

'We Make the Law and the Law Makes Us'

Some Ideas on a Law in Development Research Agenda¹

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1 Introduction

This article sets out some ideas for a law in development research agenda that focuses on how law affects the life choices of poorer sectors of society. This is not an effort to build a populist 'people-centred' research agenda. Rather, it is an attempt to construct an agenda that identifies, in a rigorous and systematic way, the causal mechanisms through which law actually influences how people invest their resources in productive enterprises to create wealth and in political enterprises to create voice. It is impossible to construct such a 'law-in-development' research agenda without, if not an answer, at least an approach to finding an answer to the following question: how much does law really matter? That is, how much causal weight should we accord legal factors when explaining either large social outcomes or the economic and political decision making of ordinary people?

The growing number of internationally supported judicial reform initiatives and access-to-justice programmes are premised on the idea that substantive legal rules and the structure of legal institutions matter a great deal. In international development circles there is agreement: law, if properly 'designed' and 'implemented', can be a force for progressive social change. As Benda-Beckmann (1989:130) observes, such a view is premised on 'the idea that legal structures and norms directly cause or determine action and its consequences'. Much evidence suggests, however, that how law operates in practice varies considerably across geographic and social space – that is, across national territory and systems of social stratification such as gender, class and ethnicity. Similar legal rules and institutions have dramatically different consequences for differentially situated groups.

Explaining why this variation exists is central to identifying how much law matters and a crucial step in constructing a law-in-development research agenda. This article sketches some preliminary ideas on why this variation exists, and hence on the relationship between law and development. It develops a view of law that is, broadly speaking, relational and focused on socio-legal practices that emerge out of the interactions between agents of the state and actors in society, as both seek to interpret

and use legal rules. This view is illustrated by looking at how law influences the forms of collective action resource-poor groups engage in. The final section outlines a research agenda of law in development that emerges from such a view of law.

2 Law as Social Regulation

Law is most often conceived as an indispensable component of the modern state. The rule of law – its promise of eliminating the arbitrary use of power and rule by knowable and impersonal rules, applied universally and uniformly across all regions and social strata – is one of the principle bases of legitimacy of the state and of public action.² Furthermore, it is through law that the state maintains cohesion between its departments and agencies and ‘pursues concrete objectives of political, ethical, utilitarian or some other kind’ (Weber 1978:644–5). Law as a component of the state is a set of formal rules, and the application of those rules by public officials, which attempt to regulate social life and reproduce particular social and power relations, including through dispute resolution.

State law, however, is only one of many mechanisms through which social regulation takes place. Weber and many since have argued that territorially defined societies have a multiplicity of regulatory orders (sets of rules that regulate, and hence shape, social behaviour), and that these orders often compete with each other.³ The interaction between regulatory orders is centrally a struggle over the distribution of power within a society – whose rules will govern behaviour. The assertion of the dominance of state law has been highly uneven in all regions of the world, and the reach and relevance of such law varies greatly within, and between, societies. Vanderlinden points out that, in reality, the individual is ‘the converging point of the multiple regulatory orders which each social network [in which the individual participates] necessarily include’ (1989:151). As a result:

When people make decisions about how to invest scarce resources, they weigh the consequences in relation to the different regulatory orders in which they are embedded.

If the above statement is true, the implications for research on law in development, and for access to

justice and judicial reform programmes, are significant. It suggests that one of the central challenges researchers and policy makers face in understanding how law influences life choices is to locate people and groups in the web of sometimes complementary and sometimes competing regulatory orders (including increasingly transnational ones created by international treaties, protocols, and accords; see Baxi and Newell in this volume). This requires that we undertake the difficult task of exploring the interaction between formal state law and other sets of rules. For policy makers the above statement suggests that people may choose not to use state law irrespective of having either ‘access’ to the judiciary or legally guaranteed rights. This is, for example, what Nader (1990) found in her study of a Zapotec village in Mexico. In order to preserve village autonomy from the Mexican state, villagers did their best to settle disputes locally and avoid contact with the state justice system.

3 Law as Institution

What kind of regulatory order is law? However we construct our law-in-development agenda, it will be built on a particular understanding of what law is, how law changes and the relationship between law and the processes of social change we commonly call development.

