

PEOPLE AND PLACES
Johannesburg:
the sheltering
screen

PLANET
Climatic changes
that make
the world flip

CONNEXIONS
Wedding bells
for Web and TV?

INTERVIEW
Antonio Tabucchi:
a committed
doubter

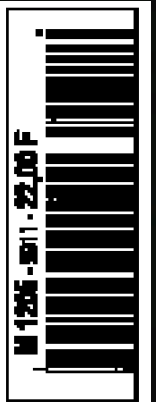
UNESCO the Courier



November 1999



Making the leap to a rule of law



Contents

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PEOPLE AND PLACES

- 3 The sheltering screen Photos by Thys Dullaart, text by Tomas Dashuber

EDITORIAL

- 9 All human rights for all Federico Mayor

PLANET

- 10 Climatic changes that make the world flip Robert Matthews

WORLD OF LEARNING

- 14 When the press plugs the schoolbook gap
Abdel López and Lucía Iglesias Kuntz

17 Focus



Making the leap to a rule of law

Efforts to establish a rule of law are high on the agenda and making headway in many countries. But effective application of rights for all is often encumbered by obstacles including the legacy of the past, neglect of customary law, wholesale transplantation rather than adaptation of foreign models, the primacy accorded to the market rather than public welfare, and lack of resources for enforcement.

Detailed table of contents on page 17.

ETHICS

- 37 Taking the sweat out of sweatshops Ruth Mayne
39 'Work, yes—but with dignity' Roberto Fonseca

SIGNS OF THE TIMES

- 40 Move over Milan, Manila is taking the catwalk Allen T. Cheng

CONNEXIONS

- 43 Wedding bells for Web and TV? Francis Balle and Sophie Boukhari

TALKING TO...

- 46 Antonio Tabucchi: a committed doubter

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THE SHELTERING SCREEN

◆ Photos by Thys Dullaart, Text by Tomas Dashuber

An all-night cinema offers a haven for Johannesburg's street children and other homeless people



Photos © Thys Dullaart/VT 2000

These children could not afford the price of a ticket and had to plead with the doorman, who later let them in.

Before being admitted to the cinema, street kids are frisked for drugs.



The lights go out and the curtain rises. Images scored with scratches and rich in dust particles flicker over the blotchy screen. A crackling noise issues from the loudspeakers as the strip of brittle celluloid is pulled through the projector.

The art of survival

We are in the Thari Cinema in downtown Johannesburg. All around are blocks of tenements and empty office buildings. Howard, the projectionist, is focusing the projector before inviting the audience to enter a world of action and beauty, not to mention ideals that can probably never be lived up to.

Around this time it is quiet in central ►

◆ Thys Dullaart is a South African photographer (see box page 7). Tomas Dashuber is a Belgian-born photojournalist.



Howard, the projectionist, keeps one eye on the projector and the other, through a hole in the wall, on the screen.

► Johannesburg. Between about six and eight o'clock in the evening, employees quit their offices in the formerly flourishing "City of Gold". Many head for the outlying townships. Others drive back to the carefully-guarded luxury suburbs north of Johannesburg. The commuters'

destination depends on the colour of their skin.

The affluent night owls who, in the heyday of apartheid, drove downtown in the evening to have a drink in the Carlton Tower are seldom seen. The city centre has become a kind of "grey zone", where

organized crime, prostitution, drug abuse and rough justice prevail.

Those who remain behind in the city centre have nowhere to go. They are street children or incorrigible adventurers who get a kick out of what has been stigmatized as the "most dangerous town in the world".

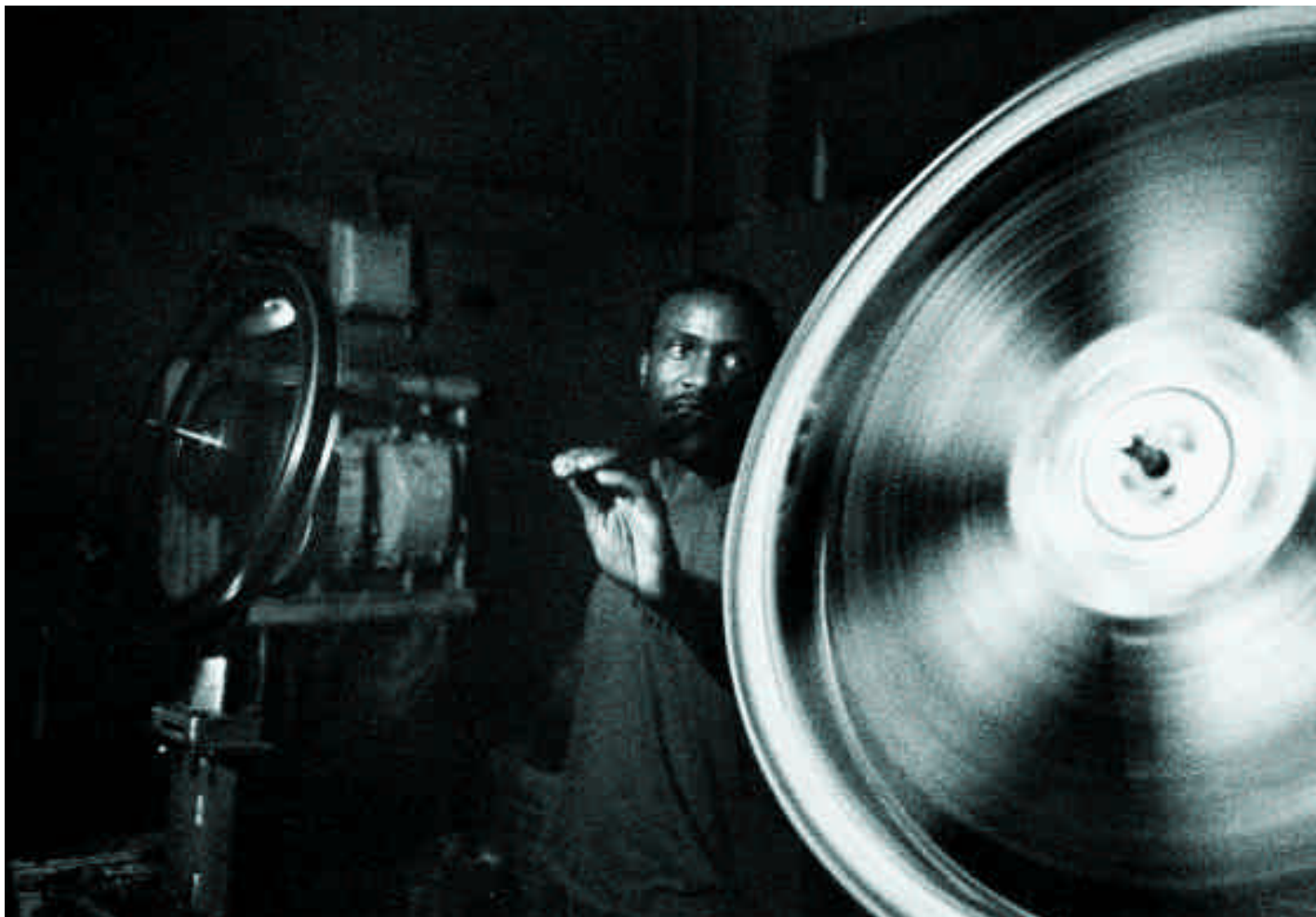
All the street children are black boys most of whom have run away from poor homes to escape abuse of one kind or another. On the streets they learn the art of survival. This means finding a suitable clan and carving out a place for yourself in a hierarchy that dictates who wears the jersey on cold nights. Even if you are freezing, the worst enemy is not being cold but being alone.

A warm place to go

They might have spent the day scavenging, begging and stealing. Many sniff glue. Official shelters for street children, some run by the churches, provide bunks and a soup kitchen. On some nights Samaritans hand out food. But while almost all the children have spent time at one of these shelters, they never stay there too long. Some of them, once their basic needs have been catered for, head off for the Thari cinema in Market Street.

Years ago, Miklos Zenasi escaped communist rule in Hungary. Now a homeless 66-year-old, he spends most nights in front of the screen.





Photos © Thys Dullaart/VT 3000

Howard rewinds a reel of film.

VITAL STATISTICS

While South Africa (population 41 million, area 1.2 million km²) has a per capita income (\$3,210) which places it among the middle-income countries, its income disparities are among the most extreme in the world.

One-third of the population has a "first world" standard of living, but over half live in "third world" conditions. In the latter group, almost all of whose members are black, only half have primary education, only one quarter of households have access to electricity and running water, and one third of the children suffer from chronic malnutrition. Unemployment levels are among the highest in the world. ■

Source: World Bank



Although it is in dire need of renovation, this movie-house has become a kind of haven, a secure, warm place where homeless people can find shelter. As well as street kids, it attracts other underprivileged people who have slipped through the very loose "net" of the South African social security system.

The proprietor of the cinema has no objection to his auditorium being used by the waifs as a kind of dormitory. The only condition he insists on is that they do not consume alcohol or use drugs. Every night, between 20 and 30 kids make themselves as comfortable as possible on the cinema's threadbare carpet.

'It's like belonging to a big family'

One regular guest remarks, "It's pretty hard to get accepted here, but once you are it's like belonging to a big family." He talks about the hard reality of life in the million-population city outside. Inside, you can find a place among the rows of dilapidated seats and see second-rate films packed with action. Once, when he was spending the night outside in the street, somebody stole his shoes while he was asleep. That is just one more reason to pay two rand (50

cents) for a place to doze between *Terminator* and *Air Force One*.

Another regular is 66-year-old Miklos Zenasi, who comes in about the same time each evening and looks for his favourite place in the front row. Here he discreetly settles down for the night. Miklos, who is known to everyone as "The old man", openly admits that he is no longer the wild bull he was once reputed to be. He deserted from the Hungarian army, fled the communist regime, and by roundabout routes eventually found his way to South Africa. Now, he says, he is too old for that kind of excitement. What's more, he adds, pointing to different parts of his body, he's a mass of aches and pains. For a while he lapses into silence before finally revealing that he has spent more nights in recent years beneath the screen than anywhere else.

Around six o'clock in the morning, when Arnold Schwarzenegger has got even with his last enemy, the city outside begins to throb with life again. It is time for the Thari to expel its children for another day. It may well see them again in the evening just as Howard is checking the focus of the lens for a further round of dreams. ■



A star looks down. From a poster of the film *Desperado*, Antonio Banderas keeps watch over a man sleeping in the foyer.



A young boy dozes on the floor beneath the projector's dazzling beam.



Photos © Thys Dullaart/VLT 3000



Ramshackle seats are used as mattresses.

AN UNOBTUSIVE EYE

Tys Dullaart, a 31-year-old South African photographer on the staff of the Johannesburg *Star* newspaper, won the 1999 World Press Photo Award ("Daily Life" category), with the picture story on Johannesburg street children from which photos published in this feature have been selected. Dullaart worked as unobtrusively as possible using a small Leica camera. He quotes with approval the great French photographer Henri Cartier Bresson who once said "Anyone who wants to catch fish should not disturb the water." In other words, if you want to take pictures in a cinema, it's a good idea not to disturb the performance.

"Living and working in Johannesburg has taught me many things about street children," he says. "Eager to see their response to the Thari cinema photos, I arranged for some of the boys featured in them to meet me at the annual World Press Photo Exhibition. I was amazed when they commented instead on a story about street children in Romania. 'But they are white,' was their initial reaction, followed by a discussion which gave me the impression that it was themselves they saw in those photos from Romania." **TD. ■**

A group of boys with eyes glued to the screen . . . until sleep overtakes them.





Another action drama comes to an end in front of a sleepy audience.

Some of the ushers were once homeless themselves.



Photos © Thys Dullaart/VLT 3000

ALL HUMAN RIGHTS FOR ALL



Federico Mayor

As this issue goes to press, UNESCO is in process of electing a new Director-General. In accordance with UNESCO's Constitution, UNESCO's Executive Board, comprising representatives of 58 Member States, recommends a single candidate to the UNESCO General Conference. The Conference, in which each of UNESCO's 187 Member States has one vote, is the Organization's sovereign governing body. It will take a decision on the Board's proposal on November 12, and the new Director-General will assume his functions a few days later.

Further details about the election will appear in the next issue of the *Courier*.

The end of the millennium has seen some remarkable advances in political democracy. Oppressed peoples everywhere are at last, or once again, tasting freedom. They owe these victories largely to themselves, to the intelligence, determination, and even the genius of their citizens.

But this freedom will be fragile as long as it is cast in a single mold, the vehicle of a uniform globalization which speaks with a single voice, primarily that of commerce. Principles may be universal; the mechanisms that infuse life into them are shaped by a host of features that are specific to each society.

No vision of democracy—which transcends politics and includes economic, social and cultural life—can really take root if it is a sterile copy that fails to take account of the history and myths, the values and traditions of each people. While these roots are necessary, however, they provide no justification for citing “cultural relativism” as an excuse for violating the basic principles on which the rights of human beings are founded. Respect for “cultural identity” cannot legitimize anti-democratic practices.

A second danger arises from the fact that the field in which these rights are elaborated and exercised is all too often limited. The recent commemoration of the Universal Declaration of Human Rights was a reminder that human rights comprise not only political and civil rights but also, on exactly the same basis, economic and social rights, such as the right to a job, housing, health and education.

One and a half billion people live in dire poverty. Their most fundamental right, the right to life, the bedrock of all other rights, is constantly threatened. So the still unfinished struggle to extend and strengthen human rights includes the duty to promote development.

This duty is not only a matter of legal formalism or an ethical imperative. Fundamental freedoms will remain very fragile as long as poverty, exclusion and inequalities persist. The forces of globalization encourage the establishment of the rule of law, but a version of law biased in favour of rules needed for successful business activity. They also do more to sharpen economic and social tensions rather than to reduce them.

The momentum created by efforts to establish the rule of law in a growing number of countries is coming up against a major obstacle. The principles and rules that govern international relations are increasing their influence on the lives of nations, but they are very far indeed from being democratic. The strongest still hold sway.

This is true where individual states are concerned. They feel their wings have been clipped, and see their legitimate prerogatives being eroded by the rise of a kind of private-sector absolutism, which tends to limit the functions of government to security and mediation, paralyzing its role as the guarantor of the general interest and depriving it of the necessary means to apply the rule of law.

It is also true of the community of states because there is still no world structure which is accepted as the embodiment of the force of law. The United Nations is a unique international democratic forum, but its authority has been weakened first by nearly half a century of the Cold War and then by unilateral actions taken by the major powers, in defiance of the very principles they profess to defend.

The rule of law is indivisible; it must encompass freedom and welfare, individual countries and the world at large. ■

CLIMATIC CHANGES THAT MAKE THE WORLD FLIP

◆ Robert Matthews

Global warming's impact on the environment is not necessarily a drawn-out affair. Recent evidence shows that dramatic changes or 'climatic flips' could happen virtually overnight.

The once-green land of Ireland turned into a frozen wilderness. Harp seals swimming among ice-floes off the coast of France. Polar bears prowling the streets of Amsterdam. These are the images conjured up by the latest research into global warming.

Yes, you read that correctly: global warming—the rise in the world's average temperature caused by the trapping of the sun's heat by pollution in the atmosphere.

If you are baffled by that, then prepare to be shocked. For the same research is now suggesting that such dramatic changes in the climate of northern Europe could take place in as few as 10 years.

Again, this figure is not a misprint: no zero has gone missing. Scientists have recently uncovered compelling evidence that global warming can have a devastating impact on timescales far shorter than anyone believed possible. Not centuries, not even decades, but years, in what are being called "climatic flips". One leading expert has recently gone on record to warn that some north Atlantic countries could find themselves plunged into Arctic conditions over the space of just 10 years.

Risk of sudden upheaval

In geological terms, that is as fast as the blink of an eye. But even in human terms, such a rate of climatic change is incredibly—and quite probably intolerably—rapid. It is far from clear whether any economy or agricultural system could cope with such sudden upheaval.

Yet evidence is now mounting that such "climatic flips" not only can happen, but have happened in the past. It is evidence that adds new urgency to the global warming debate, which has lost much of its momentum in recent years. It also highlights the frightening complexity of the task

facing scientists trying to predict the earth's response to human activity.

Arguments about climatic change typically focus on how increasing levels of so-called greenhouse gases—principally carbon dioxide from burning fossil fuels—in the earth's atmosphere trap ever more of the sun's heat.

Huge efforts have been put into predicting the likely global temperature rise caused by the extra greenhouse gases, and current best estimates point to a rise of 1.5 degrees Celsius or so over the next century.

But while scientists warn that even so apparently small a rise in temperature could cause upheaval in everything from agricultural practices to the spread of disease, the *rate* of change hardly seems terrifying. Surely we can cope and have coped with events that change over several generations?

Such arguments are buttressed by another, apparently compelling, argument

against rapid climate change. The earth's oceans have colossal thermal inertia, and would surely iron out any sudden upheaval: weight for weight, it takes ten times more energy to heat water than it does solid iron.

Small wonder, then, that scientists were unsurprised when they failed to find any signs of rapid climatic changes when they first studied ancient ocean sediments, the isotope levels of which retain a record of past temperatures.

The end of the Ice Age: a puzzling discovery

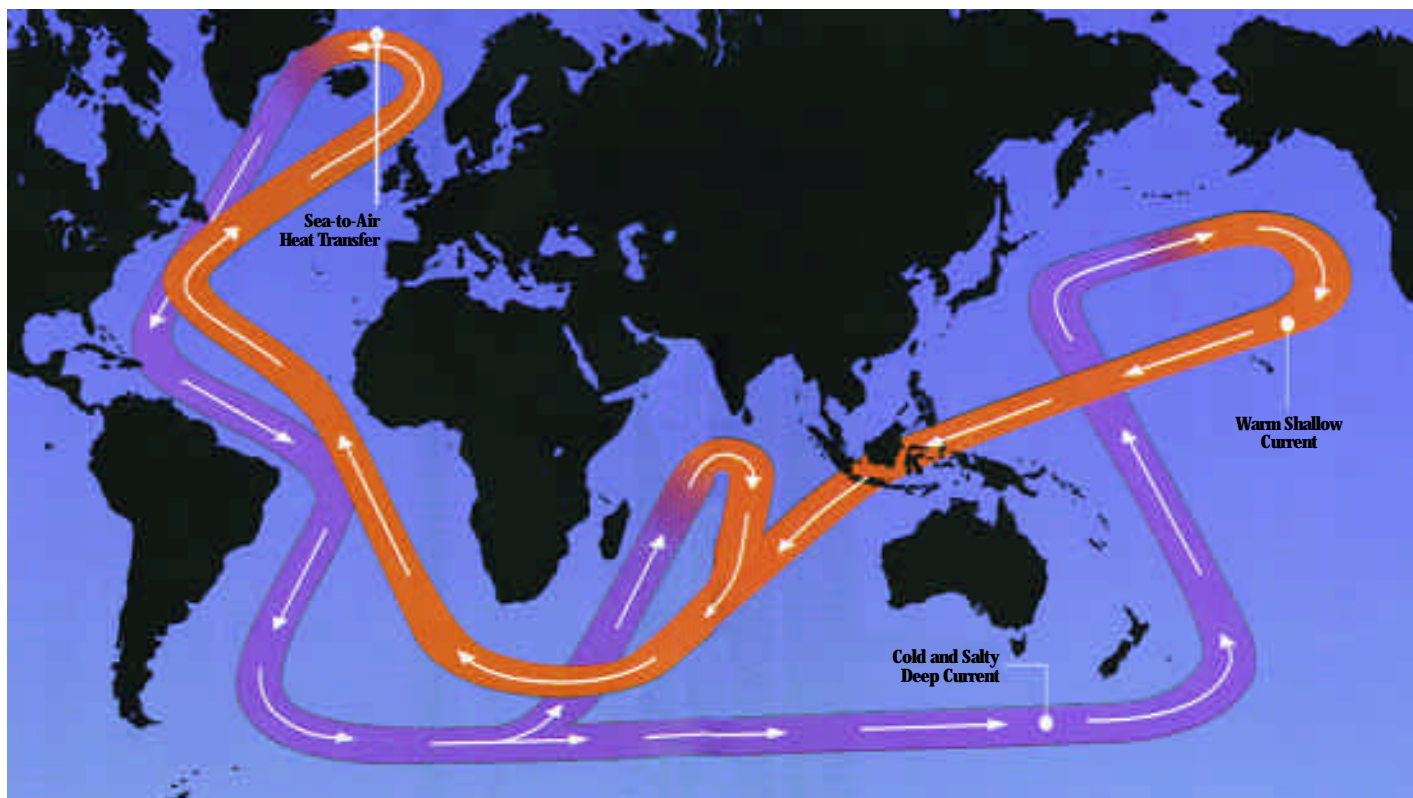
But this apparently comforting confluence of theory and data is now known to contain two huge loopholes. The first reared its head in the early 1980s, when a joint U.S.-European team of scientists working in Greenland made a puzzling discovery. They had extracted an ice-core from a site in the southern part of the country,

By analysing icy sediments (ice-cores) extracted from deep beneath the earth's surface scientists can plot the course of climate change thousands of years ago. Below, a sample taken at Lake Annecy (France) in winter.



