, an international committee of distinguished jurists involved in the law and development movement, conclude their report as follows: "The main point is to stress again the need for more research on legal education. It has been a neglected field of development studies, a neglected field of legal scholarship." *Id.*, p. 90. Despite some progress, that conclusion remains valid 30 years later.

<sup>49</sup> No full analysis has been undertaken, moreover, to determine what the long-term impact of the law and development programs was. Thirty years later, many observers see an improvement in the rule of law in countries such as Chile, Argentina, and others that were the targets of the law and development effort. McClymont and Golub report anecdotally that law professors from Peru who had studied in the United States during the law and development era "returned home to have a positive impact on their students," creating new teaching materials and teaching students to question authority. Another Peruvian pointed out that the few modern and functioning legal institutions in Peru are staffed by lawyers from the law school that had been a target of the law and development movement. McClymont and Golub, *supra* note 43 at 57. Another scholar has argued that the law and development initiative was not given enough time to succeed. B. Tamanaha, "The Lessons of Law-and-Development Studies" 89 *American Journal of International Law*, 470 – 486 (1995). A full impact assessment of the movement would be instructive. It might well turn out that many of the individuals who benefited from the law and development movement returned home to play leading roles in reform initiatives, as has apparently happened on a smaller scale with the professors who participated in CEELI's Sister Law School program.

<sup>50</sup> E. Jensen, "The Rule of Law and Judicial Reform," in Jensen and Heller, *supra* note 4 at 359 – 60; see also L. Hammergren, "International Assistance to Latin American Justice Programs," in Jensen and Heller, *supra* note 4 at 325, n.25 ("The legacy of the law and development movement discouraged attention to law schools for years. Today, the attention is there, but few donors are willing to finance a program that might take twenty years to have a visible impact.").

<sup>51</sup> This is due, in part, to the annual funding cycle of the Congress. It is also due to the current, and understandable, emphasis on the need for donors such as USAID and implementers to demonstrate impact. This in turn leads to contracts being entered into for relatively short (two to three year) periods when it is well-understood that the type of changes that democracy or rule of law contracts are supposed to engender generally take much longer than allowed for under the typical contractual period. Whether contracts rather than longer-term grants are the appropriate means for accomplishing these goals is another question.

<sup>52</sup> Other commentators have also emphasized the importance of legal education in democracy promotion. See, e.g., E. Jensen, in Jensen and Heller *supra* note 4 at 360 (noting that many contributors to the volume had "long argued that more resources should be committed to legal education"; D. Mednicoff, "Legalism Sans Frontieres? U.S. Rule of Law Aid in the Arab World," (Carnegie Endowment for International Peace, Washington, DC 2005), p. 14) (suggesting that working on law school curricula would be an acceptable form of international assistance in the Arab world). Indeed, USAID is making a significant investment in legal education in post-war Iraq, providing a \$ 3.8 million grant to the International Human Rights Law Institute of the DePaul University College of Law for the curricular and structural development of three law schools in Iraq. See [www.law.depau.edu/institutes\\_centers/iharli/programs/rule\\_education.asp](http://www.law.depau.edu/institutes_centers/iharli/programs/rule_education.asp). USAID rule of law projects in Afghanistan and the West Bank Gaza also include legal education components. These interventions, however, all are parts of massive US government undertakings, and represent the exception rather than the norm. Moreover, previous efforts to convince donors to place a greater emphasis on legal education have met with little success. See, e.g., J. Picker & S. Picker, "Educating Russia's Future Lawyers: Any Role for the United States?" 33

Vand. J. Transnat'l L. 17 (January 2000).

<sup>53</sup> ABA/CEELI is currently developing a Legal Education Reform Index, similar to its Judicial Reform and Legal Profession Reform Indices, which may facilitate conducting such assessments. On a related note, international donors may want to define more global standards for legal education reform, so that developing democracies have concrete targets to aim for as they reform their education institutions. The EU's Bologna Process may provide a model in this area.

<sup>54</sup> A recent study of the Millennium Challenge Corporation provides early evidence that countries respond to MCC incentives by improving their reform indicators. Controlling for general time trends, potential recipients of MCC funds improve 25 percent more indicators after the MCC was created than before it. D. Johnson and T. Zajonc, "Can Foreign Aid Create an Incentive for Good Governance? Evidence from the Millennium Challenge Corporation" (April 11, 2006). Available at SSRN: <http://ssrn.com/abstract=896293>.

<sup>55</sup> J. de Arruda Falcao Neto, "University Crisis and the Crisis of Legal Education," cited in Gardner, *supra* note 45 at 88.

<sup>56</sup> See J. Krishnan, "Professor Kingsfield Goes to Delhi: American Academics, the Ford Foundation, and the Development of Legal Education in India," *American Journal of Legal History*, 2005 (Available at SSRN: <http://ssrn.com/abstract=682341>), pp. 40-53; see also Website of the National Law School of India University, [http://www.nls.ac.in/about\\_history.html](http://www.nls.ac.in/about_history.html) (visited April 17, 2006).

<sup>57</sup> Krishnan, *supra* note 56 at 29-30.

<sup>58</sup> McClymont and Golub, *supra* note 43 at 169.

<sup>59</sup> In addition, a greater effort should be made to structure the teaching of law from knowledge-based curricula to problem solving-based curricula. The difference is that in "the knowledge-based approach, the curriculum is organized into subjects and teachers are regarded as experts in their subject. They impart their subject knowledge to learners who are expected to remember, understand, and apply it. In the problem-centered approach, the curriculum is centered on problems; students are active learners who work on problems or simulate problem solving. Teachers are facilitators who guide students in the process of learning by doing." S. Nathanson, "Designing Problems to Teach Legal Problem Solving," 34 *Ca. W. L. Rev.* 325 at 326 – 27 (1998).

<sup>60</sup> For example, at the NLS in Bangalore the International Bar Association has funded a continuing legal education chair and the United Nations has sponsored a refugee law chair. Krishnan, *supra* note 56 at 48.

<sup>61</sup> C. Silver, "Internationalizing U.S. Legal Education: A Report on the Education of Transnational Lawyers" (December 1, 2005). Available at SSRN: <http://ssrn.com/abstract=829744>, p. 10.

<sup>62</sup> See Silver, *supra* note 61 at 36-38, citing the examples of the Temple University Beasley School of Law graduate programs in China and Japan, the University of Minnesota Law School's planned LL.M. program at the China University of Political Science and Law, and Northwestern University School of Law's LL.M. program in Seoul.

<sup>63</sup> See, e.g., L. Fentiman, "A Distance Education Primer: Lessons from My Life as a Dot.Edu Entrepreneur," 6 *N. Caro. J. of Law & Tech.* 1 (Fall 2004) (describing lessons learned from Pace University Law School's distance learning initiative in health law). It should be noted that such innovations are not limited to the United States. See, e.g., P. Maharg & A. Muntjewerff, "Through a Screen, Darkly: Electronic Legal Education in Europe," in *The Law Teacher. The International Journal of Legal Education. Legal Education in Europe*. Vol. 36, no. 3 (2002).