The new institutionalism offers an especially useful point of departure for developing an understanding of law that highlights its role in shaping people’s life choices. This body of work focuses much attention on how institutions influence people’s and organisations’ definition of *goals* (i.e. preferences) and *strategies* for achieving those goals.⁴ Institutions are defined in one of two ways: either narrowly as the formal and informal ‘rules of the game’ (e.g. the institution of private property), or more broadly as large organisational structures (such as the state and the party system).⁵ In both cases institutions are seen as a template for demands (or group identities) and a resource for and constraint on action.

To see how institutions influence the choices people make we can look specifically at how law as institution (in the latter of the two definitions) shapes collective action by less powerful groups to make claims in the political system. In the case of

poor people, because they are the most vulnerable sector of society, law exercises a particularly significant influence. Poor social groups tend to tailor their forms of organisation, demands and strategies to fit existing law, engaging in legally protected forms of collective action (Houtzager 2001; McAdam 1982; McCann 1998).

Law, understood as a set of legal rules and the organisations of the justice system, favours certain forms of organising, certain types of claims, and certain strategies of claim making. First, legislation granting rights and entitlements creates collective interests. Such interests often cut across existing, more localised, social cleavages and provide new bases on which fragmented communities can build unity. For example, legislation in Brazil which created the legal category *rural worker* (the Rural Workers Statute of 1963), and granted this category a particular set of privileges, significantly influenced the emergence of Latin America's largest rural movement, built around a collective identity as rural workers. This identity superseded many regional identities and united politically diverse rural social categories. Paradoxically, the Rural Workers' Union Movement (Movimento Sindical dos Trabalhadores Rurais) consisted mostly of small farmers and peasants of various sorts, although it did include important groups of agricultural labourers and plantation workers (Houtzager 1998, 2001).

Second, defining demands and forms of organisation to 'fit' existing rights and widely accepted claims, and selecting carefully on which authorities to make claims (by tailoring demands accordingly), reduces the cost of collective action and increases the likelihood of success. It reduces the risk of repression (because repressing what is perceived as legally sanctioned, hence legitimate, political activity is costly to authorities). For the same reasons it also increases the likelihood of attracting support from other social groups. This is important because there is ample historical evidence to suggest that only in instances where broad coalitions of the poor succeed in attracting the support of critical elite and non-elite allies are they likely to gain political influence at the national level. It also provides leverage *vis-à-vis* other, more powerful, actors. Scheingold, for example, suggests that marginalised groups can 'capitalize on the

perception of entitlements associated with (legal) rights to initiate and sustain political mobilization' and draw on legal discourse 'to name and challenge existing social wrongs or injustices' (cited in McCann 1998:83). This in effect turns 'the rules against the rulers' (McCann 1998:89) in a process Scott (1985:337-8) captures particularly well. All dominant ideologies, Scott argues, seek to legitimise the way power is exercised by making universal claims: 'a hegemonic ideology requires, by definition, that what are in fact particular interests be reformulated and presented as general interests.' Hence, claims by subordinate groups, 'can be said to arise from the inevitable gap between the promises that any hegemony necessarily makes and the equally inevitable failure of the social order to fulfil some or all of these promises.' In so far as legislation and legal norms embody the unfulfilled promises of the dominant ideology, people may feel aggrieved when these are not kept and mobilise politically to demand 'their rights'.

Brazil's rural worker movement, for example, up until recently carefully formulated its demands in terms of the rights and entitlements spelled out in the 1963 Rural Workers Statute and the 1964 Land Statute. During the 1970s, a decade of military rule in Brazil, it in fact launched a 'campaign for rights' to fight the arbitrary power of landowners through labour courts and to pressure for the enforcement of national legislation over the private law of local potentates (Houtzager 1998).

Marx's (1998) study of race relation in the United States, South Africa, and Brazil shows how even legal categories, meant to exclude particular groups, on a racial basis in this case, can become templates for demand making and collective identities. Even though 'state-sanctioned racial categories impose real costs on their subjects', he (1998:6) found that they also 'offer oppressed populations both legal grounds for redress and bases for political mobilization', including by legitimising subordinate racial identities as a basis for collective action. The presence of racial domination, as state policy encoded in law, in South Africa and the United States helps explain why subordinated racial identity became the basis for resistance in these countries (expressed in the African National Congress and the civil rights movement); its absence in Brazil has contributed to the failure of such identities and

movements to develop despite a large and subordinated black population.