© Xavier Desmier/Bapho, Paris

◆ Science correspondent of the London *Sunday Telegraph*



© WOCF, Southampton

Ocean currents continually transport heat around the globe like a liquid conveyor belt. Above, simplified chart of the circulation process.

and had measured isotope levels in the gas trapped at different depths in an attempt to gauge the temperature in the region over thousands of years.

Because the ice builds up relatively rapidly, the ice-core was expected to give the researchers the most fine-detailed picture yet of temperature changes in the region. Plotting out the corresponding temperatures, the researchers discovered something puzzling—and disturbing.

As expected, the core showed the rise in temperature corresponding to the end of the last Ice Age around 11,000 years ago. But it also showed that the bulk of that warm-up had taken place in the space of just 40 years.

At the time, no one knew what to make of the result, which flew in the face of everything scientists then knew about climate change—or thought they knew. In the years that followed, however, further ice-cores were extracted, and they revealed an even more dramatic story: a 5- to 10-degree increase in temperature and doubling of precipitation over Greenland in the space of just 20 years.

Nothing in the earlier ocean sediment core data had prepared scientists for such a finding—nor could it. For this was the first loophole in the argument against sudden climatic flips: the absence of evidence from the original ocean sediment cores simply reflected the very broad-brush picture they gave of temperature change. They lacked the detail offered by ice-cores.

Prompted by the Greenland findings, scientists have since tracked down locations where ocean sediment builds up fast enough to give a record of temperature comparable in detail to that from the ice-cores. And, sure enough, they reveal the same story of rapid climatic change in locations as far apart as California and India.

The history of science shows that finding evidence for some astonishing phenomenon is often only part of the story. To convince the scientific community at large, the evidence has to be backed up by a more

The history of science shows that finding evidence for some astonishing phenomenon is often only part of the story. To convince the scientific community at large, the evidence has to be backed up by a more comprehensive explanation

comprehensive explanation. And for many years the standard explanation for why Ice Ages begin and end provided yet more reasons for thinking all climatic change must be slow and graceful.

That explanation rests on work by a Serbian scientist named Milutin Milankovitch, who in 1920 linked Ice Ages to changes in the shape of the earth's orbit. Caused by the push

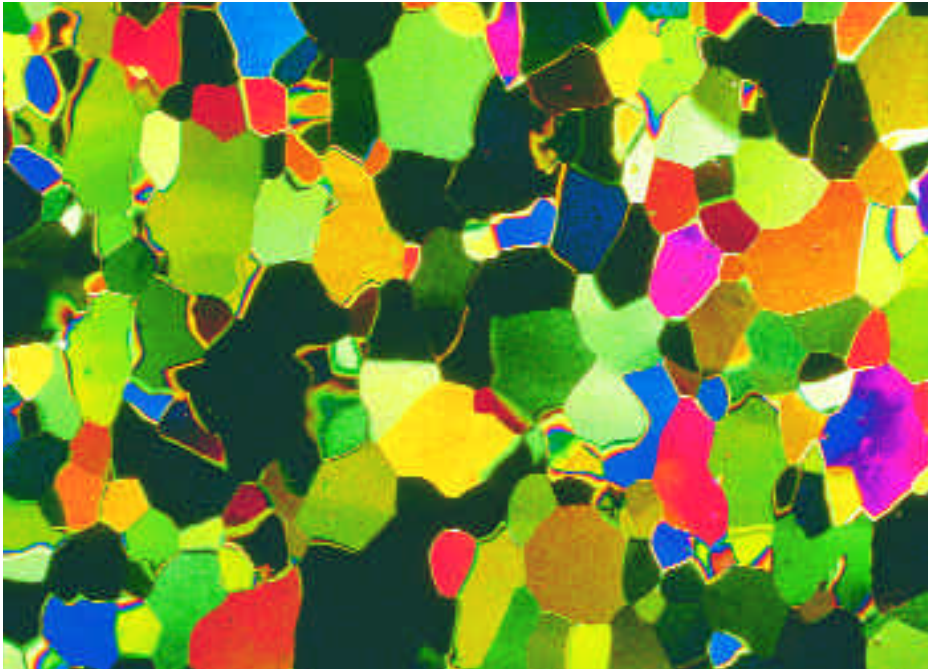
and pull of the other planets, these orbital changes altered the concentration of sunlight reaching the planet. Such changes would naturally take place very gradually, on timescales of many thousands of years—a recipe for climatic change that is anything but abrupt.

A global heat transporter

Yet, once again, there is a loophole in this comforting argument—as Wallace Broecker of Columbia University, New York State, realized around the time climate experts were puzzling over the ice-core data.

This loophole centres on a very specific feature of the earth's oceans: their circulation patterns. Ocean currents transport heat around the globe like a vast conveyor belt. In the Atlantic, for example, warm water travels northwards from the Gulf of Mexico, passing its heat to the air by evaporation as it goes. This makes the current progressively cooler, saltier and denser until eventually, near Iceland, the water is so heavy that it sinks, and begins a long journey southward, along the ocean floor.

Broecker realized that this complex, subtle process—which he called “The Conveyor”—could be the Achilles heel of the earth's climate, allowing subtle changes to be turned into dramatic upheaval. For instead of having to alter the whole body of the oceans, just a small change in temperature might be enough to alter the beha- ▶



© AP/Comma, Paris

Photographed through a polarized light microscope, a cross-section of a 100,000-year-old ice-core from the Antarctic.

viour of the Conveyor—and trigger radical and rapid climatic change over a large area.

For example, gradually melting ice from the Arctic could dilute the saltiness of the Conveyor to a critical density where it no longer sinks and begins its journey southward to pick up more heat. The Conveyor would, in effect, be switched off, isolating the north Atlantic from the warming waters of the tropics. The result would then be distinctly paradoxical, with a slight warming of the Arctic causing temperatures of north Atlantic countries to plunge.

Broecker's explanation is now widely believed to lie at the heart of rapid climate change in the past. Worryingly, however, global warming is predicted to have precisely the type of warming effect on the Arctic ice that threatens the existence of the Conveyor. Computer projections of the effect of pollution on global temperatures predict an inflow of cold, fresh water into the northern Atlantic—water that could dilute the Conveyor enough to switch it off.

The Achilles heel of the earth's climate

If that happened, says Broecker, winter temperatures in the north Atlantic region would fall by 10 or more degrees Celsius within 10 years, giving places like Dublin the climate of Spitsbergen, 400 km north of the Arctic Circle. "The consequences could be devastating," he says.

It is a scenario that gains credibility from ice-core data, according to climate expert Kendrick Taylor of the Desert Research Institute in Reno, Nevada. He says that many cores suggest that around 8,000 years ago

there was a sudden plunge back to a "mini Ice Age" which lasted around 400 years. The most likely cause, says Taylor, was the release of melted ice-water from lakes in Canada into the Atlantic, which switched off the heat-transporting Conveyor.

"The change in freshwater flux to the oceans was large, but not that much diffe-

rent from what greenhouse-induced changes may produce in the future," he said in a recent paper in *American Scientist*. "It is ironic that greenhouse warming may lead to rapid cooling in eastern Northern America, Europe and Scandinavia."

So just how close is the Conveyor to switching off once again? The short answer is: no one knows. Computer models have still to identify the critical density of sea-water at which the Conveyor will switch off, or the greenhouse gas concentrations needed to release the requisite amount of melt-water.

Cutting pollution buys time

What computer models have shown, says Taylor, is that reducing pollution emissions buys time—both by slowing the rate of global warming, and also by driving the climate more gently, which seems to increase its stability against rapid change.

But while scientists struggle to capture the full complexity of the climate on their supercomputers, evidence of other causes of dramatic climate change is beginning to emerge.

Last July, Professor Martin Claussen and his colleagues at the Potsdam Institute for Climate Science, Germany, reported evidence that today's Sahara desert was created

A MUDDY MYSTERY

The effects that scientists now believe can shape the earth's climate are astonishingly subtle, and one of the most bizarre centres on the connection between Ice Ages, earthquakes, and mud.

Last year a team from the Southampton Oceanography Centre in Britain announced in the journal *Nature* the discovery of a 450-billion-cubic-metre deposit on the sea-floor off the coast of Sardinia—the aftermath of a truly enormous slide of mud: enough to engulf the whole of France to a depth of a metre.

Carbon dating of the plankton above and below the mud bed suggest that the slide took place around 20,000 years ago—at the height of the last Ice Age. This was a time when so much water had been turned to ice that sea-levels were 120 metres lower than they are today—a fact that the team suspects is crucial to the cause of the colossal mud-slide.

Formed out of thousands of years of river deposits, the mud would have been rich in organic matter—material that rots to produce huge amounts of methane gas. Normally this gas would have been locked into the mud by the huge pressure of sea-water lying over the submerged sediments. But as the Ice Age deepened and sea-levels fell,

the mud deposits would find themselves exposed, and thus able to release their pent-up methane gas.

This gas is a very potent source of global warming, and the sudden release of huge amounts of it might have helped push the earth back out of the Ice Age.

Certainly the timing of the Sardinian mud-slide—at the height of the last Ice Age—is intriguing, says team member Professor Euan Nisbet of London's Royal Holloway College: "It is possible that a big slide could have released enough methane to act as a warming trigger."

It is an idea that has gained strength from a recent discovery by researchers at Duke University in North Carolina. In a paper also published in *Nature* last year, they argue that the sheer weight of ice pressing down on the earth's crust may have triggered huge earthquakes during the Ice Age.

Could these have triggered massive submarine mudslides, releasing methane that led to the end of Ice Age? As yet, no one knows. But it points to yet another astonishingly subtle link between the environment, climate—and us. ■

in a sudden climatic “flip” that took place just 5,500 years ago, turning vast areas of lush grassland into an arid wilderness and devastating ancient civilizations.

Using a sophisticated computer model of the land, sea and atmosphere, the team has discovered just how subtle are some of the effects that can turn Milankovitch-style changes in the earth’s orbit into major climate upheaval.

The Sahara’s quick-change act

They found that over the last 9,000 years the gravitational pull of the planets has altered the tilt of the earth’s axis by about half a degree, and changed the timing of earth’s closest approach to the sun by around five months.

By themselves, such subtle changes should not cause major climatic effects.

‘The change in freshwater flux to the oceans was large, but not that much different from what greenhouse-induced changes may produce in the future. It is ironic that greenhouse warming may lead to rapid cooling in eastern Northern America, Europe and Scandinavia’

But when Claussen and his colleagues included the effect of vegetation in their computer model, they found that it caused rainfall levels to plummet over the Sahara region.

They traced the cause to “feedback” effects, in which a slight drop in vegetation level makes the earth’s surface slightly better at reflecting sunlight, which causes rainfall levels to drop—prompting more vegetation loss, and so on.

According to Claussen, these feedback effects turned the vast, once-green Sahara into a brown wasteland within just 300 years. “It was the largest change in land cover during the last 6,000 years,” he says. “It was very severe, ruining ancient civilizations.”

The discovery is likely to force historians to rethink their explanations of events in the region. For according to Claussen, it contradicts the long-held belief that the collapse of agriculture in the region was caused by ancient farmers exhausting the soil: “Although humans lived in the Sahara and used the land to some extent, we think that ancient land use played only a negligibly small role.”



This prehistoric rock painting from Tassili N'Ajjer in southern Algeria is a reminder that the Sahara was once a fertile region with abundant plant and animal life.

The findings are also being seen as another warning of just how unstable even today’s climate may be. “It is capable of changing very abruptly,” says climate expert Andrew Goudie of Oxford University. “We’ve known that the extent of the Sahara has yo-yoed back and forwards for millions of years, and that about 8,000 years ago it was much wetter than today, with big rivers feeding into the Nile. But I hadn’t realized just how rapid the changeover had been. It is salutary.”

Temperature nose-dives

Also in July, a team of researchers from the universities of Illinois and Minnesota reported the discovery of another climatic “flip” in the northern hemisphere around 9,000 years ago, which temporarily plunged the region back into an Ice Age.

Using lake sediments from Minnesota, the team confirmed the existence of the

cold snap around 8,200 years ago, as revealed by the ice core data. But they also found evidence for another dive in temperatures around 8,300 to 8,900 years ago. The team thinks this older cold snap was linked to the release of melted ice from lakes into the Atlantic—which may have switched off the Conveyor. But the researchers now think that the more recent flip most likely had another—and as yet unknown—origin.

What is clear is that until we know much more about the complexity of climate change, all bets about how much time we have to take action are definitely off. What evidence we do have increasingly points to the stark possibility that we may have far less time than we thought.

“I used to believe that change in climate happened slowly and would never affect me,” admits Taylor. “Now I know that our climate could change significantly in my lifetime.” ■

WHEN THE PRESS PLUGS THE SCHOOLBOOK GAP

♦ Asbel López and Lucía Iglesias Kuntz

Educational supplements for young readers are flourishing in the Latin American press

A few weeks ago, several children wrote to the editors of *Zurquí*, the educational supplement of the Costa Rican daily newspaper *La Nación*. They complained that their parents wouldn't let them cut out and paste figures from the paper as the instructions indicated. Defending themselves, the parents argued they did not want to spoil their precious family collections of *Zurquí* issues. In the following week's supplement, the editors came up with a suggestion: photocopy the figures, so that children could cut them out and parents could keep their newspaper intact.

This is just one sign of the growing interest generated by the educational supplements published by many Latin American papers. A distressed 11-year-old schoolgirl in Bogotá, the capital of Colombia, phoned the country's largest daily, *El Tiempo*, to beg for a back issue because she had lost her own copy. What she really wanted was *Mi Tiempo*, an educational supplement the paper distributes free to pupils at 80 public and private schools in the city. "The girl was upset because she lost the paper before she'd finished doing all the activities in it," says Ofelia Corradine, the managing editor of the monthly, which prints 31,000 copies.

For most of the school pupils in Bogotá's poorest neighbourhoods—30 per cent of which are taking part in the project—*Mi Tiempo* is not only the closest to a schoolbook that pupils have ever come across but also something they can take home to colour, draw in, and write down what they think. One of the issues in the first half of 1999, for example, ran articles about tolerance and getting along with others, with plenty of space where the children could express their opinions.

"Each child gets a copy, so they develop a close personal relationship with the supplement," says Corradine. These

children who have mostly never owned schoolbooks or at best have had to learn from borrowed ones, acquire a sense of ownership which is an important aspect of the media's current educational projects.

Aralynn McMane, director of the World Association of Newspapers (WAN), a Paris-based body which awards an annual World Young Reader Prize (see box page 16), says "in recent years we have seen supplements for young people, in Latin America and elsewhere, become a lot

'In recent years we have seen supplements for young people, in Latin America and elsewhere, become a lot smarter. They sound less like grown-ups lecturing or pandering to children and more like a trusted friend or mentor with something useful and relevant to say.'

smarter. They sound less like grown-ups lecturing or pandering to children and more like a trusted friend or mentor with something useful and relevant to say."

George Kelly, one of the founders of the WAN and adviser on educational projects to several Latin American newspapers, says the best supplements are produced in Brazil and Argentina. *Folha* and *O Estado*, two major dailies in São Paulo, Brazil's economic capital, put out two children's weeklies, *Folhinha* and *Estadinho*. Brazilian journalist Marcelo Soares thinks they are valuable because they carry articles which interest children "without treating them like slaves of Xuxa," a famous Brazilian former model who presents children's programmes on

television. These supplements also try to explain in simple terms current events like the war in Kosovo or the recent Turkish earthquake. *Estadinho* also carries regular columns on language and science.

'A fun way to read'

Other smaller papers are hot on their heels. In the Argentine city of Bahía Blanca, *La Nueva Provincia* sends a fortnightly supplement called *El Diario de los Chicos* to 3,000 subscribers aged between 5 and 14. One of its writers, known as "Santiago", is a 12-year-old film critic with a collection of 700 film reviews from newspapers all over the world. In the city of Paysandú, Uruguay's most widely read provincial paper, *El Telégrafo*, publishes *Gurises* (which comes from a Guaraní Indian word meaning "children"), an eight-page tabloid whose motto is "A fun way to read". Ever Thursday, the day it appears, "there's plenty of fun in Paysandú's schools," says Enrique Sánchez, a journalist on *El Telégrafo*.

Gurises publishes material for classroom use and gives news about school events, competitions and other children's activities. It also provides an outlet for imaginative work by printing unpublished stories and, with backing from the World Wildlife Fund (WWF), tries to get across to its readers the importance of protecting nature, with a section of photographs on environmental issues. In 1996, the government of this northeastern Uruguayan province declared *Gurises* to be "of value" to the province because it encouraged children to read.

The newspapers are usually not just concerned with attracting young readers, but also with getting their parents into the habit of reading the paper every day. Latin American newspapers depend more heavily for survival on news-stand sales than on income from advertising. This is because most Latin American countries do not have independent bodies to verify

♦ UNESCO Courier journalists



Every Sunday, the Panamanian children's supplement *Aprendo* prints sports news (at left) and children's opinions on the week's special topic (right).

circulation: advertising agencies have to make do with circulation figures provided by the newspapers themselves. This creates lack of confidence and limits advertising sales.

The result is a flurry of promotional activities to boost circulation, with initiatives such as subscribers' clubs—started by *El Tiempo* in Bogota—and competitions with flashy prizes and gifts of atlases, encyclopaedias, health booklets, football posters, CDs and cookbooks.

Education sells papers

Education has become a weapon in the battle for new readers. The day *Zurquí* comes out in Costa Rica, sales of its parent paper, *La Nación*, go up by 25 per cent. On Tuesdays in Paraguay, when *ABC Escolar* hits the streets, the circulation of *ABC*, one of the country's main papers, rises between 20 and 40 per cent without any other promotion, says Natalia Laporta, the supplement's editor. Last July and August, *Aprendo*, the children's supplement of *La Prensa de Panama* had a pull-out section of historical photos of the Panama Canal, which will return to Panamanian ownership this December. "When we printed the cut-out features on Sundays, sales of the main paper went up by 17 per cent, a record for us," says Wendy Tribaldos, who is in charge of the supplement.

The supplements can increase the circulation of their parent papers largely because education continues to be regarded in Latin America as a means of social advancement.¹ But they also have definite advantages over other teaching methods and resources.

One is their considerable capacity to relate knowledge to the present. Producing

'The fact that the supplement is connected with Costa Rica's official syllabus is an additional attraction. That's why it's used so much by parents and especially teachers'

a schoolbook, from the moment someone thinks of writing it until the time it lands on a pupil's desk, takes at least two years. In countries with few resources to update their school primers regularly, this period can be much longer. But newspapers record events which happened only a few days ago.

Kelly remembers a Latin American geography supplement which showed the

most recent political changes around the world. "If you went to a school, the atlas in the library would still probably show the Soviet Union as a single country," he says. Some of the supplements follow the syllabus prescribed by their country's education ministry. *Zurquí's* editor, Patricia Brenes, says "the fact that the supplement is connected with Costa Rica's official syllabus is an additional attraction. That's why it's used so much by parents and especially teachers."

Following such programmes involves tackling the same subjects every year, but the editors try to vary their approach each time around. To teach about resistance to the invasion of Nicaragua by the U.S. filibuster William Walker in 1856, *Zurquí* used a play and included a script and instructions about how to make costumes. The following year, it printed cut-outs to put in a history corner in the classroom. Later the children were encouraged to produce a newspaper which featured the main historical events and a description of daily life in those days.

Low-cost reading

The great advantage of the supplements is that they are much cheaper than schoolbooks and books in general. The edition of *La Nación* which contains *Zurquí* costs only \$0.39, while school text-

1. According to figures from the United Nations Development Programme (UNDP), 23 per cent of children who attend school in Latin America and the Caribbean do not reach the fifth year.

© Aprendo/La Prensa, Panama

► books cost \$5.

Icarito, which is put out by the Chilean daily paper *La Tercera*, has 100,000 readers. It has two sections, one for primary school children and another for those of high-school age. It featured English as a subject this year and has been on the Web since 1997. "The *Icarito Digital* site is visited by 5,500 people every day, which makes it one of Latin America's most popular websites," says Nuria Cot, a teacher who edits the supplement.