The institutionalist view of law means abandoning the often instrumentalist understanding of law held by many social scientists, officials in multi- and bilateral institutions and policy makers. In the latter conception, law is a relatively straight-forward instrument of social engineering. The causal arrow points from legal rules and administrative procedures to forms of behaviour. Legislative action is indeed enacted with the *intent* of altering or reinforcing existing social behaviour; similarly with reform of judicial and administrative organisations. Law as practice, as experienced by people in the everyday, however, is the product of far more complex processes involved in the creation of legal rules and their interpretation.

The institutionalist view of law is itself unable to capture much of this complexity. Let's therefore move forward with an observation from the literature on judicial institutions and research on law and society: legal rules are not self-enforcing. The observation is obvious but has important implications. It suggests we should distinguish between substantive rules (i.e. legal doctrine) and compliance with (or enforcement of) such rules (Edelman, Ugger and Erlanger 1999:407). People do not encounter legal rules themselves in their interactions with agents of the state and each other, but interpretations of what constitutes enforcement of, and compliance with, these rules.⁷ Interpretations are constructed as different actors attempt to create readings of legal doctrine that are favourable to their concerns. Implicated in this process are both agents of the state (such as judges, police and administrative officials who adjudicate, enforce and apply legal rules) and societal actors, who either seek to comply with or to use law in their dealings with others. These acts of interpretation around enforcement and compliance produce what we can call sets of socio-legal practices.

At a high level of generality we can think of law as the outcome of the interaction between groups of people in (i) the making of substantive legal norms and (ii) the everyday socio-legal practices through which those norms are enforced and complied with, involving judicial and administrative action by agents of the state. When such a set of practices is

reproduced over time so that they acquire a degree of 'solidity' for people, allowing them adjust expectations and plan future actions around them, then we can speak of law as institution (or of institutionalised practices) (Stinchcombe 1997: 391). Legislation that is either not enforced (or, conversely, widely ignored), as is the case with many formal legal rules in all countries, falls outside of this definition of law.

We know that the interactions surrounding rule making and the construction of enforcement/compliance occurs between people with unequal power and access to resources, who are embedded in multiple regulatory orders, and who consequently have different opportunities to either exit or engage in interpreting substantive law. It is not by chance that the legal construction of property, and the interpretations and enforcement of the rules regulating private property, favour particular classes.

There is no theory of law as practice. Nor is there a framework for understanding how such practices emerge out of the interactions between unequal groups. Developing such a theory or framework of course lies beyond the ambitions of this short article. Instead the next section offers a number of illustrations of some of the processes involved in making, interpreting and enforcing/complying with legal rules. The examples will help make concrete what has been a discussion at a perilously high level of generality. Much of the focus is on the ability of the poor to use law to expand their life choices, in particular through collective action to make public claims. For poor or vulnerable social groups, collective action, as well as collective legal mobilisation by networks of lawyers and activists, have been vital ways to challenge interpretation and enforcement of legal rules, as well as win the creation of more favourable rules.

4 Illustrations

The first illustration highlights the extent to which legal rules are subject to (re)interpretation and how judicial interpretation can spill over into what Feeley and Rubin (1999) call 'judicial policy making' – that is, the creation of new legal rules by judges. Between the 1930s and early 1960s federal judges in the United States consistently dismissed

suits by prisoners challenging what were often horrific prison conditions, particularly in the southern states. Federal courts held that prisoners did not have justiciable rights – the courts lacked jurisdiction in such suits because ‘prison conditions were not subject to constitutional review’ (13). In the 1960s federal judges shifted gear dramatically and began to interpret the Eighth Amendment’s prohibition against ‘cruel and unusual punishment’ as granting them jurisdiction to rule on the constitutionality of entire prison systems.