Chile's education minister, José Pablo Arellano, pointed out at the end of 1998 that *Icarito* "reported on curriculum changes being considered in the country's educational reform programme and also

MY FIRST STORY-BOOK

The first story-book many South African school-children come across is the Johannesburg *Sunday Times's* 4-page educational supplement *ReadRight*, which in the last 8 months has printed 12 stories which can be pulled out and saved. Lisa Blakeway, editorial director of the project, which was launched in January 1999, says these illustrated stories have been the supplement's most popular feature.

ReadRight has a print run of 485,000 copies which are inserted into the *Sunday Times*, as well as 36,500 more which, with help from foundations, companies and individuals, are handed out free in 900 rural and township schools, most of which do not have a library.

The supplement is aimed at teachers, parents and pupils and can include reading and comprehension exercises, mapwork, life-skills activities, essay competitions, book reviews by children, stories to discuss in class and a course about how the government is organized.

The *Sunday Times's* commitment to education goes back further than *ReadRight*. The South African government's inability to supply school-children with textbooks they need to follow the country's new educational curriculum inspired the paper to publish all the courses in it over a 6-week period. *ReadRight*, which is an extension of this initiative, boosted the parent paper's circulation by 7 per cent. Now, there are plans to set up quarterly workshops for teachers.

This ambitious project won this year's World Young Reader Prize awarded by the World Association of Newspapers. ■



● <http://www.suntimes.co.za/edu/>



© Zurquí/La Nación, San José, Costa Rica

Costa Rican children's supplement *Zurquí* uses catchy illustrations and simple language to explain the basics of plant photosynthesis to its readers (left).

At right, the Argentine supplement *El Diario de los Chicos* hails peace in Northern Ireland, commenting that "when people or peoples accept the ideas of others, peace is possible."

on new teaching methods." This meant, he said, that the supplement was "an extremely valuable reference tool for both pupils and teachers."

The teachers and children recognize the value of the supplements. María Virginia López Jordán, a secondary school teacher in Jujuy (Argentina), says "they've provided me with up-to-date material which you can't get in school textbooks. I've worked with teachers in other subjects like history, geography, ethics and civics. The pupils can weigh up the various sources, which stimulates discussion and helps them form opinions." Other advantages the teachers usually mention are the interest the supplements generate in the classroom, the valuable extra source of information they provide and the way they illustrate abstract ideas with concrete examples.

Learning without tears

Despite all this, the supplements are sometimes criticized for being over-academic. The press ought to be encouraging interesting and enjoyable extra-curricular activities, but instead it is becoming a kind of school in itself.

Kelly says that despite attractive design and bright colours, the content is sometimes too serious, especially in Colombia and Argentina. Supplements try to talk in an adult way about complex political and social topics. "A British child would quickly switch off," he says. Still, he underlines that one of the best ways to judge the quality of the supplements is to see how schools make use of them. "If

they do—and this is happening—it means the supplements must be providing something that the country needs."

Kelly thinks the press projects in schools should first of all entertain children and encourage them to express themselves. "There is nothing which assures that being serious will make people learn better. The opposite tends to

'There is nothing which assures that being serious will make people learn better. The opposite tends to be true. When you make something exciting and interesting that's when young people open up and understand what you are doing'

be true. When you make something exciting and interesting, that's when young people open up and understand what you are doing," he says.

Tribaldos, the editor of *Aprendo*, says: "We're writing for the child of today. We're producing a supplement which is entertaining and instructive at the same time." This credo has to survive. At least those who associate education with pleasure hope it will. ■



● <http://www.wan-press.org>

FOCUS

Making the leap to a rule of law

Contents

- 18 A world in transition
Yash Gai and John Kohut

1 | Former Soviet bloc

- 19 No quick fix
Stephen Holmes
- 21 Kyrgyzstan: breaking out of the old shell
Cynthia Guttman
- 24 Ukraine: legal eagles with clipped wings
Serhiy Holovaty
- 26 A world's eye view of the law

2 | Progress in the South

- 28 In traditional societies, the jury is out on legal reform
Yash Ghai
- 31 Benin: justice on the horizon
René Lefort
- 33 South Africa: blending tradition and change
Ferial Haffajee
- 34 Chinese courts get a hearing
Katherine Arms
- 36 Law and social justice
Kerry Rittich



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Across the world, wherever authoritarian regimes have been toppled and free market economic systems have been introduced, the establishment of the “rule of law” has vaulted to the top of the agenda. Good laws effectively applied respond to a growing aspiration for the full exercise of human rights to be guaranteed. Legal reform is also part and parcel of the process of integration into globalized markets. This process is bound to be a long one.

In the former Eastern bloc, attempts to simply import laws from the West have largely failed (pp. 19-20). The heritage of the recent and remote past is a heavy burden, as a former Ukraine Justice Minister (pp. 24-25) describes from first-hand experience. But, as recent changes in Kyrgyzstan suggest (pp. 21-23), it is not necessarily an insuperable obstacle.

Tradition also cuts different ways in Third World countries where disregard of customary law may create new forms of injustice (pp. 28-30). Post-apartheid South Africa is trying to find a new role for customary law (pp. 33-34). Benin, via the independence of its new constitutional court, is reviving its tradition as “a pioneer of democracy”. A report (pp. 34-35) citing examples in the fields of labour and business law shows how Chinese citizens are increasingly turning to the courts to find redress for grievances. The legal omnipotence of the political authorities is being eroded.

But in a world where legal systems are so different (pp. 26-27), lack of resources means that the transition process is going to be an uphill job. This “enforcement gap” helps to explain why there are winners and losers in the globalization of the rule of law.

A world in transition

◆ Yash Ghai and John Kohut

In a number of countries emerging from authoritarian rule, a new quest for the rule of law is being encouraged by popular pressure and globalization

On the steppes of Central Asia in countries not so long ago under Stalinist rule, youths are being taught something unimaginable a decade ago: to defend their legal rights in the event of being stopped by police. After 17 years of dictatorship, Benin has a new constitutional court to which even the humblest citizen can appeal. Almost one third of its decisions so far have concerned human rights violations.

The passion for the principle, if not always the practice, of the rule of law is not coincidental. Much of the world has changed radically in recent years, moving from one-party authoritarian rule and command economics to multi-party politics or to free markets, and often both. Rule of law—a system in which, in theory and in practice, the law is binding on all persons as well as the government, a system which treats all equally—is seen as instrumental to the success of such transformation.

The present wave of transition started 20 years ago in Latin America with the dismantling of military rule and the establishment of democracy. This was followed by the collapse of com-

munist regimes in the Soviet bloc, and the shift towards more democratic political systems and free market-oriented reform. Meanwhile, a number of states and territories in Africa and Asia, as a result of mass movements (Benin, Indonesia) or political evolution (Taiwan), are changing authoritarian or dictatorial regimes to more participatory and accountable systems.

brings international pressure for countries to protect basic rights through a rule of law. While a set of laws in itself doesn't guarantee individuals rights—Nazi Germany and Stalinist Soviet Union had legal codes—a legal system equitably and tenaciously implemented is a cornerstone of democracy. "I can't conceive of democracy without a rule of law," says Meir Leker, Secretary General of the International Association of Legal Science.

The force of tradition

If there is consensus on the need for a rule of law, the dynamics involved in success or failure in getting to such a goal are varied. First of all there is tradition. For instance, one legal scholar traces the absence of the rule of law in Russia back to the influence of Russian Orthodoxy on the legal consciousness and a tradition of absolutism uninterrupted for nearly half a millennium. On the other hand, a strong traditional sense of freedom can give impetus to the establishment of the rule of law after a period of dictatorship. Secondly, socio-economic factors play a part: in free markets, workers, business owners and investors all demand protection. Then there is the Weberian analysis that as political leaderships move away from charismatic legitimacy based on great deeds—such as leading a revolution—they seek legitimacy elsewhere, including in effective government through the law.

In the 1960s and 1970s, USAID (the U.S. Agency for International Development) and the Ford Foundation sponsored law reform programmes in the South directed more at economic and social development than political development. By and large they failed. Governments which passed the laws had little commitment to them. Sufficient resources were seldom provided for the implementation of the laws. Most projects overestimated the capacity of states to absorb new policies and institutions; for example there were not enough, or not enough well trained, lawyers, judges, administrators, who understood or were able to operate the new laws. Most projects underestimated the persistence of custom and customary practices.

Many similar issues arise in current efforts to build a rule of law. Here we assess the dynamics at play in those attempts. ■

Nobody has a more sacred obligation to obey the law than those who make the law.

Sophocles,
Greek poet (496-406 B.C.)

If there is consensus on the need for a rule of law, the dynamics involved in success or failure in getting to such a goal are varied

Momentum for legal reform has come from growing popular pressure at national level, as well as from globalization, the catch-word not only for increasing trade and economic integration, but also for standards of civil conduct affecting ordinary people's basic rights. Membership in economic and political groupings and federations often

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Former Soviet bloc

No quick fix

◆ Stephen Holmes

Foreigners have swamped the former Soviet bloc with legal advice, but the results have fallen far short of expectations

Over the past half-dozen years, a flock of foreign development agencies and private foundations have organized a multimillion-dollar effort to promote “the rule of law” in the former Soviet bloc. Aimed at fostering stability in the region, these multilateral and bilateral efforts, often overlapping, were not entirely eleemosynary. While political stability would reduce the security burden on the West, economic stability would presumably provide a new market for Western goods and a favourable business climate for Western investment.

due-process rights for criminal suspects. Unfortunately, in these areas too, more attention has been paid to on-paper legislative advances than to solving pervasive problems of compliance and implementation. Strictly on-paper reform efforts flowed naturally from the weakness of enforcement capacities in Eastern Europe after 1989 and Russia after 1991, and to some extent from a long tradition of legal regulations which appeared “on the books” but were not followed or enforced in practice.

What have we learned from these imperfect efforts?

Lesson one: the magnitude of the problem

The first steps of legal reform, such as the drafting and ratification of a bill of rights, may be relatively easy. But subsequent steps, such as creating an honest civil service, are much harder.

Improving the quality of public institutions requires a broad and deep social consensus and capacity for co-operation. Law is a public good, and politically disorganized societies, by definition, have a hard time creating public goods. The under-reinforcement of basic rights in, say, Russia is often a product of fiscal insolvency. The miserably low salaries and benefits of Russian judges, which have engendered a crisis of understaffing and low-quality personnel, constitute a major obstacle to the delivery of justice in the Russian Federation.

One must thus recognize that legal reform is a branch of state-building. Legal development projects have scored only modest successes in the region because, among other reasons, the post-communist state remains incapable of repressing force and fraud.

But the post-communist state must not only become stronger; it must simultaneously become more accountable. Accountable government, in turn, presupposes a society well-organized enough to discipline office-holders. ►



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Embedded in these legal assistance programmes are a handful of basic assumptions, the most important of which is that the free market is created, sustained, and constantly re-attuned by legislative and adjudicative decisions that must be reliably enforced. Essentially, law is seen as a springboard to economic development. In line with this idea, the lion's share of foreign aid for legal reform in Eastern Europe and Russia has been devoted to improving the security of acquisitions and transactions.

But considerable resources have also been aimed at promoting, for instance, voting rights and

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► Human-rights projects in the region have tended to channel resources toward private actors in civil society and to neglect government as a partner. Commercial-law projects, by contrast, have channeled resources, including Western expertise, to governmental agencies, neglecting “civil society” or private-sector actors as potential partners. The first lesson of a half-decade of abortive or stalled legal reform is therefore the need to compensate for these symmetrical shortcomings. Legal development projects must aim at increasing the responsiveness of government to social interests and opinions.

Lesson two: the illusions of reform by decree

The rule of law implies that the legislature wields serious powers and bears serious responsibilities. It is therefore next to impossible to conduct a successful legal reform programme without a reform majority in the lawmaking body. If the legislature and the executive branches are unable to cooperate, as they are in Russia, many of the laws in force will be anti-reform or, at the very least, incompetently or shoddily drafted.

The designers of foreign technical assistance programmes should not, therefore, overestimate the effectiveness of rule of decree, that is, by one-sided executive-branch decisions, that do not represent a wide social consensus and have not been hammered out in a process of consultation with social forces outside a small clique in the Kremlin. Foreign-funded projects should target technical assistance to areas of legal reform where executive-legislative co-operation is possible.

Lesson three: the inadequacy of mirror-imaging

Much of Western legal-development aid has aimed at replicating Western institutions abroad. In the early 1990s, especially, Western-trained legal-development professionals often strove to transform the legal systems of Eastern Europe and Russia to make them resemble the legal systems they knew at home. But law is not a kitchen appliance that we can unplug in the United States or Germany and simply plug in again in Bucharest or Sofia. Recipient input in (even a veto over) model selection and import is essential.

Lesson four: lack of trained development professionals

Lawyers are trained to solve routine problems within routine procedures. They are not trained to reflect creatively on the emergence and stabilization of the complex institutions which lawyering silently presupposes. Ordinary legal training, therefore, is not adequate to the extraordinary problems faced by the manager of a legal development project in Eastern Europe or Russia. Legal reform

cannot succeed without attention to social context, local infrastructure, professional skills, logistic capacities, and political support.

The much-lamented lack of donor co-ordination is rooted in the weak theoretical framework underlying the foreign funding of legal reform. The European Union and the U.S. should jointly create and fund a “Legal Reform Strategies Centre” to provide a “driver’s manual” for legal reform, based on empirical studies.

Lesson five: project selection, governmental support

For the sake of sustainability, project selection must give greater weight to recipient interest and commitment than to donor interest and commitment. Law is an aspect of sovereignty. As a consequence, many foreign-funded rule-of-law projects will inevitably operate under joint supervision of the foreign donor and the local government. This doubling of oversight and reporting requirements may in some cases paralyze the operation of the programme or destroy its coherence. This is reason enough for development agencies to continue to work as closely as possible with “clients” or partners within the government. That necessity, however, imposes certain limits on project selection.

The “rule of law” slogan, remember, is redolent of the Cold War, when it was used to express the West’s sense of moral superiority over the Soviet bloc. Today, it is essential that Western-financed law programmes avoid all appearance of triumphalism or imperialism. Since anti-piracy laws aim at making Russians pay more for Western videos, CDs, and software, over-emphasis on such laws can leave the impression that the West is seeking “tribute” after its “victory” in the Cold War.

Lesson six: project selection: social support

Given the limited resources at the disposal of foreign legal assistance programmes, it makes sense to choose projects strategically. Projects with some potential for producing interim successes—and therefore able to sustain donor interest and commitment—should be favoured over projects that will have no visible benefits for 20 or 50 years.

In general, foreign support should be given to law reform efforts which combine top-down and bottom-up features, working both with the regulators and the regulated. Stated differently, the creation of a functioning rule-of-law system depends on negotiated rule-making. Foreign-funded legal development projects should aim at strengthening consultative and co-operative relations between state and society. The relative strength of such relations in Poland and Hungary helps explain the modest but important advances they have achieved in the area of legal reform. It is the weakness of state-society relations elsewhere in the former Soviet bloc that explains the weakness of the rule of law in many post-communist states today. ■

It is better to do your own duty, however imperfectly, than to assume the duties of another person, however successfully.

Bhagavad-Gita
(Sacred Book of India)

Kyrgyzstan: breaking out of the old shell

◆ Cynthia Guttman

In Kyrgyzstan, widely regarded as the most democratic country in Central Asia, legal reform is running up against old attitudes and dire economic conditions



© Cynthia Guttman, Paris

Fourth year law students at Kyrgyz National State University: enrollment in this field has surged over the past decade, but students complain about the lack of recent reading materials.

At the Judicial Training Centre in Bishkek, a staff member slips a CD-Rom into a computer, calls up all the legislation passed in Kyrgyzstan since last August and scrolls down several screens of amendments and laws. Such readily available information and technology are rare in this cash-strapped nation of 4.7 million inhabitants that has built its reputation since independence in 1991 on the boldness of its democratic reforms, to such an extent that it can be hard for the judicial profession to keep up.

In a district court of the capital, there are no such modern installations. The walls here are in dire need of repainting, a bare lightbulb hangs over an uncluttered desk staffed by two clerks, a manual typewriter sits atop a large locker, and a hard bench is propped in a corridor leading to the judge's office. Inside, there is no sign of being in a state body—no official portrait, no flag, no emblem or uniformed officials.

The case underway involves a private bank, the national securities commission and a newspaper, none of which has a lawyer. The bank is suing the securities commission for defamation after the latter accused it of providing false information and publicized the affair in the press. Into the fifth

hearing, the case, one of the more complex ones heard by this judge, exemplifies an all too common problem. "The main difficulty is applying the new laws," she says. "Sometimes there are many contradictions within the law, which makes our task very difficult, especially given the number of new laws adopted in the last two years."

Her struggle echoes that of many of the country's 300-odd judges trying to come to grips with new laws and codes (including a civil, tax code and criminal code) governing entirely novel fields of expertise: leasing and selling buildings, franchising, property rights, private business, bankruptcy, banking, customs and organized crime. And there is more to come: the family code is being revised and the final touches have just been put on a new electoral code, which will be put to the test this fall. This intense activity is a far cry from the days when new laws were passed down from Moscow and the judicial system was under the helm of the communist party. Now judges and lawyers are not only expected to understand the new legislation along with international instruments, but to help conceive new laws and amend former ones.

Economic integration

Since independence, Kyrgyzstan has often hailed itself as "the Switzerland of Central Asia"—a multiethnic country that has gone further than any of its neighbours in constructing an open society. Surrounded by gas-rich Uzbekistan and oil-rich Kazakhstan, not to mention China—some argue that the resource-poor country had no other option than to invest in democratic reforms as a way to attract international attention and integrate into the world market. Along with efforts to fight corruption, make the state administration more efficient and institutions more credible, President Asker Akaev has repeatedly stressed the importance of strengthening economic integration. Last November, Kyrgyzstan became the first country in the region to join the World Trade Organization.

"This is all out of our own domestic national interests," says Ednan Karabaev of the Kyrgyz-Russian Slavic University. "We started by reforming the state, while Uzbekistan began with the economic structure. In our case, the previous governing structure would not have allowed the reforms to succeed, whereas in Uzbekistan, there would have been a ▶

◆ UNESCO Courier journalist



Vital statistics

Population: 4.7 million, of which an estimated 61.2% live in rural areas.
Principal ethnic groups (1989 census): Kyrgyz: 52%, Russian: 21.5%;
 Uzbek: 12.9%
GNP: \$1.7 billion; GNP per capita: \$350
Human Development Index ranking: 97
Poverty (% of population below national poverty line): 51%
Literacy (% of population age 15+): 97
Life expectancy at birth (years): 67
External debt as % of GDP: 54.4%

Source: World Bank, Human Development Report 1999
 note: figures vary by up to 20% according to the source used

► social explosion had it started off by changing the political structure.” Although recognizing that they have little tradition of self-governance, the Kyrgyz are fond of claiming that democratic principles are deeply embedded in their nomadic traditions. Law professor Galina Mukambaeva is delving into *Manas*, the revered national epic, in an attempt to prove that her nation of nomadic tribes had its own structure and ideology over 2,000 years ago. In the capital, a fiery equestrian statue of the legend’s hero is just as present as a giant one of Lenin, which stands next to the shrine where the Kyrgyz flag is guarded, a proud symbol of newfound nationhood.

A hybrid system

The turning point in this democratization process came in May 1993, when Kyrgyzstan adopted a new constitution that established a secular democratic society “based on the fundamentals of rule of law”. The country counts a fledgling opposition press (see box), legalized trade unions (albeit weak), some 20 political parties, and over 1,000 non-governmental organizations. It recently became the first country in the former Soviet Union to authorize private land ownership. Most observers would agree that the country has a solid legal framework but the context remains very fragile for putting it into practice. Extreme poverty is on the rise, private business lacks the wherewithal to kickstart the economy, and many, especially in rural areas, long for the times when the state provided a cushioned security. In the south, a hostage crisis and border war are dragging on. They have already claimed over a dozen lives and displaced several thousand people.

The separation of three branches of power is one of the cornerstones of the Constitution, which represents a radical break from the omnipotence of the state. “There were situations at the beginning of independence when the government tried to use the judges and courts,” says Mr Tylebaliev,

chairman of the Supreme Court. “But now things have changed, and the court system is independent.” Not everyone would agree that such a long road has been travelled, however, starting with the judges themselves. Seventy per cent of them practiced during the Soviet period. Now they have to learn to function in a hybrid system mingling elements from the European and Anglo-American models, with many laws from Soviet times still prevailing in amended form.