Feeley and Rubin (1999:14) point out that the Eighth Amendment does not mention prisons and sets only very general boundaries for the exercise of judicial review over forms of punishment. Over the next decade, however, federal judges filled this legal void through a series of rulings that ‘fashioned a comprehensive set of judicially enforceable rules for the governance of American prisons’ (14). According to the author’s admittedly judge-centred account, in the absence of legal text these rulings were based on the recommendations of the different actors (such as the Federal Bureau of Prisons and the American Correctional Association), congruence with basic legal principles, and judges’ own notions of what constituted desirable social outcomes. By 1985 prisons in thirty-five of the fifty states and the entire correctional systems of nine states, ‘had been placed under comprehensive court orders, [many of which] specified such details of institutional administration as the square footage of the cells, the nutritional content of the meals, the number of times each prisoner could shower, and the wattage of light bulbs in prisoners’ cells’ (13).

The second illustration highlights how the role of social movements and sustained legal mobilisation have been crucial in constructing interpretations of legal doctrine favourable to vulnerable groups and the processes by which rights are made real for ordinary people. McCann (1998:93) retells how the US Supreme Court outlawed public segregation in the 1950s, but that its rulings ‘mostly generated hostility or apathy in the South [and] compliance with the courts was very low.’ To simplify a complicated story, the court rulings, such as *Brown vs. Board of Education*, helped produce a mutually reinforcing combination of local confrontations by the civil rights movement, Northern public opinion favourable to change, and resolve among important

federal officials that greater federal intervention was necessary to enforce the new legal rules. This mix of judicial action, social movement demand making from below and federal government intervention produced substantial and progressive change in law as practice. Studies of the enforcement of, and respect for, other types of rights also suggest that the realisation of legal rights by less powerful groups often occurs only when sustained collective legal mobilisation *from below* takes place and targets both judicial and administrative agencies of the state (Epp 1998; Hart 1991; McCann 1994).

The third illustration, from Brazil, shows how non-legal factors influence the ability of the poor to use law to engage in collective claim making. In the period spanning 1955–1990 segments of the rural poor in Brazil organised in a variety of ways to improve both the economic and political choices open to them. The organisational forms their movements took, the nature of their demands and the strategies they pursued, consistently reflected particular features of the legal system.

Between 1955 and 1962, sharecroppers, tenant farmers and other rural poor organised in legally sanctioned *civil associations* to contest arbitrary police action, violence committed by landowners and, in the northeast of the country, the abolition of the *cambão* (an institution similar to the feudal *corvé* requiring various types of ‘tenants’ to provide days of free labour in addition to rents). The organisational form and legal strategy of these groups seem paradoxical because the civil code and the judiciary were highly conservative. Furthermore, the state’s ability (or willingness) to enforce national law over local private regulatory orders was very weak in most of the countryside. The state, and hence state law, had only a tenuous presence in rural areas – social regulation was dominated by powerful local landholding families and maintained through a combination of patron–client networks, popular religiosity and violence.

Nonetheless, in the northeast of Brazil, the most dynamic organising pole during this period, associations popularly known as peasant leagues registered under the civil code and brought suits in court on a host of issues. A former leader observes that, despite the state’s inaction, ‘the leaders of the Leagues recognised the existence of a historic

contradiction between the law of the liberal bourgeoisie ..., i.e. the Civil Code, and the reactionary, traditional norms of the latifundistas' (Morales 1970:470). Along with providing various social services the leagues sought to 'defend the legitimate rights in accordance with the national laws of the country' and engaged in various forms of public actions that sought legal change by pressuring the state legislature, the governor, the courts and public opinion, particularly around the issue of agrarian reform (Novaes 1997:38; Ricci 1999:68).

Although the labour code allowed for rural unions, and labour tribunals were considered less conservative than their civil counterparts, unions were not favoured as an organisational form. Registration under the labour code was difficult and the regulation of such unions was under the purview of the Ministry of Agriculture (not the Ministry of Labour), where the influence of sugar and coffee planters dominated and virtually ensured that existing legal rights and norms would not be enforced (Morales 1970:456).

The leagues' strategy was possible, and had some success, because various urban actors became allies and legal mediators, giving peasants unprecedented access to the courts, as well as political support. Furthermore, the governor elected in 1958, an industrialist, refused to use the coercive apparatus of the state to quell the peasant leagues. This marked a substantial break with the past and in effect made the state a law-bound entity in ways it had not been previously. Although state capacity to enforce the law and protect civil and political rights remained weak, Morales (1970:477) observes that 'a marked change in the political atmosphere could be felt ... for the first time. Democratic liberties increased.' These political changes made the use of law a viable, even sensible, strategy.

Around 1962 the pattern of organising inverted completely: civil associations were replaced by rural worker unions, the labour code and labour courts became a key, though not the only, channel for legal mobilisation. Why the change? New legislation (the Rural Workers Statute of 1963) came into force that made registration of rural worker unions easier, expanded the rights to which rural workers were entitled and brought regulation of rural unions

under the purview of the Ministry of Labour.⁸ The unions benefited from state resources (the union tax) and some degree of protection, and labour courts (tripartite 'boards' in which officials from the Ministry of Labour, union movement and employers are represented) in general were more responsive to the concerns and demands of 'workers' than their civil counterparts (Moura 1988; Novaes 1997). In this context the civil code was no longer an attractive regulatory order through which to challenge the power of landowners. Civil associations were quickly converted into rural worker unions and registered under the labour code.

The impact of these legal changes on rural organising and claim making, however, varied significantly over the next decades. Between 1962 and 1964, in the context of a highly competitive democratic regime, the changes in labour law provoked a surge in rural unionisation. Available allies and legal mediators multiplied in this environment. The Rural Workers' Union Movement that emerged out of this process sought to draw the state into mediating rural social relations. It used the labour courts to demand the full implementation of national labour legislation, organised sector-wide strikes that forced the Ministry of Labour to intervene and negotiate new collective agreements, and mobilised to make rights claims and demand for agrarian reform (Palmeira 1985; Pereira 1997).

The onset of authoritarian rule in 1964 dramatically altered how peasant groups experienced and used law. On the one hand, the military initiated a major episode of state-building and greatly expanded the reach of the national state, making important parts of national legislation real for the first time in rural areas. State agencies, and even local government in particular regions, lost some of their 'private' character, became more law-bound and gained greater capacity to enforce national law. (The extent to which this occurred varied significantly from region to region, however.) On the other hand, basic civil and political rights were routinely violated and collective demand making outside of formal institutional channels was repressed. The cost of collective action therefore rose significantly and the movement's strategy shifted from strikes and public demonstrations to bringing individual suits in the labour courts and lobbying state officials.

The political opening initiating Brazil's slow democratic transition led to the reappearance of movement allies, while the state as a whole grew more law-bound in the sense of respecting civil and political rights. Major change in legislation came only in 1988, with a new constitution, but in this new political context the Rural Workers' Union Movement initiated a wave of public claim making. The first of these were large sector-wide strikes in the sugar-cane plantations of Pernambuco (1979–80), which strictly adhered to the military's cumbersome strike law – the Ministry of Labour not only supervised the strikes but went so far as to reign in abusive local police (Pereira 1997). An important shift in the goals of collective claim making occurred – from manoeuvring within legal rules to trying to rewrite the rules themselves by lobbying state assemblies, the national Congress, and public opinion. Paradoxically, the state's ability to enforce national law entered into a period of significant decline in the 1980s, limiting the efficacy of the movement's more aggressive and sophisticated use of law and contributing to a surge in private violence against peasants and rural movements.

5 Towards a Research Agenda

Three comparative research programmes emerge out of a view of law as practices. The first is to examine what factors influence the ability of differentially situated groups to use law in ways that enhance their life choices – that is, to create choices that lead to greater accumulation of economic and political resources. The second is to look more broadly at how law constrains and facilitates the particular forms of economic and political behaviour of these social groups. Such research would highlight how legal practices vary across systems of stratification (by gender, class, ethnicity, and so on) and what role they play in maintaining such systems.⁹ The third programme explores how large historical processes, such as urbanisation, the expansion of the market and economic globalisation (to name but a few) alter legal practices and who can use law.

It won't escape notice that national law, rather than other regulatory orders, is the point of departure for the law-in-development agenda suggested here. The relative primacy of national law over other

regulatory systems is a peculiar historical outcome that involved a long process of political struggle, often in its most primal and violent form. Yet two reasons impel us to begin our research here.