“We’re moving from an inquisitorial model to an adversarial model. Under the previous system, the prosecutors would bring the case, the judges were very passive,” explains Lamar Cravens, of the American Bar Association’s Central and East European Law Initiative. “Without a habit of initiative, it’s very hard to enforce the new procedural rules.” Lawyers are also faced with the task of sharpening their advocacy skills and understanding all the defence mechanisms available to them in protecting their clients. Natalia Ablova, director of the Bureau on Human Rights and Rule of Law, regrets that all too many lawyers fail to apply international human rights instruments in arguing their cases.

Herding sheep to make ends meet

But even with the strongest commitment, judges can seldom devote themselves heart and mind to their task. “Salary is one of the most important elements necessary for judges to keep their independence. I know of judges who keep sheep and cattle to survive,” says Anarkul Toksobaeva,

A new sense of responsibility

There is no more poignant illustration of extreme poverty in Kyrgyzstan than the sight of elderly women erring the streets, hawking a few newspapers that passersby might not have picked up at one of the city’s kiosks. Freedom of expression is a constitutional right and was further bolstered by a referendum in 1998 forbidding the adoption of laws limiting press freedom. A fledgling opposition press exists, and yet, over the years, it has lived through a steady tug of war with government. An emblematic figure of the opposition press is Zamira Sydykova, editor-in-chief of *Res Publica*, viewed by many as the veteran opposition newspaper. Sydykova spent two and a half months in prison over a series criticizing the chairman of the Kyrgyz gold mining company. Another journalist spent four months in prison over an article on the appalling conditions of workers living in factory dormitories. Last year, an edition of the paper was banned in a region where a toxic spill by a foreign company occurred. Sydykova puts her problems down to money and the high risk involved in criticizing sacred cows: “Such cases come up every time you touch someone in a high position, and the state is always the winner.” More recently, the editor of the opposition daily *Vechernii Bishkek* ran into problems with law enforcement, allegedly over tax issues. Talgat Asyrankulov, president of Independent Bishkek TV, one of four independent channels, believes he has avoided problems by sticking to firm principles: “we broadcast information that has been checked three times and presents several different viewpoints. We show no violence, no drugs and make no political declarations.” The OSCE monitors press freedom and tries to serve as a clearing house for complaints, but Jerzy Wieclaw urges caution in the matter. “Newspapers sometimes run into problems because they don’t check their information. There should be an element of responsibility, and this is still something new here.” ■



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Checking the headlines at a kiosk in Bishkek, the capital. The country boasts a small opposition press and several independent television channels.

director of the Judicial Training Centre, which organizes seminars for judges on analysing new legislation. A judge earns approximately \$40 per month—more than a teacher (\$15 to \$20 a month) or a government clerk (\$10 a month) but far short of the minimum required to survive. Such a context can undermine the ideal of judicial independence. “If you don’t come under pressure from a member of parliament, you come under the pressure of the shadow economy,” notes Toksobaeva.

The selection process is also a point of debate: judges are appointed for a set term by the president upon the recommendation of an attestation committee, a process that parliament is seeking to modify. “Creating an independent judiciary is really the major problem of this country: to have elected judges, at least at some level, to improve their status, if not in a radical material way, at least to give them the feeling of independence,” says Jerzy Wieclaw, head of the Organization for Security and Co-operation in Europe (OSCE) in Kyrgyzstan.

Instilling confidence in the court system is a lengthy task, rendered all the more difficult if the judiciary’s image is tainted. Before lodging a complaint, people have to prove they have paid their state tax. Many cannot afford a lawyer. Law enfor-

ment agencies are judged weak and often unknowledgeable about their own law and international obligations. “People’s rights are frequently violated, whether by a state body or another person, but they have no custom of turning to the courts,” says Mirgul Smanalieva, head of the Attorneys Association of Kyrgyzstan. “One of our goals is to organize TV programmes to explain to people how they should behave and who they should turn to when their rights are violated. If each citizen knew their rights and could fight for them, maybe our system would work more effectively.”

Such an investment in civil society is considered one of the keys to entrenching rule of law. “It’s a little better than before but people still don’t know their rights, they don’t know what the constitution means, how their taxes are spent or how to lobby for their interests,” says Asiya Sasykbaeva, head of the Interbelim center, an umbrella organization providing services to improve NGO capacity. The Soros foundation is earmarking 8 per cent of its budget towards law programmes (against 2.5 per cent at present) to support law and human rights projects, open up legal aid centres and improve the competence of administrative officials in the regions. Schools are also a target. “The goal is to make every student feel they are a citizen of this country and to understand they have human rights,” says Atyrkul Alisheva of the Institute for Regional Studies, explaining the aim of her textbook on law, constitution and human rights, which is being used for the first time this year in high schools.

Soul-searching

At the university level, where law is a subject in growing demand, new disciplines are being introduced, especially in the field of international law. Some faculties are trying to encourage more analysis and less rote learning, more practice and less theory. Although new books are being written by professors, many of those still in use date from Soviet times, libraries are poor, there is a lack of published legal commentaries and a number of law faculties are short of qualified teaching staff. The multiplication in the number of universities since independence (from 9 to 23) has also led to wide gaps in quality. The ABA is urging the government to set up a national competency standards exam for all students wishing to practice law.

In a country still soul searching after the collapse of the USSR, youth are likely in the best position for shaping a new ideology. According to the OSCE’s Jerzy Wieclaw, “educated youth want to think and behave like Europeans, this is their point of reference.” Although jobs in the legal field are hard to come by at present, Smanalieva has no doubts about the commitment of the young. “There is a big difference between the young generation and ours. We had a complex about expressing our minds openly, and this interferes with our ability to be creative. The young speak openly and bravely and can convince. They are the ones who will really bring in reforms.” ■

You must remember that some things that are legally right are not morally right.

Abraham Lincoln,
U.S. statesman (1809-1865)

Ukraine: legal eagles with clipped wings

◆ Serhiy Holovaty

Ukraine embarked on a far-reaching legal reform programme, but found that old habits die hard in an entrenched *nomenklatura*. Below, the viewpoint of a former Minister of Justice

Shedding 350 years of colonial servitude when it became a state eight years ago, Ukraine has confronted enormous difficulties in establishing the institutions of democracy, including a rule of law.

In 1995 Ukraine became a member of the Council of Europe, voluntarily taking upon itself to fulfil obligations concerning the adoption of a new democratic constitution, the drafting of new civil and criminal codes, the reform of the judiciary and the harmonizing of its legislation with European norms and standards of human rights and freedoms. In June 1996, the passage of a constitution expressing Ukraine's desire to build a rule of law was hailed by the Council of Europe.

Yet on the whole there is less democracy in Ukraine today than there was four years ago. Ukraine is in default of its obligations under the terms of its accession to the Council of Europe, the judiciary generally remains corrupt and inefficient, executive and legislative intransigence have left initiatives with respect to Ukraine's commitments suspended in a legislative purgatory, and corruption is rampant in Ukraine's public administration. As a result, Ukrainian society's view of the law is marked by cynicism and scepticism.

Soviet legacy

The genesis of the problem lies in the legacy of Soviet rule and the monopoly of state power in Ukrainian society. Soviet era elites retained power after independence and now continue to wield tremendous administrative control over the lives of citizens. Today they oversee the unbridled distribution of state property, and exercise control over most economic activity, resulting in widespread institutional corruption. They have expanded their power by establishing new administrative bodies to regulate the private sector and citizens' private activities through the imposition of licences, quotas and other controls. With institutions of civil society too weak to hold them to account, the governing *nomenklatura* has no incentive to promote significant democratic, especially legal, reforms so long as its members continue to be the principal beneficiaries of the existing system.

In 1995, I as Minister of Justice designed a reform programme in line with the principles of the Council of Europe and the provisions of

Ukraine's constitution. Our key objectives were to have the ministry of justice take the leading role in the administration of justice in the country, to promote and secure individual human rights and freedoms, to create a market-oriented legal infrastructure, and generally to incorporate transparency and openness in the legal system.

A comprehensive legal reform programme was undertaken, involving everything from the rights of the accused upon detention and arrest, to the principle of an accused's innocence until guilt is proven.

'Clean hands' to wipe out corruption

But weak governance has allowed corruption to flourish. It has resulted in the emergence of the present machinery of government where responsibilities overlap and accountabilities are diffuse, in ministerial ownership of commercial activities and associated conflicts of interest, in the low pay and poor supervision of civil servants and in the lack of a public service ethos in the civil service. Changing the prevailing mentality from a command approach to public administration to an

Vital statistics

Surface area: 604,000 sq km

Population: 50.3 million; life expectancy: 67 years

Poverty: 32% of population below national poverty line

GNP: \$42.7 billion; GNP annual growth - 2.4%

GNP per capita: \$850 (1998 estimate), a fall of more than 60% since independence. (Official figures overstate fall in output because of expansion of the informal economy beyond the reach of government regulations. Estimates of the informal economy range as high as 60% of GDP).

Source: World Bank



◆ A member of parliament and former Ukrainian Minister of Justice, Serhiy Holovaty is president of the Ukrainian Legal Foundation, which was founded in 1992 to work towards the establishment of the rule of law in Ukraine.



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A July 1997 demonstration of Kiev tradespeople demanding tax reductions and measures against bureaucratic corruption.

approach based on a transparent, accountable public service is a daunting task.

The ministry of justice undertook concrete measures to bring the issues of transparency and accountability in government to public attention. In April 1997, the President of Ukraine adopted a “National Programme against Corruption”, popularly referred to as the “Clean Hands” campaign, developed by the ministry. This programme proposed a systemic approach to the problem of corruption, including legislative initiatives, deregulation of the economy, and the reform of public administration to make it more accountable and transparent.

Judges under threat

The ministry’s reform efforts were vehemently resisted by the entrenched *nomenklatura* in government and the judiciary, largely by implementing the programme to the minimum necessary extent, then claiming that it had been carried out.

The problem of building an independent judiciary proved particularly acute. Today’s judges still carry the burden of Soviet traditions, when the judiciary often acted in tandem with prosecutors and communist party officials to suppress the rights of individuals. They are under-trained and so poorly paid that they are largely at the mercy of threats and bribes from the political and administrative authorities over which they should be exercising control. It is common for judges to receive threats from local authorities to cut off electricity, gas and heat if “appropriate” decisions are not rendered. Both the public and the judiciary remain ignorant of the citizens’ constitutional rights to be protected from official interference in the judicial process. Efforts to establish a legal basis for a market economy have not met with greater success.

It is easier to change laws than it is to change mentalities and inertia.

Francisco Fernández Ordóñez
Spanish lawyer and
politician (1930-1992)

Indeed, most citizens of Ukraine are alarmingly resigned to the status quo, and do not yet appreciate, let alone insist upon, the enforcement of the rights they now possess. Thus, reform of the legal system is hampered by a collective memory of the use of the law by state authorities as an instrument of oppression, and not as the handmaiden of individual liberty.

This situation is compounded by the state of the legal profession. Numerous attempts have failed over the past few years to establish a professional, self-governing law society which would ensure the protection of the rights of citizens and the provision of quality legal services. The primary impediment to the realization of this goal is that Ukraine today still possesses a legal culture where lawyers are seen, and see themselves, as servants of the state. Most law school graduates still seek employment in law enforcement bodies or in government agencies.

Stalinist forces on the prowl

The *prokuratura*—established by Stalin as a completely autonomous law enforcement body with extensive powers of supervision over all levels of government and administration, and powers to initiate actions in criminal matters—continues to perform many of its Soviet-era functions, including supervision over judicial decisions. Even though under Council of Europe obligations that are incorporated in the constitution, the *prokuratura* was to have shed its Stalinist responsibilities, its investigative powers have been expanded. After a brief attempt at reform, the State Security Service, the SBU, is once again performing many of the functions of its predecessor, the KGB. With some exceptions, the legal profession has largely been silent and ineffective in safeguarding citizens against these and other abuses of their rights.

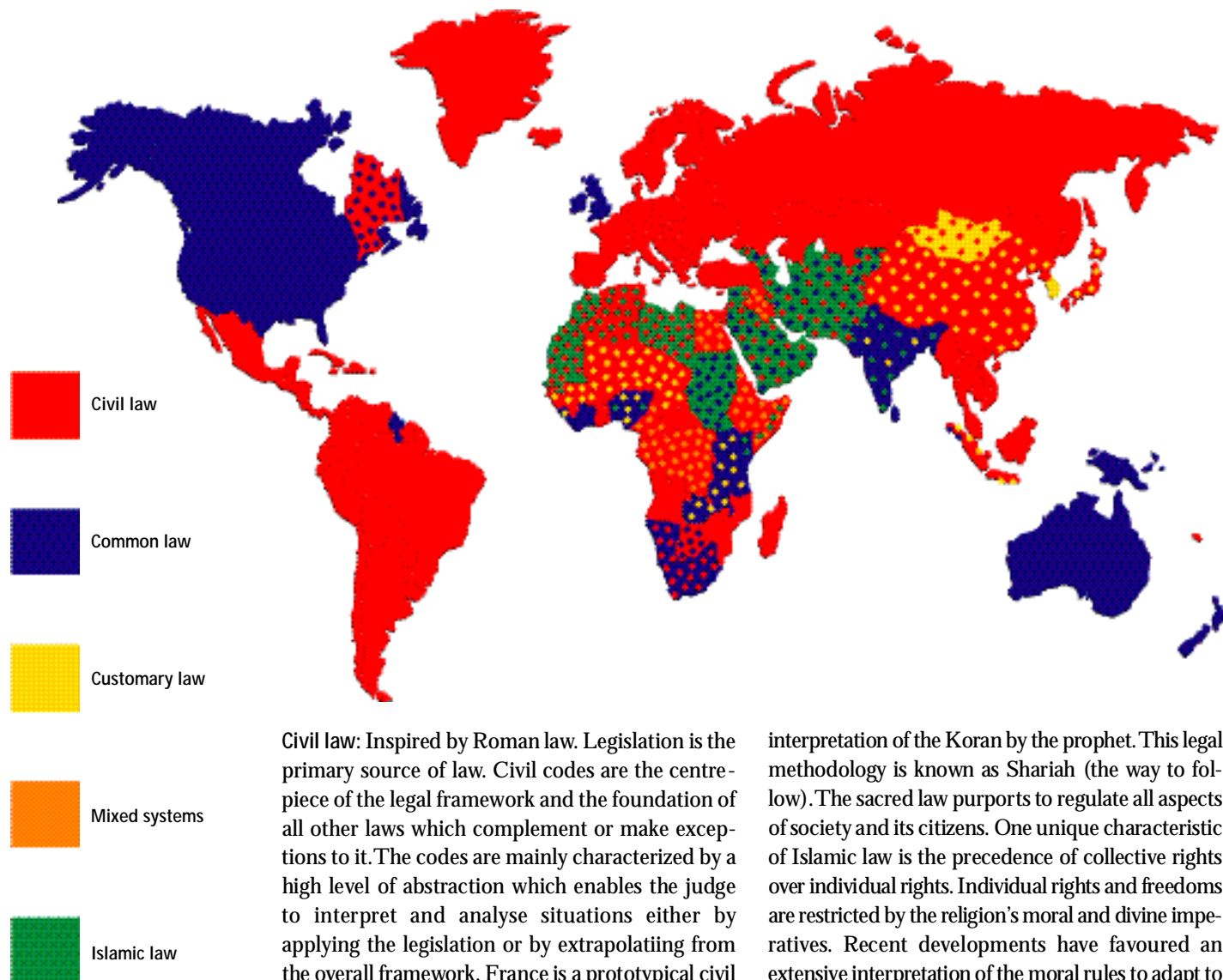
To turn this situation around requires the emergence of a new legal culture based on the principles of the rule of law set out in the constitution. These provide for a new relationship between the individual and the state, whereby the state undertakes to foster, preserve and protect the human rights and freedoms of the individual. Realization of these objectives requires an understanding of what the constitutional rights of the Ukrainian citizen mean and how they should be applied.

This is fundamentally the responsibility of Ukraine’s law schools. And here they are failing miserably. They remain fundamentally conservative. Educators continue to teach that the law is an instrument of sanction by the government, and not an instrument to protect the rights of citizens against the excesses of the state. The Ukrainian Legal Foundation has made a start towards the creation of a new law school along the European model by founding the Ukrainian Centre for Legal Studies, which teaches human rights and market-oriented commercial law. ■

A world's eye view of the law

A variety of different legal systems and traditions grew up over many centuries. Some were exported far and wide. Now there are signs that they are starting to converge.

Major legal systems



Civil law: Inspired by Roman law. Legislation is the primary source of law. Civil codes are the centre-piece of the legal framework and the foundation of all other laws which complement or make exceptions to it. The codes are mainly characterized by a high level of abstraction which enables the judge to interpret and analyse situations either by applying the legislation or by extrapolating from the overall framework. France is a prototypical civil law nation. Over 60% of the world population is influenced by this tradition.

Common law: Derived from English unwritten law that evolved from the 12th century onward. Known as “judge-made law”. Jurisprudence is the primary source of law. Developed through an inductive approach, legal concepts emerge and progress over time, constructed by an amalgamation of numerous cases that bring together the legal scope of these concepts. Common law prevails in the United Kingdom, the U.S.A. and most Commonwealth countries, influencing over 30% of the world population.

Islamic law: Controlled, ruled and regulated by the Islamic religion and followed by over 20% of the world population. Its main source is the holy book, the Koran, complemented by the Sunna—limited

interpretation of the Koran by the prophet. This legal methodology is known as Shariah (the way to follow). The sacred law purports to regulate all aspects of society and its citizens. One unique characteristic of Islamic law is the precedence of collective rights over individual rights. Individual rights and freedoms are restricted by the religion’s moral and divine imperatives. Recent developments have favoured an extensive interpretation of the moral rules to adapt to the new reality of the 21st century.

Mixed systems. They include two or more legal methods used concurrently or interactively in a multi-cultural or multi-religious society. The legal systems of many North African and Middle Eastern countries are strongly influenced by the civil law tradition, but in some areas, especially those relating to personal status, family matters and property law, these countries tend to follow Islamic tradition.

Customary law: Body of usage and customs that have, through time, acquired force of law. There are many expressions of customary law, which can be developed notably through religion, race or cultural identity. It plays an important role in a relatively large number of mixed law countries and, over time, many of these nations tend to implement their “cus-

tomy laws” in a code. Justice can be delivered in many ways adapted to local traditions.

Legal systems in former Soviet Union and Eastern Europe. The vast majority of these countries were part of the civilist legal tradition prior to the 1917 revolution or postwar changes. Following those events, parts of their codes were invalidated to accommodate communist ideology, and their civil codes were never fully abrogated between 1917-1991. Since 1991, Russia and other East European countries have been undergoing important reforms to adapt to globalization, while remaining true to their civilist roots.

Impact of globalization: Legal systems have become, in certain areas, barriers to the development of world trade. Hence, in the last 50 years, the rise of international institutions which promote the harmonization of laws and try to minimize the effects of “transystemic legal barriers”. International trade is the driving force in the development of a *jus commune* that will transcend and coexist with traditional legal systems. ■

Prepared with the assistance of the Faculty of Law, University of Ottawa, and David J. Shaw, attorney at law, Utah (USA)

Landmarks in legal history

■ 2350 BC:Urukagina’s Code

This code has never been discovered but it is mentioned in other documents as a consolidation of “ordinances” or laws laid down by Mesopotamian kings.

■ 2050 BC:Ur-Nammu’s Code

Earliest known written legal code. Evidence shows it was supported by a legal system including specialized judges, the giving of testimony under oath, and the power of judges to order damages to be paid to a victim by the guilty party.

■ 1700 BC:Hammurabi’s Code

This Babylonian king came to power in 1750 BC. Under his rule, a code of laws was developed and carved on a huge rock column. The expression “an eye for an eye” has come to symbolize the code’s underlying principle.

■ 1300 BC:The Ten Commandments

The Prophet Moses received a list of ten laws directly from God. Known as the Ten Commandments, they later became part of the Bible.

■ 1280 BC to 880 BC:The Laws of Manu

A written compilation of legal rules which had been passed on from generation to generation. It formed the basis of the caste system in India, where people were classified by their social standing. Punishment only used as a last resort. Members of higher castes punished more severely than those of lower castes.

■ 621 BC:Draco’s Law

Draco, a Greek citizen, was chosen to write a code of law for Athens. The code was so severe that the word “draconian” has come to mean unreasonably harsh.

■ 450 BC:The Twelve Tables

These laws written to govern Romans are considered to form the foundation of much modern public and private law. Promoted the organization of public prosecution of crimes and instituted a system whereby injured parties could seek compensation from their aggressors. A basic principle is that the law must be written. Justice should not be left to judges alone to interpret.

■ 350 BC:The Chinese Code of Li K’wei

The first Chinese imperial code of laws dealt with theft, robbery, prison, arrest and general rules. It served as a model for the T’ang Code.

■ 529: Justinian’s Code

The Byzantine emperor Justinian is remembered for his codification of Roman law known as the *Corpus Juris Civilis*. Many legal maxims still in use today are derived from the code, which inspired the modern concept of justice.

■ 604:The 17-Article Constitution of Japan

Written by a Japanese prince regent, the Constitution shaped mora-

lity and law in Japan. One of its clauses said that “peace and harmony should be respected because they are very important for inter-group relations”. Shows emphasis of “Oriental law” which seeks to prevent disputes, whereas “Western law” seeks to resolve disputes.

■ 653:T’ang Code

Listed crimes and their punishment in 501 articles, revising earlier Chinese codes and standardized procedures.

■ 1100:First Law School

Started by Italian jurist Irnerius in Bologna. By 1150, it had over 10,000 students and contributed to the revival of the *Corpus Juris* and the spread of Roman law throughout Europe.

■ 1215:Magna Carta

King John of England signed Magna Carta (the “great charter”), conceding a number of legal rights to his barons and to the people. The first time a king allowed that he could be compelled to observe a law or that the barons could question him. Has been called the “blueprint of English common law”.

■ 1776:The American Declaration of Independence

For the first time a government rebuked the medieval theory that certain people possessed by right the power to rule others.

■ 1804:Napoleonic Code

A comprehensive code of law enshrining many victories obtained during the French Revolution, e.g. individual liberty, equality before the law and the lay character of the state. Inspired similar civil codes in the Canadian Province of Quebec (1865), Germany (1900) and Switzerland (1907).

■ 1864:The Geneva Convention

Agreement designed to provide for minimal human rights in time of war, e.g. for protection of military medical personnel and for humane treatment of the wounded.

■ 1945-46:The Nuremberg War Crimes Trial

A panel of eight judges tried Nazi officials for crimes against peace, crimes against humanity and war crimes, showing that even in time of war basic moral standards apply.

■ 1948: The Universal Declaration of Human Rights

Proclaimed by the United Nations Enshrines civil, political, economic, social and cultural rights. ■

Source: The World Wide Legal Information Association (More information can be found on <http://www.wllia.org/hist.htm>)

If you like laws and sausages, you should never watch either being made.

Otto von Bismarck,
German statesman
(1815-1898)

2 Progress in the South

In traditional societies, the jury is out on legal reform

◆ Yash Ghai

Customary laws do not always easily fit into human rights development theories. But they can play an indispensable role in ensuring justice

Numerous countries in the South recently have embraced the idea of the rule of law in the conviction that legal reform helps nurture nascent democracy and market-oriented economic reforms.

Despite very important advantages in establishing a rule of law regime, it is nevertheless a long-term enterprise. Meanwhile there are certain costs and problems—so often ignored by legal reformers—with the shift to law as a primary mode of organization and framework for policy.

In many societies it is foolish to think of new legal institutions as a panacea. We cannot assume that reliance on legal reform will necessarily succeed, or that it is appropriate in all cases. Psychological attitudes and social conditions necessary for the rule of law may be absent in certain societies. The rule of law is not easily established in societies where the notion of power is personalized, rather than located in an office. Nor is the concept of the limitation of power readily assimilated in societies dominated by monarchs or chiefs or other kinds of hierarchy. States which are largely agrarian, based on the peasantry and under the influence of traditional ideologies, are less likely than largely urban societies to demand the accountability from their rulers that is essential for the rule of law. Thus constitutional reforms in imperial Ethiopia did little to limit or regulate the government. As a result, introduction of a rule of law in a Western sense may not only fail, but also, it could backfire: that is to say, some of the consequences of reliance on law as a method of social regulation may be negative.

Contemporary discussions of the strategy of law tend to overlook the reality of countries that

are largely “pre-modern”. Modernity is associated with a concept of “rationality” based on a belief in the scientific method, and confidence that society can be changed and reformed by conscious design. Law itself is a deliberate creation, aimed at clear objectives and regulation. In that sense the role of state law in modern societies which have been integrated on the basis of the economy, particularly the market economy, and which are closely connected to the apparatus of the state, can be different from that in societies which are still dominated by customary values, institutions and practices.

Cultural factors and local loyalties

Pre-modern societies in most Asian and African states have their own systems of governance and dispute settlement. Cultural factors are more, or at least as, important as the economic. Local loyalties transcend loyalty to the state. Community pressures are more powerful than state sanctions in influencing social behaviour. Justice according to local expectations and by local institutions is more highly valued than that of state law and tribunals.

Customary laws and methods do not always easily fit into the human rights development theories which now dominate the redesign of state structures, such as the separation of powers or professionalization of justice. There are undoubtedly problems with traditional or informal justice. But it is an important resource and we should attempt to improve its efficacy rather than to eliminate it. Traditional justice can form the basis of inexpensive, participatory and accessible forms of justice.

◆ Sir Y.K. Pao Professor of Law, Hong Kong University

A particularly apt illustration of the role of customary law comes from the persistence of belief in witchcraft in a large number of societies. Many aspects of the community, such as reciprocity, arrogance or private accumulation of wealth may be more effectively managed through fear of punishment for transgressions by witchcraft than by state regulation. National criminal law may command little allegiance in a community which does not identify with the state, and which has its own moral standards. The weakening of traditional structures by modern laws may undermine communal mechanisms which help to maintain social cohesion.

Thus the emphasis on the law at the expense of customary systems can have quite unexpected consequences. It can weaken traditional institutions, for example of dispute resolution, before the institutions of a rule of law can be fully set up across a country. It is well known that the traditional function of dispute settlement was to maintain balance and harmony in the community and

Customary laws and methods do not always easily fit into the human rights development theories which now dominate the redesign of state structures, such as the separation of powers or professionalization of justice

therefore it aimed at reconciliation. Modern methods focus more on retribution and thus may fail to remove the underlying causes of conflict. There is widespread feeling in Papua New Guinea that its problems of crime and violence are associated with the decline of traditional sanctions. The operation of the institutions of modern law can put access to justice beyond the means of the large majority of people, particularly in the rural areas. Courts or other tribunals may not be available locally. The apparatus of justice, and those required to mobilize it, tend to concentrate in urban centres (in Mozambique, for example, a recent survey found that only 5 per cent of lawyers are located outside Maputo, the capital).

Access to justice

Moreover, the financial cost of justice through a formal legal system is much greater than in traditional systems (as Western states are discovering). Costs include high salaries and other perks for judges; the fees of prosecutors and defence lawyers; construction of buildings, libraries and remand centres. Rules of fair trial require the provision of legal aid, at least in trials for serious offences. Few developing states have adequate resources for these tasks, at least not without ▶



- ▶ diverting them from the more material needs of the people.

The grafting of a modern legal system on to a customary one may reduce real access to justice for some social groups. One reason is that lawyers are able to use their power to oust from the legal sector those without full legal qualifications and to secure monopolies of legal services. In Cambodia and Mozambique, for example, an increasingly organized legal profession has excluded from the system paralegal defenders who previously rendered important legal services after a period of six-12 months training, compared with several years training for lawyers. This has increased the cost of legal services and has reduced access to legal representation.

A fair trial

Furthermore, formal systems of justice are marked by lengthy delays. These are the results not only of procedural rules, but also of the shortage of lawyers and judges (and sometimes of the lack of transport to take remand prisoners to courts). Police are seldom trained or able to cope with the formal legal system. They lack forensic and investigative skills, and this leads to long periods of detention or remand of suspects, or the use of pressure, sometimes amounting to torture, to extract confessions. The notion of a fair trial involves at least one appeal. There is a serious backlog of cases, and consequently a denial of justice. At the same time, traditional institutions which not only would deal expeditiously and effectively with these cases, but also provide stability in social relations, are marginalized or abolished. Unencumbered by complex rules of procedure and restrictions on admissibility of evidence, traditional leaders were able to settle disputes speedily.

Formalization of the legal system and the legal profession may decrease the capacity of the government itself to make use of the legal system. This is the consequence of the high salaries that lawyers can command in the private sector. The problem is, once again, illustrated by Cambodia and Mozambique. Top lawyers in both these countries have gravitated to the private sector, particularly to service large corporations. As governments cannot hire lawyers of equal competence due to official salary scales, the government is at considerable disadvantage during negotiations with a corporation or investors as a group. In both these states, considerable legislative drafting is done by private firms of lawyers; in fact they, and not the government end by making policy in crucial public matters. The difficulties for the government are aggravated as these developments lead to greater integration of the national economy into the global system, increasing the reliance on lawyers with international and comparative expertise.

This brings us to a fundamental problem underlying legal reform in many pre-modern

societies. The assumption behind the present strategy of law, reflected in foreign assistance for democratization or conditions for other forms of assistance, is that there is a unity of purpose between democracy and markets, and that similar institutions and laws serve them both. However, the law for the market may have a different structure and dynamics from that for democracy. Law for democracy is about the empowerment and protection of all people, particularly the weak; but law for the market is about conferring power on the rich and the well organized. Property, a principal legal instrument for the market, reduces the scope for commons, i.e., property owned collectively, and transforms it into a private entity.

This results in the impoverishment of many and the enrichment of a few. Property, combined with another legal instrument for the market, contract, has become the major means whereby capitalists own, and exercise control over, the labour, and other resources, of the poor.

Laws made by private interests

These developments have at least two adverse effects on democracy. First, more and more policies and laws are made at the behest of foreign states and capital, reducing the scope of national democratic decision making. Increasingly these laws are made by private interests, either in international economic institutions, or more directly by commercial corporations through joint ventures and arbitration regimes. For example, many countries have been pressed to bring in legislation on intellectual property rights, particularly in genetic engineering, which has opened natural resources to foreign ownership. In India such legislation was opposed widely by farmers and other interest groups, but the government was under great pressure from the World Trade Organization (WTO) and the U.S. government to enact it. Finally, mention can be made of laws or regulations which have eaten away at workers' rights, or welfare provisions for education or health, despite considerable public opposition.

Secondly, there is a distinct shift of domestic political power to wealthy domestic classes, in alliance with foreign capital. A large part of these developments are brought about by and encapsulated in the law, which is often imposed, as the above examples show, and as is illustrated by the conditions imposed on Korea, Thailand and Indonesia by the World Bank and the International Monetary Fund for assistance to them during the recent financial crises.

I realize that there is no easy answer to the problems of change. There is undoubtedly a danger of romanticizing traditional systems, forgetting the oppression that takes place within its interstices. It is sufficient here to warn against the opposite tendency, the romanticizing of formal legalized systems, and to urge caution in the strategy of law. ■

It goes without saying that a law to be valid must be clear enough to make its commands.

Hugo L. Black,
U.S. Senator and Supreme Court
Justice
(1886-1971)

Benin: justice on the horizon

◆ René Lefort

The law is paramount in Benin, but the courts and the police are still not enforcing it effectively



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Mathieu Kérékou, democratically elected president of Benin in 1996. He was required by the country's constitutional court to retake the oath of office after leaving out several words during the first ceremony.

‘Twenty-five thieves burned alive in Benin by vigilante groups,’ read the headline on a recent news agency story. After a spate of robberies and rapes, the thieves, mostly immigrants, were publicly burned to death in the southeastern province of Couffo in August. The government sent troops to beef up the local police, but lynch law is spreading and replacing police work and the judicial process.

Yet the U.S. State Department and human rights organizations both within and outside Benin say the country has become “a constitutional democracy” and “is now living under the rule of law”. Benin is held up as an example in sub-Saharan Africa, where “the wind of democracy” that blew in the early 1990s is otherwise dying down.

Benin is ahead of the pack, says Maurice Glele Ahanhanzo, a member of the country's constitutional court, because legal principles are now so deeply rooted in the population that “they have become the main instrument for regulating life in society”. However, the Beninese can see that these principles are still very far from being effectively applied, even by the courts. They draw their own conclusions, all too often by taking the law into their own hands.

Benin's “democratic revival” is home-grown—it hasn't been copied from elsewhere. Unlike the situation in many other French-speaking African states, it does not stem from the loss of a powerful

ally after the Berlin Wall came down. Nor is it the result of pressure following France's decision, announced by President François Mitterrand in a speech to francophone African leaders in June 1990, to make aid to African countries conditional upon their progress towards democracy. If there has been any outside influence, it has come from the foreign aid agencies whose intervention became indispensable because of Benin's rundown economy.

The “democratic revival” is above all the result of a dynamic process within Beninese society that was triggered by the rejection of 17 years of “Marxist-Leninist” dictatorship. The old regime's death knell was sounded in February 1990 by a conference, the first of its kind in Africa, that brought together the “dynamic forces of the nation”. A constitution adopted a few months later was “in its entirety devised, sought for and drafted by the people of Benin,” says Ahanhanzo. It started by “affirming the deep-rooted opposition” of the Beninese people to the previous regime's legal violations and other failings.

A counterweight to the authorities

Another factor lies in the prestigious history of Benin, previously known as Dahomey, and the nostalgia it gives rise to. The educational system was much better than elsewhere. The country was a seed-plot of intellectuals and earned the nickname “the Latin Quarter of Africa” after the famous Paris student district. Its “graduates” staffed colonial administrative services all over West Africa. The remarkable “democratic revival” fits into a long history that Beninese are very proud of. The preamble to the constitution states that Beninese want to “once more be the pioneers of democracy and the defenders of human rights that we were until quite recently.”

The constitution devotes 33 articles to a detailed exposition of all basic rights, as if its authors had wanted to cover all the authoritarian practices the country had experienced. The articles set forth political, civil, economic and social rights, including a “right to development” in all its forms. Above all, the document makes the constitutional court the keystone of the new rule of law. The court is empowered to give an opinion, when requested to do so, on any prospective laws or regulations which might infringe human rights. Even more important, it can also, on its own initiative, pass judgment on such laws or regulations after they have been adopted. What's more, any citizen can bring a suit of this ▶

◆ Director of the Unesco Courier

► nature before the court without paying a fee.

This facility, which does not exist in the world's old, most entrenched democracies, is widely used. Around a third of the court's 468 decisions up to the end of 1998 concerned human rights violations. Some other decisions have been widely trumpeted. The court's seven judges annulled the election of the wife of the country's first democratically-elected president, Nicéphore Soglo, as a parliamentary deputy. They also forced his successor, former dictator Mathieu Kérékou, who was democratically elected in March 1996, to re-take his oath of office because he had "omitted" several words the first time round.

The court has become the main counterweight to the authorities because of its wide powers and the extremely independent way it has used them. Its integrity is unquestioned. According to a recent survey¹ it is the country's best-known institution and, for 94 per cent of those polled, the one they

**'There's a two-speed
approach to civil liberties.
At the top you've got
tremendous freedom; at the
bottom,**

trust most.

Totally different opinions were expressed about the police and the other courts, however. All those polled felt that "a policeman can wield complete power over you at the drop of a hat". Arbitrary arrests, unauthorized searches, brutal detention in custody for longer than the maximum legal period are common, and prison conditions are inhuman. Ninety-two per cent of those who took part in the survey said they had no confidence in the legal system because it was corrupt and too slow.

"There's a two-speed approach to civil liberties," says Julien Togbadja, head of Benin's Human Rights League. "At the top you've got tremendous freedom; at the bottom, massive violations." Ninety-four per cent of those polled said "powerful people often intervene to halt or pervert the course of justice."

The judges have some solid arguments on their side, starting with their extremely inadequate facilities and pay. The first computers, for example, have only just arrived—as a gift. Justice gets a normal share of the national budget (1.6 per cent in 1999) but the country has only 144 judges (one for every 8,000 citizens), a fifth of the figure in industrialized countries. Given their meagre salaries ranging from \$200 to \$600 a month gross, heroic efforts are needed to resist bribery.

For ordinary citizens, justice is remote. The only court of appeal sits in the capital and 90 per

Laws change less rapidly than customs; they are dangerous when they lag behind customs and even more so when they claim to precede them.

Marguerite Yourcenar
French novelist and
essayist (1903-1987)



Benin:

Area: 113,000 km² in the form of a 700-km-long strip of land; 51 people per km².
Population: 6 million, annual growth rate 2.9%; infant mortality 88 per thousand live births; life expectancy 53 years.
Illiteracy: 52% (men), 79% (women).
GNP per capita: \$380 a year; annual economic growth rate: 5.6%

Source: World Bank

cent of the population neither speak nor read French, the only language used in law books and trials. In principle, legal fees don't exist, but the courts are increasingly asking those involved to contribute to their costs. Also, for cultural reasons, lawsuits create hatred and bitterness which endure for generations. As a result, Beninese go in for extra-legal "arrangements" and at worst resort to lynching.

Democratic revival

But they still want the law to be more widely applied. "Civil society is very active in the face of the authorities' many attempts to curb freedoms," says Togbadja. The impetus for this mobilization comes from the independent media (about 10 newspapers, a dozen radio stations and four television channels), human rights NGOs (no less than 100 of them), the churches and, says Togbadja, "a handful" of politicians. This is because "the political class grew up under the old totalitarian regime," says Virgile Akpovo of the Human Rights Institute.

The democratic revival is going strong, chorus Benin's human rights campaigners. They are particularly happy about the start of a programme to modernize the legal system and improve prison conditions, as well as to apply a constitutional clause that says human rights must be taught in schools and even in the armed forces.

But the activists also firmly agree that the movement is fragile and that the main threat comes not from people's attitudes or from laws or institutions, but from underdevelopment. Social and economic rights are virtually a dead letter because of widespread corruption and impoverishment.

In addition, says Ahanhanzo, "there can be no rule of law without a state." He criticizes liberalization and structural adjustment policies, and asks "how can anyone think of downsizing a state which is already in poor shape?" As Senegalese President Abdou Diouf likes to point out, "hunger is incompatible with democracy," because it means people "can't play their part as citizens." ■

1. The survey was carried out for a conference on "the critical assessment of respect for individual human rights and democratic practice in Benin" (Cotonou, September 17-18, 1998) organized by Benin's Institute for Human Rights and the Promotion of Democracy.

South Africa: blending tradition and change

◆ Ferial Haffajee

In South Africa's Herculean task of law reform, women's groups are in the vanguard of the movement to adapt traditional law to post-apartheid society

When former President Nelson Mandela married Graça Machel last year, their Western ceremony was simple and secret. But their customary marriage in the verdant hills of Xunu in the Transkei was treated like an occasion of state. Machel was welcomed in traditional dress by the elders of the Tembu clan in a ceremony beamed around the world. And Mandela's elders negotiated her bride price or *lobola* with Machel's Mozambican kin.

and customary law as the poor cousin is gone," says Professor Thandabantu Nhlapo of the South African Law Commission. "Both have to be judged in terms of the constitution." This harmonization process marks a major step in South Africa's Herculean task of legal reform. The first step lay in repealing apartheid laws. Next came the need to reconstitute the Law Commission, which was dominated by racist judges of the old regime. Now it must shape new laws to govern a new social order.

Customary law in South Africa has suffered similar travails to those of other African countries with a colonial past. Afrikaner governments inherited a dual legal system of common and customary law from British colonizers. They codified this mixed system into the Native Administration Act which in 1986 became the Black Administration Act—sculpted as a tool to divide, by fine-tuning the separate system of administration for blacks. Under the Act, customary law was tolerated so long as it wasn't deemed "repugnant" to common law, in which case it was nullified.

Swift, cheap justice

Yet customary law is probably the only form of justice known to many South Africans. About half the population lives in the countryside where traditional courts administer customary law in over 80 per cent of villages. The courts, which are also found in some urban townships, deal with everyday disputes like petty theft, property disagreements and domestic affairs—from marriage to divorce and succession. (The courts cannot impose fines of more than \$6 and serious crimes are tried by formal courts.)

Justice is swift and cheap as the courts are run with minimal formalities and charge less than a dollar for a hearing. The judges use everyday language, and the rules of evidence allow the community to interject and question testimonies. These courts are close to the people who don't have the money or time to travel to towns for formal courts.

Yet the system is not without its critics—namely women, who are barred from serving as judges and often discriminated against as litigants. Paradoxically, women's groups, under the umbrella of the Rural Women's Movement, have been in the vanguard of efforts to recognize customary law and adapt it to post-apartheid society. Discussions about ways of elevating customary law are intertwined with debates on making



In January 1999, Thabo Mbeki is blessed by village elders before successfully running for the South African presidency after the retirement of Nelson Mandela.

The event was significant for many reasons, yet above all, it moved traditional customs and laws from the fringes to the centre of South African society. It signaled a shift in power for customary law which the apartheid state treated as common law's "poor cousin".