First, regulatory orders are first and foremost about the distribution of power and the enforcement of forms of social stratification – they privilege the power of some over that of others. The idea of citizenship entailed in national law provides the basis, however partial and imperfect in practice, of legal equality. This limited form of equality has in many (and diverse) instances freed people from 'local tyrannies' and been important in improving the welfare and expanding the life choices of poorer and more marginalised sectors of society. In many societies, enforcing existing national legislation in ways that do not discriminate against the poor would produce a social revolution. Furthermore, in democratic settings national law has historically provided greater opportunity for ordinary people to influence the content and form of social regulation to which they are subjected.

Second, national law is at this historical moment the only regulatory order that has the potential (however imperfectly exercised) to enforce rules and adjudicate disputes across *all* social arenas, including international ones. The advantage of having agents of the state enforce ones' set of rules, or interpretation of rules, is simple: the state's monopoly of legal coercion and capacity to mobilise formidable economic and symbolic resources behind the enforcement of rules (far greater than that of any other national organisation) means that state law has the potential to do 'at a sweep what myriad of strikes, demonstrations, absenteeisms, featherbeddings, sit-ins, marches, assassinations, and prayer meetings [can] not, precisely because the latter [are] inevitably local or regional, episodic, and without legal force' (Anderson 1996:13).

The research agenda is built on the idea that individuals and groups make decisions about how to invest scarce resources by weighing the consequences in relation to the different regulatory orders in which they are embedded. Hence the relation between state law and other regulatory orders, and particularly the extent to which state law has ultimate authority in the relevant social arenas, must stand at the heart of the law-in-

development agenda. The choice to comply with or use the rules of a particular regulatory order is almost certainly contingent on a large number of factors, some of which are highly context specific. The research programmes, however, can identify more general features of different regulatory orders and the context in which they are situated.

The illustrations of rural collective action in Brazil make clear that the impact of law is contingent on both legal doctrine and on how a range of non-legal factors configure. As Nader points out in this volume, how people fare in a legal system is context-specific and depends on broader social conditions.¹⁰ We therefore need to look broadly at the factors that influence the form law as practice takes and how differentially situated groups comply and use law.

Three sets of factors appear to be particularly important candidates for further research. The discussion that follows highlights their significance for the choices people make about whether or not to engage in overtly collective political activity. This reflects both the author's biases and the importance of such actions to the ability of the poor to interpret and use law. There is in fact little systematic research on how law influences the processes through which poorer social groups acquire the ability to engage in collective public claim making (McCann 1998:78). The factors below are nonetheless relevant to all three research programmes alluded to earlier.

5.1 Justice system: legal doctrine and organisation

Some general dimensions of formal legal systems influence whether, and how, people comply with and use state law. One can look at specific features of legal doctrine or organisation, such as the presence of specific justiciable rights, or at more generic features that can be compared across legal systems. Good candidates in the latter category include:

- *certainty and enforceability of legal rules*, which make it rational for people to invest in using legal procedures to make claims or simply to respect the law. Uncertainty over how police, the courts, and state agencies will respond to

attempts at collective claim making, not to the claims themselves, will influence the likelihood that people will engage in such activities.

- *accessibility of judicial and administrative institutions*, that is, how comprehensible, affordable and fair/trustworthy the system is perceived to be by ordinary citizens.
- *availability of mediation* between poor people and the specialised judicial institutions, such as 'barefoot lawyers', legal advocacy NGOs, and public legal aid.
- *social embeddedness of law* in terms of language, history, symbols etc. Embeddedness may affect the legitimacy of a system and the facility with which people can gain access to and use it.

5.2 State as 'law-bound authority'¹¹

The degree to which the state is law-bound (i.e. rule of law prevails) has a profound influence on the enforceability, certainty, and security of rights under the law. The cost of engaging in collective action is significantly lower when agents of the state are required to protect groups from intimidation and violence by state and non-state actors, to guarantee negative rights such as freedom of association, speech and press, and to ensure due process in legal proceedings. This last issue is of great concern in a number of low- and middle-income countries and relates directly to the ability of the state to enforce rights and assert its rules over those of other regulatory orders.