A groundswell of innovation is underway to instill new authority, resources and dignity to customary law. Not only is the aim to correct historical injustice, but to rebuild trust in the criminal justice system and respect for the rule of law. The challenge lies in building a legal system which integrates common and customary law in line with the new constitution, enshrining such fundamental principles as gender equality. "The old, unequal relationship between common law as the big brother

◆ Senior Editor, Johannesburg
Financial Times

- ▶ it gender-neutral. Three issues top the agenda: traditional marriages, inheritance rights and the status of traditional courts.

Under apartheid, traditional or customary law marriages were not legally recognized and only regarded as “unions”. If a couple couldn’t afford a common law marriage, the woman was considered a “minor” who wasn’t even allowed to open a credit account with a local grocer. Most rural women raise their children alone as their husbands are migrant workers in mines and industrial centres. “The women couldn’t buy anything. They had to wait for their husbands to return from the city in order to sell property,” says Likhapa Mbatha of the Centre for Applied Legal Studies (CALs), a legal think-tank. Thus, the Recognition of Customary Marriages Act was passed last year after close collaboration between the SA Law Commission and the women’s movement. For Mbatha, “It’s a recognition that South Africa is in Africa.”

Reforming and recognizing traditional courts

This first victory was about righting an apartheid wrong: disrespect for customary law. The next step lies in making it gender-neutral. According to customary law, only males can inherit property and wealth. Nhlapo’s sub-committee has proposed bringing this law into line with the non-discriminatory common law. Indeed, the proposal may not be as radical as it appears. In a research project, CALS

found that many villages have informal ways of ensuring inheritance to widows and daughters. A parliamentary decision on the proposed changes is anxiously awaited.

The third priority lies in reforming and recognizing traditional courts. South Africa’s common law criminal justice system is buckling under the weight of shrinking budgets and poor management, according to the National Director of Prosecutions. Nhlapo sees a partial remedy in expanding the operations of the traditional courts which have the respect of the people—an essential ingredient in reinforcing the rule of law. “You must empower traditional courts to dispense justice in a way and in a language that people understand,” says Nhlapo, “by bringing traditional courts in line with the constitution and financially investing in them.” To begin breaking down the gender barricades to justice, the South African Law Commission recommends having elected councillors preside with traditional chiefs in their courts. However, the women’s lobby does not fully trust the chiefs and headmen. So instead of formally recognizing these courts or expanding their powers, the lobby would simply like to see them treated as local arbitration tribunals. Not surprisingly, the proposition has ignited an open battle with the traditional leaders, who want to strengthen their courts.

The jury is still out on the traditional courts system. Whatever the outcome, it will be a milestone in South Africa’s history and quest for justice. ■

Wherever Law ends,
Tyranny begins.

John Locke,
English philosopher
(1632-1704)

Chinese courts get a hearing

◆ Katherine Arms

In an increasingly conflict-prone society, ordinary Chinese are shunning *guanxi*—personal connections—and granny patrols, and calling their lawyers instead

The sort of skulduggery to which the 80 women labourers fell victim is now so common that the case might well have escaped public notice.

Four years ago the women, from a poor area of inland Hebei province, came to the country’s capital to work at the Huayi Clothing Mill, a fully Chinese-owned business. Given a slowdown in the economy, the women considered themselves lucky to have jobs. Unfortunately, however, the clothing mill didn’t pay its workers for more than a year.

The women complained to local authorities, but to no avail. Finally, as a last resort they applied to the Centre for Women’s Law Studies and Legal Services in Beijing for help.

Recently, they won their lawsuit and have been awaiting a decision on damages. Their lawyer estimates that a total of between \$120,000 and

\$230,000 will be awarded to the 80 women. Amounting to between \$1,500 and \$2,900 per person, that may not sound like much, but compared to the average per capita income in China it represents a small fortune.

What is perhaps most amazing about this story is that the women bothered to turn to the courts at all given that the judicial system has such shallow roots in both pre- and post-revolution China. Though the legal system is in its infancy and, according to human rights activists, is subject to government interference in the case of sensitive political issues, it is nevertheless being taken increasingly seriously.

In imperial times up until the beginning of this century, China didn’t even have lawyers. Rather, it had scribes, commonly known as “litigation

◆ Beijing-based writer



Some 30 investors outside the Beijing municipal government office in April 1998 call for the justice system to enforce contracts they had signed.

tricksters”, who might launch appeals on behalf of people who felt they had been wronged. Engaging in this practice was potentially dangerous. “Habitual litigation tricksters” could be exiled to the “malaria regions” of the south.

After the 1949 communist revolution, the priority of the judicial system was to serve socialism, a principle which often worked against protection of individuals’ rights. Things got worse. During the Cultural Revolution of 1966-76, Mao Zedong wiped out legal institutions in favour of “revolutionary justice”.

Coping with a judicial vacuum

In this vacuum, ordinary Chinese people have had to depend on informal neighbourhood committees, commonly run by elderly, retired women workers forming a sort of granny patrol, or on party or government leaders to intervene in disputes. Invariably, the politically well-positioned have used *guanxi*, the Chinese term for personal connections, to sway arbitrators. Meanwhile, those without good *guanxi* have often had no choice but to suffer in silence, or make a desperate journey to Beijing where they camp outside the State Council’s petition office for days or weeks hoping that some government official might give them a sympathetic ear.

Since the end of the Cultural Revolution and the beginning of economic reform in the late 1970s, the Chinese leadership has gradually been rebuilding a legal system. This year, for the first time, the government amended the national constitution to declare China a country governed “according to the law”.

This may seem banal, but legal experts say the clause is important. Although reference to a “rule of law” is not made as such, “basically, the spirit is the same,” says Wang Chenguang, associate professor of

law at Hong Kong’s City University.

One underlying reason for the switch to reliance on law is that the old party and community structures can no longer cope. In big cities, where high rises now house significant swathes of society, many of them recently arrived, neighbours no longer know each other as they did, say, two decades ago when government restrictions on movement made it virtually impossible to switch abodes. Local committee elders are reluctant to interfere in the lives of people they don’t know, and residents are unwilling to countenance interference, says Wang, a former member of Beijing University’s law faculty and practicing lawyer in Beijing.

Corruption and regionalism

At a practical level, Beijing now sees the legal system as a possible solution to two of its biggest headaches: corruption, which President Jiang Zemin has called the single biggest threat to the future of the Communist Party; and regionalism, in which local officials give preference to local companies, official bodies and other entities, a trend which many central government officials believe undermines national unity.

Meanwhile, say other experts, society is simply becoming increasingly conflict-ridden as the rapid change to a free-market economy presents all sorts of new opportunities for disputes. For example, since China abandoned co-operative farming and turned towards free enterprise, more and more people have flocked to cities and towns to find work. The poor and uneducated are frequently victimized by greedy or abusive bosses.

There are now in China some 140,000 lawyers, still a small number in a country of 1.2 billion people. But with free enterprise growing law is increasingly popular amongst students as a lucrative vocation.

Since the Centre for Women’s Law Studies opened in 1995, six staff lawyers have assisted more than 7,000 people, according to Guo Jianmei, a lawyer and the centre’s director. She says they have tried more than 400 cases and have won more than half. Guo credits the UN Fourth World Conference on Women held in Beijing in 1995 with giving the centre a big push.

“Many people from foreign countries came here and they asked us, ‘Do you have legal aid?’ and we told them we didn’t. It started the whole discussion,” she says.

Spreading the word about basic legal rights is a fundamental necessity. In 1993, Xie Lihua founded *Rural Women Knowing All*, the first publication for migrant women. She was interested in the plight of rural women in big cities without money and exploited by employers. There are an estimated one million migrant women in Beijing alone, many of whom have no idea they have rights, says Xie, whose magazine has a circulation of 220,000 and an estimated readership of 14 million.

“It used to be: ‘I order you to do this’ without any question,” says Xie. Now “we are moving from a planned economy to a market economy and with this move our laws have to change as well.” ■

Let the welfare of the people be the supreme law.

Cicero,
Roman statesman and writer
(106 B.C.-43 A.D.)

Law and social justice

◆ Kerry Rittich

Law reform in the service of democracy must find ways of protecting the vulnerable

Legal reform and “good governance” have vaulted to the top of the development agenda. International financial institutions and influential donors continually stress the importance of the rule of law, a healthy regulatory environment and strong and consistent enforcement of rights to successful economic development. In the new world order, the state’s role is to facilitate private activity rather than guarantee the welfare of its citizens.

But there is growing concern that market reforms and globalization are connected to greater social stratification and economic inequality. What is often overlooked is that legal reform may enhance rather than alleviate this stratification and inequality.

It is important to see legal reform as a key part of a broader set of policy, legislative and institutional reforms which are designed to create not simply rule- and norm-based societies but particular types of market economies. There are no “free” markets; functioning markets depend upon a legal infrastructure and a commitment to the rule of law. The growing interest in legal reform indicates nothing if not the widespread recognition of this fact.

Tradeoffs between efficiency and equity

Respecting the rule of law and protecting rights however does not mean that there is any one best set of laws, even in a market economy. Yet legal reform projects in developing and transitional countries have become inseparably associated with the idea of a single, optimal path or model. Current projects emphasize strong protection for property rights, the consistent enforcement of contracts and, increasingly, financial sector regulation as the foundation of an investor-friendly legal infrastructure. At the same time, states in transition to markets have been discouraged from adopting or retaining “excessive” regulations, including protective labour market policies that might impede growth and efficiency.

Market-oriented legal reforms can affect the fortunes of different groups in at least three different ways. The first is through the types of reforms that are implemented. Because legal reforms allocate rights and entitlements, different rule structures may well benefit different groups in different ways. In some instances, there may be tradeoffs between efficiency and equity. Strong property rights will protect owners and entrepreneurs but may contribute to the disadvantage of renters and workers; environmen-

tal and consumer protection laws protect the public at large but impose costs on businesses.

Second, people can be affected by the absence of particular laws. Labour standards and laws authorizing collective bargaining, for example, have been crucial in industrialized societies. If they are weak or missing as they are in many developing countries, or if they are indefinitely postponed because priority is given to implementing laws and regulations which facilitate economic transactions, vast numbers of people can find themselves worse off than they need be in the market for labour. Particular groups may also be harmed. Women with caregiving obligations are likely to be systematically disadvantaged and shut out of better work opportunities without market regulations which ensure that part of these costs are borne by others. This is especially likely where social programmes and subsidies are reduced or eliminated at the same time, as has occurred in many parts of Central and Eastern Europe.

Open debate

Finally, where legal reforms follow a “standard form” or are designed by experts from afar, a common experience in transitional states, the risk is that local history and priorities will be ignored or displaced and democratic control over decisions about basic social organization is weakened.

To avoid aggravating inequality and worsening the position of those who are frequently already vulnerable in the reform process, three conditions need to be met.

First, conflicts of interests—between workers and entrepreneurs, for example—as well as the necessary tradeoffs that legal reforms often entail should be acknowledged openly, rather than hidden behind the veil of efficiency. This will allow countries to debate more openly the political and distributive choices that legal reforms involve.

Second, donor countries and international financial institutions need to rethink the position that state “intervention” is usually or necessarily the enemy of economic development.

Third, developing states need much more space, indeed they should be actively encouraged, to accommodate distributive, equity and social concerns not only through social programmes and transfers but through the processes of legal and regulatory reform as well. This would allow greater attention to labour market concerns and environmental protection as well as to poverty alleviation and gender, racial and ethnic equity. ■

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TAKING THE SWEAT OUT OF SWEATSHOPS

◆ Ruth Mayne

Thanks to an alliance between northern consumers and workers in the South hundreds of companies have adopted codes of conduct designed to improve labour conditions

From London to Nicaragua, consumers and workers are uniting to attack an age-old scourge: sweatshops. Major consumer campaigns are gaining ground across Western Europe and North America by joining forces with non-governmental organizations (NGOs) and trade unions in the South to demand respect for workers' basic rights.

The roots of the campaigns go back to the late 1980s, when NGOs and trade unions began working together to mobilize and channel growing public awareness and outrage over exploitative labour practices as countries, particularly in the South, competed for foreign investment by denying workers' fundamental rights (like joining a trade union) and large companies relocated factories from country to country in search of cheap labour.

The campaigns have basically taken two approaches. The first, dubbed fair trade initiatives, seeks to help small producers in developing countries receive a fair price for their work. NGOs help them by promoting niche markets for their products—ranging from handwoven rugs to coffee beans. Eventually, the producers also gain access to mainstream markets, with special labels indicating their “fair trade” products.

In the second spate of campaigns, referred to as ethical trade initiatives, NGOs, trade unions and consumers pressure (via petitions and demonstrations) large multinational companies to adopt codes of conduct respecting minimum labour standards for their factories and those of their suppliers. While both kinds of campaign can complement one another, they have different aims. Labels aim at helping individual producers in developing countries, whereas codes seek to improve labour conditions in mainstream industries such as retailing and manufacturing textiles, clothing, footwear and toys in both the North and South.

One high profile operation took aim at mighty Nike, the athletic shoes manufactu-



San Francisco garment workers take part in a march on the National Day of Conscience against Sweatshops, April 4, 1997.

© David Bacon/Impact Visuals, New York

rer, which agreed to a code of conduct after a heated consumer campaign in North America and Europe backed up by media exposés of labour abuse in Indonesia, China and Thailand. Clothing companies like Levi Strauss, Liz Clairborne and The Gap have also adopted codes to protect their brand names. While there is no precise data concerning the number of companies adopting codes, the International Labour Organisation (ILO) counted and reviewed more than 200 codes in a 1998 report. Over 80 per cent of the codes had been adopted by multinational enterprises, mostly based in the North.

A new departure

The code campaigns can be seen as a response to the stark failure of governments and multilateral institutions to help ensure a fair distribution of trade benefits to workers and small producers. With governments and business increasingly hostile to statutory regulation and trade unions since the late 1980s, the campaigning groups have focused on market-based mechanisms to achieve social and environmental goals.

The code campaigns have made it easier to build consensus between northern and southern NGOs than previous attempts at reforming the world trading system. Trade union proposals in the mid-1990s for a workers' rights clause at the World Trade Organization¹, for example, were viewed with great suspicion by many developing country governments. They saw such clauses as a new form of northern protectionism aimed at keeping cheaper southern goods out of their markets. They were also mindful of past campaigns gone awry: consumer boycotts backfired as companies simply changed suppliers or relocated their factories. The result: lost jobs, not improved working conditions. The codes mark a new departure by stressing the need for co-operation: companies are encouraged to adopt

¹ The International Confederation of Free Trade Unions (ICFTU) has suggested a social or workers' rights clause that would make WTO privileges conditional on compliance with a set of internationally agreed fundamental workers' rights. The ILO would retain the role of monitoring and judging infringements.

◆ Policy adviser, Oxfam



A textile factory in a Nicaragua free zone in 1990, before the adoption of an ethical code.

► a strategy of long-term engagement with suppliers to improve working conditions over time, rather than taking the simpler but potentially more damaging route of withdrawing their business when labour abuses are found and highlighted by consumer campaigns.

For codes to be effective, they must meet a few basic conditions. First, all relevant actors—especially workers—have to be involved in their design and implementation. Not only must they include the seven core ILO conventions (assuring respect for human rights at the workplace, including freedom of association and collective bargaining) but they must address local concerns, like migrant labour. The codes should also apply to “flexible” and informal sector workers where possible and promote long-term engagement to improving conditions. Independent verification is indispensable.

Boosting morale and productivity

In the UK, for example, the top five retailers, including Marks & Spencer and C&A, have agreed to adopt ethical codes of conduct after three years of consumer lobbying galvanized by the Clothes Code Campaign launched by Oxfam, an international non-governmental aid organization. Thousands of consumers petitioned the companies, while Oxfam staff made the case for ethical trade with senior corporate managers who soon saw the commercial advantages of the codes. A code can do more than just safeguard a company’s public image. By improving working conditions, a code can boost staff morale and productivity—both essential for making a company more competitive.

However, consumer support is only one part of the equation: local labour associa-

tions must play a central role in developing and implementing codes. In the Dominican Republic, for example, the non-governmental organization CIPAF (Research Centre for Action on Women) is joining forces with Oxfam to develop a code for workers in the free trade zones. The Dominican campaign is linked to a wider network of women’s associations trying to improve labour conditions across Central America under the banner, “Work, yes—but with dignity!” (See article next page.)

Even though the Dominican constitution and labour code enshrine the right to freedom of association and collective bargaining, many companies in the free trade zones prevent unionization by intimidating and black-listing organizers, while massively hiring temporary workers. According to local NGOs, confrontation was the traditional response, with workers’ organizations denouncing company violations and employers disputing the allegations, while threatening to move their operations to other countries. The government was left paralyzed, fearful of losing jobs. However, these dynamics are now changing in the Dominican Republic. Given the campaign’s international exposure, companies are now beginning to negotiate with workers and government to produce a joint code of conduct for all free trade zones in the country.

Practice lags behind rhetoric

While the campaigns mark a major step forward, they have limits. Codes can complement but not replace government regulation. Governments are ultimately responsible for enforcing human rights and the rule of law. However imperfectly they perform this role in practice, they are the

body best suited to mediate between the different interest groups in society when setting and enforcing labour standards.

Another key concern is that corporate practice often lags behind the rhetoric of support for ethical trade. In a 1998 review of 215 codes of conduct, the ILO found that only 15 per cent included freedom of association and collective bargaining. Only 25 per cent of the codes had provisions to prevent forced labour—or the refusal to contract with companies using forced labour. And very few had monitoring requirements.

The ILO also points out the arbitrary nature of consumer pressure campaigns which mainly single out companies with a brand name to protect. They also tend to focus on exporting companies and so do not necessarily cover workers in the domestic sector.

Fear of bureaucracy

But these are arguments for improving the initiatives rather than abandoning them altogether. Some of the problems could be in part rectified by a shift to home-grown industry or sector-wide codes of conduct which would promote greater involvement by developing country suppliers and governments. The ILO might also help to develop an internationally agreed model code of conduct—although this might spark resistance.

Some NGOs are concerned that ILO involvement would overly-bureaucratize the campaigns. Some developing country governments are also wary of ILO support for these schemes out of fear of northern protectionism.

The campaigns are now at a crossroads. Hundreds of codes have been adopted by companies, the next step lies in applying them. One thing is certain: the impetus for voluntary initiatives will not go away as long as the workers fail to receive a fair distribution of the wealth they help to create. ■



- **Clean Clothes Campaign:**
www.cleanclothes.org
- **Clothes Code Campaign:**
www.oxfam.org/uk
- **Ethical Trade Initiatives:**
www.eti.org.uk
- **International Labour Organisation:**
www.ilo.org
- **Stop Sweatshops:**
www.uniteunion.org

'WORK, YES—BUT WITH DIGNITY!'

◆ Roberto Fonseca

Nicaraguan workers have prevailed on foreign employers to adopt a code of ethics enshrining respect for their rights and better working conditions

After more than a decade of war and internal conflict, peace officially returned to Nicaragua in May 1990. Thousands of members of the so-called "Contra army" laid down their weapons and tens of thousands of reservists and soldiers were retired. Many of them automatically swelled the army of the unemployed.

"When the war ended, we didn't know what to do, we felt exposed. I got a job in a factory at the Las Mercedes industrial free trade zone, picking up garbage and cleaning machinery," says Eugenia. Her experience is echoed by many women working in the country's *maquila*¹ assembly industries. Eugenia never thinks of leaving her job. "There aren't any other factories" she says, "and I'm 40 years old, so I have to stay where I am and put up with things without complaining."

Violence

The Las Mercedes free zone currently has more than 20 textile assembly plants, most of them Asian-owned and directly providing over 18,000 jobs, 80 per cent of them held by women. These factories exported more than \$135 million worth of goods in 1997, compared with the slightly more than \$200 million earned by the country's main export, coffee. For many years, the local media attacked the violation of labour laws by the factories. Women in particular were the victims of persistent physical, psychological and verbal abuse. They were also fired simply because they became pregnant.

"There was a really violent aspect to life in the free zone," says Sandra Ramos, leader of the María Elena Cuadra Movement of Working and Unemployed Women. "To try to end the abuses, we forced a code of conduct on the assembly plants."

The 10-article code deals with matters like maternity leave, working hours, overtime wages, regular medical checkups and job security. It is the first of its kind to be negotiated and put into effect in Central America, where

there are about 1,100 such factories employing more than 300,000 workers. Under the banner, "Work, yes—but with dignity!" (the slogan of a coalition of women's labour groups lobbying for codes of conduct across Central America), the Nicaraguan initiative owes its success to workers' determination and strong public support which took the shape of a 30,000-signature petition.

The ministry of labour made the code a ministerial edict on January 23, 1998. Within about a week, all of the factory owners of Las Mercedes accepted the code in an open letter to the labour minister: "We have decided of our own accord to comply with the ministerial edict because we think it will improve and harmonize relations between employers and employees."

Working conditions slowly began to get better. A survey carried out in January 1999 by the María Elena Cuadra Movement showed that since the code was adopted most workers (95 per cent of the 2,562 women polled) had not been victims of the kind of mistreatment common up until then. The survey also found that factories began opening creches and food areas where workers could eat meals brought from home or bought from vendors. But the workers also said there was a long way to go before they had social security, decent wages and good factory hygiene. The average monthly wage was less than \$100, far below the estimated

cost of a family's basic needs of around \$150 a month.

"Regulation of foreign investment in Nicaragua is inadequate," says Ramos. Backed by women MPs, her movement is now pushing for parliament to reform the laws governing the free trade zone. "The code of conduct was a first step," she says, "but it's only a means to an end."

The whole matter is a tricky one, however, and demands caution. Ramos says international consumer campaigns to press for codes of ethics can be risky. Pressure applied the wrong way could lead to closure of the factories and the loss of local jobs.

'Clean' clothes

"At international level, some people are campaigning with good will, but others are seeking to advance their own national interests through these campaigns." The Nicaraguan activists are against, for example, boycotting Central America's free trade zones. They are also opposed to the idea that consumers in rich countries should only buy locally-made goods. Trade unions in the United States in particular have promoted this approach, which Ramos rejects as nationalistic. On the other hand, "We think the campaign in Europe for 'clean' clothing products, which doesn't talk about a boycott but about improving working conditions, is more effective," she says of campaigns like that of Oxfam (see article page 37).

"What we ask campaigners in rich countries to do is negotiate directly with the big textile firms there so they respect workers' rights in their factories in poor countries and later to organize an independent inspection to check whether the factory owners are keeping their word.

"Anyway," says Ramos, "the code of conduct isn't something invented in the North. It was thought up by women of the South. We haven't copied any foreign model." ■



◆ Editor-in-chief, *La Prensa*, Managua (Nicaragua)

1. Foreign-financed textile factories set up in free trade zones, where they are exempt from taxes and produce for foreign markets. Most of the women are manual workers who assemble garments.

MOVE OVER MILAN, MANILA IS TAKING THE CATWALK

◆ Allen T. Cheng

Reviving a piece of fashion heritage, a Filipino housewife creates an alternative sense of style

Until the late 1980s Patis Tesoro was a housewife and part-time fashion designer who enjoyed an upper-middle class life in the exclusive neighbourhoods of San Juan, a town on the outskirts of Manila. Occasionally, she would tailor-make an outfit for people in her rich circle of friends, and it would bring enough money to buy the expensive ornaments with which she decorates her spacious home.

But in the aftermath of nation-building that followed the 1986 overthrow of President Ferdinand Marcos, Tesoro found her true calling as a social activist, entrepreneur, and leader in development economics. Seeing that ethnic wear was a part of Philippine identity that was dying out as the result of an

invasion of polyester and cotton goods based on Western design, Tesoro set out to save one humble piece of heritage: piña, a hand-woven fibre derived from the pineapple leaf, the mainstay of the traditional ethnic dress called the *barong*. (See box on facing page).

Turning over a new leaf

More than a decade later, her designs are de rigueur for Philippine high society. Along the way to success, Tesoro almost single-handedly helped create thousands of jobs for peasants and weavers throughout the Philippines. In a country whose per capita GDP is roughly \$880 a year, piña weavers can now earn as much as \$200 or \$300 a month. Such an income makes it much more likely that women will stay in the villages and weave piña rather than go abroad to be domestic

servants, who earn salaries ranging from \$300 to \$400 a month. Though Tesoro had a lot of help from others, she used no capital except her own pocket money and grants totalling no more than a few million pesos¹. Her story is that of raw determination, strategic lobbying of the right government officials, and smart marketing at home and abroad. It is also a tale of how the developing world can transform tradition into business that creates wealth and shores up cultural identity.

For developing nations, the potential economic rewards alone of building fashion design and retailing capabilities are enormous. Currently the South is the hub of textile and clothes manufacturing, Asia being the biggest producer (garments account for 45

◆ Hong Kong-based journalist

1.1US\$ = around 40 pesos.

Filippino women at Banga in Aklan province (Visayas islands) extract fibre from pineapple (piña) leaves.



per cent of Hong Kong's exports) with Latin America now emerging as a player.

But these are largely "low-end" operations where the gross profit margins are fairly small—perhaps only 10 per cent. The big margins, as much as 200 per cent, go to designers and retailers, predominantly Western. Ironically in recent years many Western fashion houses have turned to ethnic themes from Africa, Latin America and Asia for creative inspiration. In the middle of this supply chain, trading houses that source from manufacturers and sell to retailers enjoy margins of 20-30 per cent.

If the developing world has thus far been relegated to a sweatshop role, things may be changing in Asia as the region's economies get back on track following the 1997 financial crisis, and as indigenous designers discover their abilities.

"We (in Asia) have a wealth of talent

THE SECOND LIFE OF A 400-YEAR-OLD TRADITION

Brought by the Spanish galleons to the Philippines in the 1580s, the pineapple soon became a major crop in the isles. The variety that prospered then bore a fibrous fruit with leaves that grew up to two metres, three times longer than the leaves of today's edible variety.

Natives took those leaves and stripped them down to fibres, which they spun into threads to make a shimmering, soft fabric, softer than the softest hemp, yet with more texture than silk. By the 1600s, piña and abaca—a fabric made from the fibres of a plant related to the banana—became the major exports of the Philippines. Natives traded piña and abaca with merchants from the Middle East, Malaysia, China and India. "It was what everyone wore—piña and abaca," says Patis Tesoro. It wasn't until the 1700s that locals began importing cotton from England.

The piña plant couldn't compete with imported cotton or silk, both of which were mass produced in Europe and in China. Despite that, piña and abaca were what many rural Filipinos continued to wear well into this century. The process of weaving these fibres was far more cumbersome than cotton or silk, both of which can be spun into very long threads by machines. The piña fabric had to be hand-woven because its fibres were never more than two metres in length and were hard to attach to each other.

As a result, piña fabric was far more expensive to weave than either cotton or silk. Because of its higher price, piña became the fabric of choice of Filipino noblemen. "It used to be that if you wore a piña *barong*, you'd really made it," says Tesoro. ■



A piña weaver prepares her loom.

© Patis Tesoro, Manila

emerging, as good as anywhere in the world," says Professor Edward Newton, chairman of Hong Kong's Institute of Textiles and Clothing, Asia's biggest such research centre and think tank.

But to realize potential a lot of artistic creativity is needed, as well as a sense of what sells, gumption, risk-taking and a vision.

"I always felt that we Filipinos were looking for an identity," says Tesoro at a coffee shop she's built adjacent to her museum-like studio, which is filled with rolls of traditional fabrics and tropical spices. "What we needed to do was to get back to our roots. We were losing our identity. We were being overwhelmed by Western civilization."

Ethnic roots

Tesoro's story begins in the late 1980s. In the euphoria after the downfall of the Marcos regime, Tesoro and her close friends began a process of soul searching. Many wanted to do something to contribute to the new republic and decided to look at their ethnic roots: a complex history of ethnic tribal traditions, flavoured by Spanish and American colonialism.

Along with two other well-connected

wealthy friends, Tesoro, now 48 and a mother of four, opened the Padrones de Casa Manila, a museum that celebrates more than 300 years of Philippine history.

It was then that Tesoro came to realize that many traditional industries were dead or dying during years of neglect under Marcos. Among them was what once was the pride and joy of the Philippines: natural fibres. Tesoro was particularly intrigued by piña cloth, which by that time was nearly impossible to find.

When Tesoro went in 1986 to the Visayas, a set of islands where piña still grew wild, she found only a handful of part-time weavers—most of them women in their late 70s or 80s. Clearly piña was going to die with these women, says Tesoro, who began lobbying local officials to set up courses to train the next generation of weavers. It took Tesoro nearly two years of lobbying officials before they took any action.

It was finally only by contacting Victor Ordoñez, Under Secretary of Education, and Carlos Dominguez, Secretary of Agriculture, that Tesoro was able to convince the government to take action. In 1988, Tesoro and the Aklan State College of Agriculture in ▶

© Patis Tesoro, Manila



Samples of piña material.

► the Visayas began a series of courses on piña weaving. It took another year of lobbying government officials for Tesoro to convince the government to put up more funding to train local farmers to begin cultivating piña again. "It was not easy," says Tesoro.

Re-establishing the piña trade was even more difficult. She recalls the first meeting she held with former growers, weavers, leaf strippers and traders. She asked why they stopped selling piña. "There was a shouting match," says Tesoro. "People blamed each other and the middlemen. What it came down to was the price of piña was just too low. There wasn't nearly enough a profit margin for the industry. People would rather go overseas to be domestic helpers than be weavers."

Status symbol

By now, the government's Fiber Industry and Development Association was on her side. Together they began setting up a distribution channel for the piña. In turn, she promised the growers and weavers that she would buy their supply and also help promote their fabrics nationally by integrating them into her fashion designs. In fact, it was Tesoro who continually was willing to pay a higher price for piña at the beginning. By marketing her piña *barongs* to her rich friends, Tesoro was able to influence how the elites of Manila dressed.

Tesoro's clients list today reads like a Who's Who of the Philippines: Cory Aquino and her daughters, former President Fidel Ramos and his wife, President Estrada and his wife, and almost every major business tycoon in the country. "It is now a status symbol again," claims Tesoro, whose outfits sell for as much as \$1,000 each.

In fact, it was by enlisting the help of former first lady Amelita Ramos that Tesoro

was not only able to get more funding grants to train both growers and weavers but also spread the gospel about the importance of piña as a fabric among Philippine elites. Together, Tesoro, the former first lady, and a few others, founded the Katutubong Pilipino Foundation, which is dedicated to the revival of traditional Philippine arts, crafts and culture.

Today, Tesoro is no longer the only buyer of piña. Many younger Filipino designers are turning to it. In fact, the piña industry today employs more than 2,500 people in the state of Aklan alone, which produced 80,000 metres of piña fabric in 1998, up from a mere 3,000 metres a year back in 1986. Aklan is the centre of the piña industry in the Philippines. Here, more than 80 per cent of the country's piña products are produced. The industry's annual turnover is roughly US\$1 million a year.

Much of the Philippine's piña exports

began after the Paris Fair of May 1997, when Tesoro and then first lady Ramos put on a major show to promote traditional Philippine fibres to the world's top fashion houses. That show was the re-introduction of piña to the world. New York-based Filipino-American designer Josie Natori is now experimenting with piña, for instance. More may be on the way. The Japanese textile group, Kanebo, for instance, is experimenting for the first time with the mass manufacturing of piña by mixing its fibres with others.

Newton shares the view that many developing nations will explode on to the world fashion scene. He is particularly optimistic about India and China, which have the market girth to produce influential fashion culture and may some day rival the West. Besides Tokyo, he sees the emergence of Hong Kong and Shanghai as possible rivals to Milan, Paris and London in the next decade or two.

Hong Kong already plays the pivotal role as the sourcing centre for the entire garment industry and is also beginning to produce some top fashion design talent. Shanghai will rise, supported by its growing middle class, which demands not just Western brands but Chinese ones as well. Indeed, in China today Jeans West is already a leading domestically-produced blue jean.

Unique products

"Some day, 'Made in China or Hong Kong' will become a status symbol," says Newton.

Smaller countries such as the Philippines will have fewer chances of producing name brands because the home markets in most instances are just too small to give them global presence. There, says Newton, designers should focus on niche design and products. "If you don't have uniqueness, then you have to be competitive in making cheap garments like any other developing country in the world," he says.

Finding the right designs however is a huge challenge. Newton believes talented young designers would do well to study fashion in the West, as did Japan's Kenzo (Paris) and Josie Natori (New York).

However, Tesoro's example suggests breakthroughs are possible by looking inward. She now hopes to professionalize the Philippines' natural fibre industry so that future designers will have more ingredients to use in their ethnic designs. ■



- *The Art of Philippine Embellishment*, by Patis Tesoro (Anvil Publishing Inc., Manila, 1994) traces the history of Philippine apparel from its native roots to modern times.

FASHION TIPS FROM THE PHILIPPINES

For those wishing to launch a fashion business, using their own funds or other sources of investment, Tesoro has this advice:

1. Identify partners in government and local communities who can be won over to your cause.
2. Learn about the community you will rely on.
3. Make all partners see that the project will raise living standards and benefit the country and its culture.
4. Selling to big fashion houses isn't that difficult because they are always looking for new ideas, innovative products and materials. But ensuring adequate supplies is a challenge. ■

WEDDING BELLS FOR WEB AND TV?

◆ Francis Balle and Sophie Boukhari

The divide between the Internet and television is fading fast. How will television survive this whirlwind of convergence?

Does the future of television lie in the Internet, as many people in the global audiovisual industry believe? Television has ruled the media roost during the second half of this century. But is the familiar TV set, watched passively from a distance by lolling couch potatoes, now destined to be dethroned by the interactive computer, operated by users working inches from the screen? Or will TV and computer combine to spawn a new generation of hybrid products and audiovisual services, resembling neither the TV set nor the computer as we know them?

Imagine for example a screen full of images you could activate any time you liked. If you were watching the film *Titanic*, you would use an infra-red remote control to click, like a computer mouse, on the face of Leonard DiCaprio to fetch a biography of him from the Web or send him an e-mail. You would click on his shoes to buy a pair of the same kind or even click on the wreck of the famous ship to download, for a price, other videos about it.

Conglomerates locked in battle

We're not there yet. Indeed, any predictions must be offered with a grain of salt. After all, is anyone clever enough to predict exactly what the tumultuous affair between the Internet and television will give birth to? However, crystal balls aren't needed to see the increasingly fuzzy line between television and the computer. After sizing each other up as rivals, the



Digital technology makes it possible to transmit a video via the Internet.

worlds of computers and the audiovisual media have realized they need each other and can gain from technological "convergence". With the digital revolution, any text, drawing, sound or picture can be turned into standard computer format and used either on the Internet or on television (as it goes digital).

This has set off major shifts in a new industry arising at the crossroads between audiovisual services, computers and telecommunications. A major battle is raging between two giant conglomerates. On one side is the world's biggest Internet service provider, America Online (AOL), which has joined forces with Philips and DirecTV, the leading U.S. satellite digital television operator, in a bid to win the race to capture the next century's customers. On the other side, AT&T, the world's biggest telecommunications firm and the main U.S. cable operator (which also provides high-speed Internet access) has

teamed up with Microsoft, which is trying to impose its software on the Internet networks and in the new decoders used by digital TV sets.

Many factors are pushing the two worlds of the Internet and television towards each other. The Net is drawing away more and more viewers from TV and threatening its revenue from advertising. Recent surveys in the U.S. show television viewing (which averages four hours a day compared with three in Europe) has dropped since the under-30s have plugged in to the Web. The trend is expected to accelerate as more young Americans get high-speed Web access, which is currently only available in 700,000 homes.

The big guns of the Web—those who provide services and software—want to turn TV viewers into Netizens so they can expand their markets. The number of Internet users is tiny compared with the ▶

◆ Francis Balle, a French university lecturer, author of *Dictionnaire des médias* (1998) and *Médias et sociétés* (9th edition, 1999) and Sophie Boukhari, UNESCO Courier journalist

- ▶ number of people who watch television. In rich countries, 95 per cent of the population watch television, but only 20-35 per cent of families have computers, which still scare a lot of people because they are complicated to use and are still associated mostly with the workplace.

Cyberspace in the salon

So at the dawn of the 21st century, sound, video images and television programmes are proliferating on the Web. Meanwhile, as television becomes digital, it is starting to offer interactive facilities and access to the Internet.

Since WebTV was launched in the United States in 1996 and purchased by Microsoft the following year, the race has been on to provide television viewers with access to the Net via their TV screens. This facility is currently being offered through boxes linking the TV set to a telephone line. As digital TV spreads, super-decoders will give future viewers access—through cable, satellite or radio—to a profusion of channels (many of them paying) as well as to the Web and other interactive digitally-provided services, such as personalized weather forecasts and news services, data-banks which can provide in-depth material about TV programmes, shopping centres and home banking. Recent surveys suggest that there will be 61 million decoders operating in the world by 2003.

There seems to be a growing consensus that the Net will not become a really widespread medium until it reaches people's homes through the TV set. A recent survey in Britain showed that 70 per cent of people



© Luca Jantes/Studio X, Paris

Internet technology encourages active participation by users hunting for information on the Web.

going online for the first time will be accessing the Net via television. There is a good chance this will happen in developing countries too. In India, the Satyam Infoway service provider has just brought out a box

There seems to be a growing consensus that the Net will not become a really widespread medium until it reaches people's homes through the TV set

which allows TV viewers to access the Net. In Britain, the majority of the population is expected to take up digital television within a matter of years. Chris Smith, the Culture Secretary, said last September he wanted the new technology to bring the Internet into every home.

With Internet heading into the home, electronic commerce is set to take off—which just happens to be one of the aims of the technological convergence. The viewer, for example, will see an advertising banner at the top of the screen announcing a bargain price for, say, a pair of jeans. It will take just a click of the remote-control to get to the maker's website and order a pair.

The Net providers are also using this same method to offer TV viewers an endless range of online services—information, training and entertainment. Far from killing off TV in years to come, Internet will actually give it a second wind by drawing it further (than cable or satellite) into the age of diversity and abundance.

At the same time as the Net goes on television, television will stake new territory on the Net by offering access to existing TV channels and new "webchannels" set up specially for it.

TV programmes live on the Net

This expected boom in TV on the Internet is a bit surprising in view of the very poor quality of the images. At present, putting a video film online is a bit like trying to get a camel through the eye of a needle. The feed down a telephone line is far too slow and irregular. Reception quality varies according to the bandwidth and the number of people connected. The images come through at the rate of four or five a second (five times slower than a normal television transmission), the size of the picture is no more than 25 cm², and line congestion causes frequent sudden breaks in transmission. But TV channels, from the

WEBSITE OF THE MONTH

<http://www.unesco.org/netaid>

A new UNESCO site has been launched in conjunction with NetAid, the foundation which uses Internet technology to help in poverty reduction. Created by the United Nations Development Programme (UNDP), with the aid of Cisco Systems, a private company, NetAid has the capacity to handle 60 million hits per hour. It uses the powers of the Internet to bring together people from all over the world to exchange ideas and aspirations, to volunteer goods and services, or simply to learn about the causes of poverty and solutions to it. UNESCO promotes informal and community-based approaches capitalizing on the skills and capacities of the poor themselves and encouraging them to devise their own strategies to rise out of poverty. ■

smallest to the major networks, know that over the next decade big innovations will transform the scene, with greater speed, 3D images, full-screen pictures and other improvements.

According to the managers of Comfm, a French Web portal (gateway site) which provides access to radio and TV stations around the world, in mid-1999 over 100 TV stations were transmitting their programmes round the clock live on the Net. Hundreds of other general and specialist channels offer audiovisual archives, either free or paying.

By broadcasting television on the Net, you can reach a global audience much more cheaply than by cable or satellite. Also, in an increasingly competitive environment due to the skyrocketing supply of programmes on offer, TV stations plan on using the Web to make themselves more attractive. For example a "webviewer", during a football match, can look up biographies of the players or the history of the teams by clicking on a banner which runs across the screen. A viewer can also plunge deeper into a subject while the TV news is on by delving into the Web to get extra information and video material which is available on demand. It remains to be seen, however, whether this mass of material will overwhelm the average viewer.

Online TV stations, despite their current hesitations, also dream of becoming

successful Web portals. The programmes would draw in consumers and then steer them towards virtual shopping centres. They would sell not just videocassettes, games and CDs but all kinds of other items, from clothes to cheese.

Several of the big networks are also hoping to win back on the Web some of the viewers they are losing to new stations and to the Net. The major networks are busy setting up websites which complement their television programmes without competing with them. The giant U.S. network, ABC, has launched the first-ever live interactive "web-only" news programme. It goes out on the Web in the middle of the day, at 12.30, to target a new audience of office-workers during their lunch-break.

Special-interest TV channels

An entirely new kind of TV, the web-channel, is also emerging in the shape of countless small stations operated by companies, political organizations and special-interest groups (medicine and cooking, for example). One big advantage they have is that production and broadcasting costs are negligible. Many of the people setting up such webchannels think mass television has a limited future. They are betting that audiences will become more and more fragmented just as they did with the growth in cable-and-satellite

delivered programmes. With digitalization, this fragmentation is expected to increase and give rise to television communities, with viewers tuning into thematic programming. While watching highly-specialized channels, webviewers can look up material about the topic being presented or chat with other people connected to the site.