5.3 Political regime dynamics

The degree to which national regime institutions are democratic and competitive – and competition is based on interests rather than patron–client relations – has a significant impact on how people can use law as a resource. It is likely to influence the ways in which the poor are able to claim rights or gain access to legal institutions, as well as how judges and other actors will interpret and use law. Authoritarian and democratic regimes apply and enforce legal rules in quite different ways, at least in the area of civil and political rights. More generally, the degree to which a regime is democratic and competitive, and to which competition is based on interests rather than patron–client relations, influences which legal rules are enforced and for what groups. Such regime features also influence

whether *mediators* and allies are available to help poorer social groups navigate the legal system and access key judicial and administrative institutions. Although this section sets out preliminary ideas for a long-term research agenda, the preceding analysis does point to more directly policy-oriented research as well. Such research, for example, could focus productively on what kinds of organisations are effective legal mediators for poor social groups. The hope would be to identify *generic features* of such organisations that, in their social and political context, make them particularly effective mediators, rather than differentiate between categories of organisations such as NGOs, public legal aid, church groups and so forth. Policy-oriented research could also give us a much needed sense of how poor groups perceive the law (for example, its relevance to their lives and its legitimacy), and through which mechanisms they learn what their rights and entitlements are as citizens, and what legal-procedure remedies are available to them. Acquiring such knowledge entails undertaking survey research across several national contexts.

6 Concluding Thoughts

One of the central questions a law-in-development agenda must explore is how, and how much, law influences the difficult life choices people or groups make about how to invest scarce economic and social resources in enterprises of production and political expression (i.e. wealth and voice creation). Exploration of this question can be guided by a view of law that focuses not only on substantive legal doctrine and specialised justice organisations of the state, but also on the socio-legal practices that are produced as differentially situated actors attempt to enforce, comply with and use legal rules. In this broad conception, law impinges on people's lives not just when they enter into contact with judicial institutions and enforcement agencies such as the police, but also with public agencies that regulate a variety of activities (from land use to voter registration). This view suggests a form of reciprocal causality: legal doctrine and practices shape life choices as people seek to comply and use law; and in their efforts to comply and use law people reinterpret legal doctrine and create new practices. In this sense, we make the law and the law makes us.

Notes

1. This article owes much to discussions during and surrounding the International Workshop on the Rule of Law in Development (IDS, University of Sussex, 1-3 June 2000) and to ongoing conversations with Michael Anderson, Richard Crook and Laura Nader.
2. Hence Trubeck (1972:6) observes, 'by professing to be the manifestation of reason, and treating all men as equals, modern law legitimizes the state.'
3. For recent views see Garth and Sarat (1998); Benda-Beckmann (1989); and Vanderlinden (1989); and the articles of Benda-Beckmann and Woodman in this volume.
4. Thelen and Steinmo (1992:8-9); Powell and DiMaggio (1991); Katznelson (1997); Krasner (1984); Hall (1986); Kitschelt (1986).
5. These different conceptions of institutions are perhaps best exemplified by the new institutional economics of North (1990) and the historical institutionalism of Skocpol (1992).
6. The justice system consists of agents of the state, such as judiciary, public prosecutors, enforcement agencies such as the police, and the prison system.
7. In the context of judicial proceedings the concept of rule-scepticism captures this reality well (Llewellyn 1989).
8. These changes in effect extended to rural areas a version of the corporatist labour framework prevalent in urban centres since the 1930s. Legally rural workers included agricultural labourers, workers in cattle raising or extractive production, independent workers (tenants, squatters), and smallholders.
9. For insightful ideas on how these questions might be tackled, see Charles Tilly's *Durable Inequalities* (1998).
10. Nader (1990:xviii) also notes that several studies of 'user patterns' show that the use of state law may vary inversely with the strength of other kinds of social control.
11. The capacity of agents of the state to act to secure compliance with state law is a different matter that also deserves attention. State agents attempt to enforce compliance with legislation and other sets of legal norms through a variety of strategies. The extent to which they are able to do so, however, is significantly influenced by the coherence and efficacy of the state apparatus. For an interesting discussion of enforcement strategies in the area of environmental legislation, comparing the United States and European Community experience, see Vogel and Kessler (1998).

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