More than 40 million people—about a quarter of all those online—already have software to access these sites and download sound and video from them onto their computers. The world's leading audiovisual portal, Broadcast.com (recently taken over by Yahoo!), gets half a million visitors every day.

What about the future? As television and the Web converge, will the familiar old TV set disappear? It seems unlikely, since the two means of communication are distinct—the Internet meets the needs of the individual, and television addresses a mass audience. They also have different publics—the active Net-user and the passive TV viewer. So we can be fairly sure TV will stay TV, whatever kind of screen we shall use to watch it. There will always be people who want to lap up the programmes offered on their favourite channel. Mass TV will always have a role in broadcasting major events which bring a mass audience together, such as the funeral of Princess Diana or the World Cup football final. ■

How much longer can the couch potato survive?



© Michel Baretz/Rapho, Paris

ANTONIO TABUCCHI

A COMMITTED DOUBTER

An Italian novelist jolts the forces of complacency in the world of fact as well as fiction

The central figure in your best-known novel, *Pereira Declares, A Testimony*, is an ageing and lonely widower who is in charge of the cultural pages of a newspaper. Why did you choose an anti-hero as your main character?

I've always been drawn to tormented people full of contradictions. The more doubts they have the better. People with lots of doubts sometimes find life more oppressive and exhausting than others, but they're more energetic—they aren't robots. I prefer insomnia to anaesthesia. I don't go for people who lead full and satisfying lives. In my books, I'm not on the side of the authorities. I'm with those who've suffered. My first novel, *Piazza d'Italia*, was an attempt to write history that hasn't been written, history as written by the losing side, in this case the Tuscan anarchists. My books are about losers, about people who've lost their way and are engaged in a search.

What are they looking for?

They're looking for themselves through others, because I think that's the best way to look for oneself. The main character in *Indian Nocturne*, who retraces the steps of a friend who's disappeared in India, is involved in such a quest. And so is Spino, the character in *The Edge of the Horizon* who tries to find out the identity of an unknown corpse. I don't know whether these people are going to find themselves, but as they live their lives they have no choice but to face up to the image others have of them. They're forced to look at themselves in a mirror, and they often manage to glimpse something of themselves.

After the success of *Pereira Declares* with the Italian public, there was some talk of your running for election to the Italian Senate. Do you regret ruling out that opportunity?

No, I'm happy to go on living the life I've chosen. I'm a university teacher and I like my job. Literature is my life of course, but from an ontological point of view. From an existential point of view, I like

being a teacher. Literature for me isn't a workaday job, but something which involves desires, dreams and fantasy. I don't want to promote my own image either. I don't like going on television or mixing in literary circles. I live quietly at home among my family and friends. Besides, there are politicians who do the job far better than I ever could. I think it's more interesting to keep a sharp eye on politics. My job is to look at what politics is doing, not be a politician myself.

Your latest novel, "The Lost Head of Damasceno Monteiro" (1997), is based on the story of a man who was murdered in a Republican National Guard police station on the outskirts of Lisbon and whose headless body was found in a park. Why did you use this real-life event?

I was in Portugal when this shocking act occurred. I was deeply revolted. When a crime offends human nature, it offends us personally. You feel both horrified and guilty. My emotions, sensitivity and imagination as a writer were moved by this event. Look, I have here the documents drawn up by human rights investigators from the Council of Europe in Strasbourg who monitor conditions of detention in European countries. They talk about the relations between the police and citizens in police stations—places of detention to which you or I would be taken today if we broke some law or other in the street.

If a politician's job is to soothe people, to show that all's well because of his or her presence, mine is to disturb people, to sow the seeds of doubt. The capacity to doubt is very important for human beings. For heaven's sake, if we don't have any doubts, we're finished!

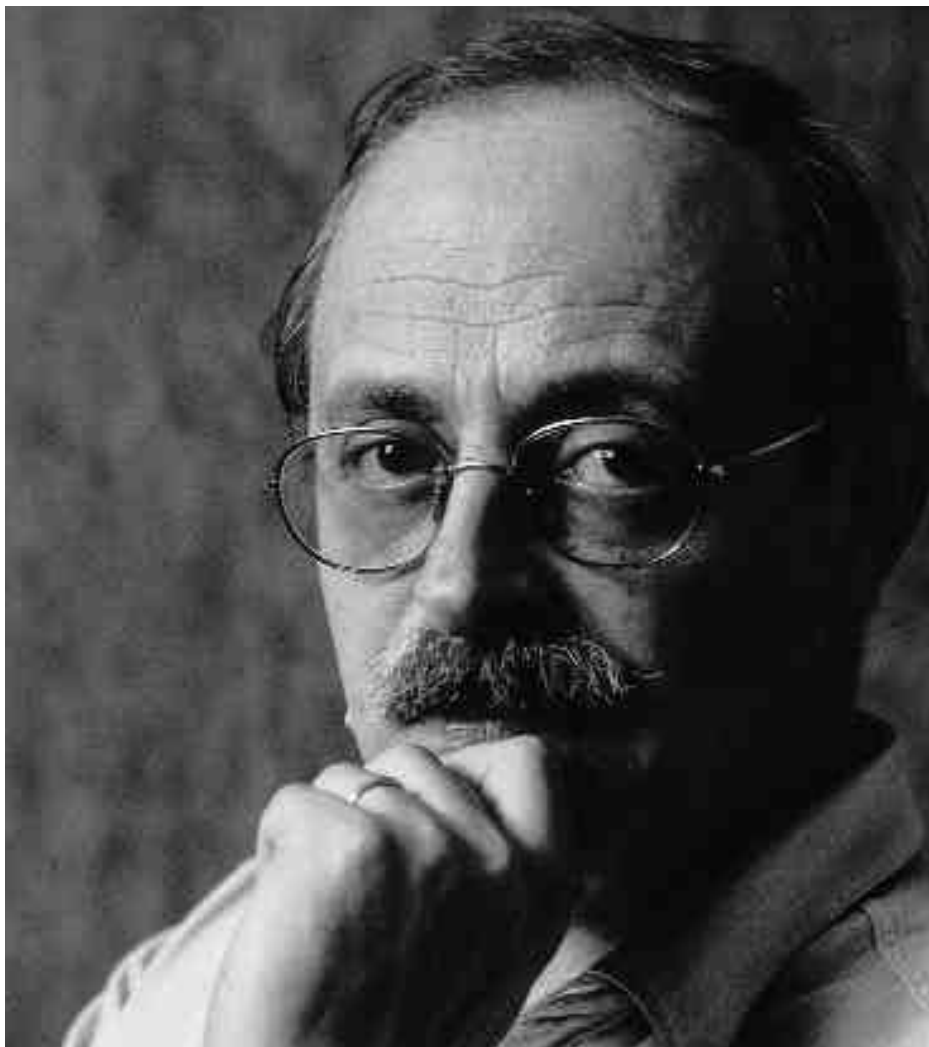
Did you use these documents when you were writing the novel?

Yes, I wanted to know about the situation in Portugal, which is rather concerning. Reading other reports made me realize things are the same nearly everywhere else in Europe, including in countries which seem more democratic. But democracy isn't a state of perfection. It has to be improved, and that means constant vigilance. I thought I had to go beyond the actual event and talk about it through a novel—to give fictional treatment to this violent occurrence. In a novel, my feelings and sense of outrage can find a broader means of expression which would be more symbolic and applicable to many European countries.

What was the Portuguese public's reaction to the book?

I didn't get many requests for interviews. People generally don't go in for self-criticism, so I'm not surprised when a foreign writer is attacked for looking too closely at this kind of incident. But when Sergeant José dos Santos, the killer, finally confessed to his crime and was sentenced to 17 years in jail, the Portuguese press asked me how I'd been able to predict the outcome of the trial in my novel, as if I was a fortune-teller. I was in Istanbul at the time, and when I got back to my hotel I found newspapers had faxed me lists of questions. But I don't think I have any particular talent for prediction, because when you have three or four elements in hand, you don't have to be a genius to reach certain conclusions. Fantasy and imagination are also a kind of intuitive knowledge which doesn't have much to do with Wittgensteinian logic,¹ as I said in my book "Plato's Gastritis". But they are a form of knowledge, one involving suspicion and doubt.

1. Ludwig Wittgenstein, Austrian-born British philosopher (Vienna 1889-Cambridge 1951), was one of the founders of modern analytic philosophy. "The limits of my language constitute the limits of my mind," he wrote in his *Tractatus Logico-Philosophicus*. In "Plato's Gastritis", Tabucchi criticizes this logic, which he describes as "very sensible but very limited" because "it only allows us to talk of what is known".



© Ulf Anderson/Gamma, Paris

KEEPING HIS OPTIONS OPEN

Antonio Tabucchi is used to writing his novels on hot, empty July afternoons in Lisbon, where he lives for six months of the year. But this summer, he had other things on his mind. None of his colleagues in the International Parliament of Writers was able to go to East Timor to write about the referendum there in late August, a historic step in the Timorese people's fight for independence from Indonesia. He hesitated to go to this island 700 kilometres from Australia because he was afraid he wouldn't be able to get back in time to give key evidence in favour of a gypsy family in a court case in Florence.

This is a typical situation in the 56-year-old writer's life. Tabucchi waits for things to happen and keeps all his options open. He knows that an encounter with a book, a picture or a person can give a new twist to a person's life. His own changed after he read on a train journey a poem called *Tabacaria* ("The Tobacconist's"), by the Portuguese poet Fernando Pessoa (1888-1935). He went to study in Lisbon and developed a passion for the country which, he says, is now part of his "genetic baggage".

With Maria José de Lancastre, he has translated much of Pessoa's work into Italian and written a book of essays and a play about him. In 1992, he wrote a

novel in Portuguese, *Requiem: A Hallucination*, which a friend later translated into Italian for him. Tabucchi is married to a native of Lisbon and has a daughter "who is more Portuguese than Italian and a son who is more Italian than Portuguese".

He was born in Vecchiano, a village not far from Pisa, in Tuscany. Nearby is the University of Siena, where he teaches literature six months of the year. The subject of his next course will be the Brazilian poet Carlos Drummond de Andrade (1902-87), whom he got to know in Rio de Janeiro.

Tabucchi writes a column for the Italian newspaper *Corriere della Sera* and for Spain's *El País*. Among his various awards are France's Medice Prize for the best foreign novel in 1987, Europe's Jean Monnet Prize in 1994 and the Nossack Prize from the Leibniz Academy in 1999.

In the 1995 Italian parliamentary election campaign, the hero of his novel *Pereira Declares* became the symbol of left-wing opposition to communications magnate Silvio Berlusconi. Many people identified with the Portuguese journalist who, in 1938 during the Salazar dictatorship, committed a bold act of rebellion. Today Tabucchi is known first and foremost as "the author of *Pereira*".

This book continues your debate with the Italian semiologist and writer Umberto Eco. What's the root of your disagreement with him?

Eco sees the intellectual as an organizer of culture, someone who can run a magazine or a museum. An administrator, in fact. I think this is a melancholy situation for an intellectual. I claim the right to take a stand once in a while. When something strange happens in the world or in your home, you have to look into it to see if you can pin it down, work it out, talk about it and sound the alarm: "Look out! This is happening in my home, in my town, in the world, which is also my home." On the other hand, an intellectual would be totally witless if he said: "Something terrible is happening in my home but I can't get interested in it because I'm putting together a catalogue for an exhibition of paintings in my local museum."

So what do you think an intellectual should be doing?

If a politician's job is to soothe people, to show that all's well because of his or her presence, mine is to disturb people, to sow the seeds of doubt. The capacity to doubt is very important for human beings. For heaven's sake, if we don't have any doubts, we're finished! An intellectual is going to have doubts, for example, about a fundamentalist religious doctrine that admits no doubt, about an imposed political system that allows no doubt, about a perfect aesthetic that has no room for doubt. Doubts are like stains on a shirt. I like shirts with stains, because when I'm given a shirt that's too clean, one that's completely white, I immediately start having doubts. It's the job of intellectuals and writers to cast doubt on perfection. Perfection spawns doctrines, dictators and totalitarian ideas.

Are you absolutely certain about this?

There are some fundamental values it's impossible to be wrong about. Nobody can disagree with the saying "do not do unto others what you would not have done unto yourself". That's something basic, that's part of human nature. I don't have any doubts either about the Universal Declaration of Human Rights. Perhaps some more should be added to the list, but I don't have the slightest doubt about human rights.

Doubts begin when political action is taken. For example, was it right or wrong to undertake military intervention in Kosovo to stop human rights violations?



"The salt of any interesting civilization is mixture." Above, Berlin police gesture Romanian gypsies to move on.

Yes of course. But remember that during the Kosovo war, writers could express themselves freely, which I think was a very good thing. Many members of the International Parliament of Writers (IPW) did so because we set up a network of newspapers, including *Libération* (France), *El País* (Spain) and *Corriere della Sera* (Italy). Every day, a writer spoke up. There were many conflicting viewpoints, but I think writers' opinions were expressed with great freedom during the war. Who were the only people who didn't have any doubts at the time? Politicians and the military. But writers expressed one doubt after another. An

article published by one writer was completely different from and contradictory to that published by another the day before. I think this is very important.

But politicians also have to make decisions. There comes a moment when doubts have to be left behind.

Yes, but I still prefer politicians who listen to the doubts of others and start having a few doubts themselves. It's very useful when politicians have doubts because there are so many choices to be made in the world. Unfortunately politicians in Europe these days are more concerned with figures and accounts than with principles. They're like Eco's intellectuals: political administrators and bureaucrats.

One of the most worrying kinds of violence in Europe nowadays is rooted in xenophobia. What do you think about that?

Xenophobic violence is the most serious conflict in Europe today, one which I think it's imperative for intellectuals and writers to oppose in word and deed. It has broken out in many countries, for economic and social reasons like unemployment and clandestine migration. But we have to make a distinction between skinheads, for example, who are simply the embodiment of brute force, and people whose speeches and writings provide theoretical backing for racial hatred and attacks on minorities. This is being done openly, with virtual impunity. In June 1999, Italy's third-biggest newspaper, *Giornale della Toscana*, printed an

article entitled "Florence, the capital, *but* the capital of gypsies"—note the use of the word "but". In it, a columnist sneered at seminars on gypsy culture that had been organized by the Michelucci Foundation, of Fiesole, near Florence. Fifty years after half a million gypsies were exterminated in the Second World War—thousands of them in Auschwitz—we're again preparing the mass killing of this minority.

Why are gypsies so often the target of this kind of violence?

Xenophobia manifests itself especially against civilizations and cultures that are weak because they lack economic resources, means of subsistence or land. So nomadic people are the first targets of this kind of aggression. Sometimes it isn't physical violence but violence in the form of intolerable, subhuman living conditions

Xenophobic violence is the most serious conflict in Europe today, one which I think it's imperative for intellectuals and writers to oppose in word and deed

like those the gypsies on the outskirts of Florence have to put up with. I've criticized this situation in a report that was recently published in Italy². Many gypsies have fled their own countries and are nomads by necessity after escaping from the war in Yugoslavia. A society which considers itself civilized can't treat people like that. It's contrary to the notion of culture and hospitality, to the very spirit of our civilization, which originates in Ancient Greece and European humanism.

What did you mean when you titled one of your articles "I am an Albanian"?

The salt of any interesting civilization is mixture. A civilization that's closed and inward-looking is sterile. Civilizations that are worthy of attention have managed to incorporate a variety of ingredients and elements. As a writer, I've always been interested in others. The most important basis of any novel is wanting to be someone else, and this means creating a character. We all want to be someone else but without ceasing to be ourselves. I think it's very important to defend this

2. *Gli Zingari e il Rinascimento*, Librerie Feltrinelli, April 1999.

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Tabucchi's works translated into English and published by New Directions include *Pereira Declares: A Testimony* (1996), *Requiem: A Hallucination* (1994), *The Edge of the Horizon* (1990), *Indian Nocturne* (1989), *Letter from Casablanca* (1986), and *Little Misunderstandings of No Importance* (1987). His *Fernando Pessoa*, written with Maria José Lancastre, was published by Pocket Archives in 1997. ■



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"Xenophobic violence is the most serious conflict in Europe today."
Above, skinheads on the outskirts of Paris.

idea in real life too.

What has had the greatest influence on your political life?

It's hard to say. Perhaps the story of my country, my childhood, my grandfather, the First World War. My interest in human rights originates in anti-war feelings that go back to my childhood. I was born in the Second World War during the Nazi invasion of my country. I vividly remember the stories my grandfather told me about the carnage of the First World War, which people tend to forget was one of the worst massacres in human history. So this antipathy to violence goes back to my childhood, to my grandfather and to the anarcho-libertarian and republican tradition of my native Tuscany.

You're one of the founders of the International Parliament of Writers. How did it get started?

Three hundred intellectuals from around the world, including Toni Morrison, Günter Grass and Octavio Paz, founded it in 1993 after the murder of the Algerian writer and poet Tahar Djaout. The idea was to set up an organization to protect, almost physically, writers and intellectuals threatened with death, persecuted or imprisoned in their countries. A year later, we set up a council of about 50 members. Its first president was Salman Rushdie, who was unfortunately not just a symbol but a living target of such persecution. Our current president is the Nigerian writer Wole Soyinka. We have a network of about 30 "refuge" cities which offer writers and their families a decent place to live and enough money to subsist and take part in the city's cultural activities—its libraries, ▶

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East Timorese lining up to cast ballots in the August 30, 1999 referendum on independence or autonomy.

► schools and associations.

Are any of these cities outside Europe?

Yes, they exist in Brazil and Australia. Mexico City recently became a refuge-city, in line with a tradition going back to the 1920s and 1930s, when the Mexican capital took in many persecuted intellectuals from Europe. I went to Mexico City in March 1999 with the secretary-general of the IPW, the French writer Christian Salmon, to sign an agreement whereby the Mexican authorities provided a refuge for two writers, Vladimir Arsenijevic from Serbia and the Kosovar-Albanian writer Xhevdet Bajraj. Both of them now live in Casa Citlalepetel, a house run by the Friends of the IPW association.

Has any IPW action given you particular satisfaction?

Everything it's done has been useful. Our notion of a writer is a very broad one. It includes Shakespeare and a journalist working on a newspaper in a remote village in Afghanistan. But I'm very happy that Italy, whose only refuge-city so far is Venice, will soon have three more such towns in Tuscany—Grosseto, Pontedera and Certaldo. I'm very fond of Certaldo because it was the birthplace of Boccaccio, the great medieval Italian novelist. They're all quite small towns where writers can get together more easily

than in a big city.

The IPW organized support for the August 1999 self-determination referendum in East Timor. Why?

When you have a foreign invasion—in this case by the Indonesian army—writers, intellectuals, newspapers and magazines are the first targets of repression. Xanana Gusmão, the Timorese leader, is a poet and a journalist. In 1994, the IPW voiced support for the self-determination of the Timorese people in the name of fundamental principles of justice and civilization. More recently, we asked for the referendum to be held without fraud and without violence by the anti-independence militias which are conniving with the Indonesian regime. I think the international community, the United Nations, will have to insist and bring pressure to bear so a military power like Indonesia doesn't crush the people of this little island. So I agree with Nobel Peace Prize winner José Ramos Horta when he says that if you call for troops to get out of Kosovo, you must also demand the withdrawal of Indonesian troops from East Timor, even though the public seems to think that a European country is more important than a tiny island in the Indian Ocean. People have a right to live, even on an island which seems insignificant to most people. ■

Interview by Asbel Lopez



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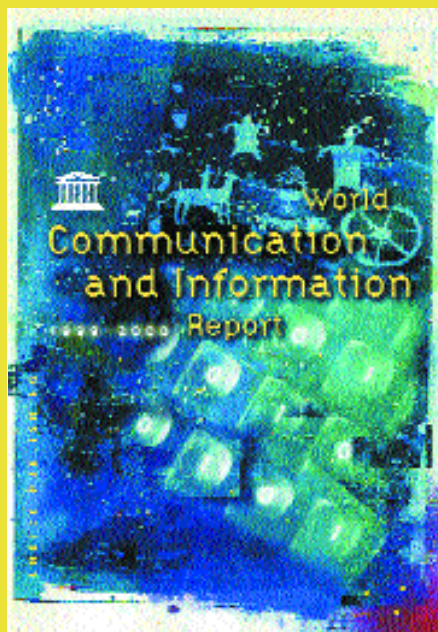
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