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Legal Imperialism: American Lawyers and Foreign Aid in Latin America

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LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA. By *James A. Gardner*. Madison, Wis.: University of Wisconsin Press. 1980. Pp. xii, 401. \$20.

During the 1960s, a small army of American lawyers participated in legal assistance programs designed to reform Latin American legal education and legal systems. Early development assistance efforts had been dominated by economists, but influential American lawyers eventually convinced assistance agencies that legal reform was a precondition to development. These agencies then sponsored "a relatively small but remarkably prestigious, energetic, and ambitious endeavor to provide American legal assistance to developing countries" (p. 8). Unfortunately, James Gardner reports, these "law and development" programs were largely unsuccessful. American

lawyers, though "well motivated in the usual sense of that term" (p. 13), were "poorly equipped for the tasks undertaken" (p. 9). Because these lawyers did not fully understand local languages, laws, politics, economics, or cultures, they generally attempted to transplant American legal culture. "As a result," Gardner concludes, "American legal assistance was inept, culturally unaware, and sociologically uninformed. It was also ethnocentric, perceiving and assisting the Third World in its own self-image" (p. 9).

Legal Imperialism traces the history of American legal assistance to Latin America, documents its failure, and, on a broader level, considers the implications of these unsuccessful transfer programs for the American legal model itself. The law and development movement, Gardner posits, attempted to transfer from America to Latin America four legal models:

(1) methodological, the American case and Socratic method of teaching law; (2) educational, the basic American model and structure of legal education; (3) professional, the American model of the lawyer as a pragmatic problem-solver and social engineer; and (4) jurisprudential, the anti-formal, "rule-skeptical," and "instrumental" vision of law drawn largely from American legal realism. [P. 4].

The bulk of the author's analysis of the effect of these models is contained in lengthy case studies of "authoritarian Brazil, socialist Chile, and democratic Columbia" (pp. 3-4).

In these case studies, Gardner discusses the pre-existing legal and professional structure of each country, the initiation and design of American legal assistance programs, developments in the law and profession during and after the programs, and whether the programs were successful (pp. 61-211). He finds that the American legal education model and structure were universally rejected due to local institutional interests, while the social-engineer model and instrumental view of law were to some degree accepted, though in unanticipated ways, in Brazil and Chile. He concludes, for example, that Brazilian lawyers influenced by the assistance program became agents for the authoritarian state, and infers that the American model of the lawyer as social engineer and our instrumental view of law are vulnerable to authoritarian abuse. The case studies also reveal a dramatic change in the mood and orientation of the law and development movement. Initial confidence and optimism, offering service with the expectation that the recipient nation would eventually adopt American legal models (pp. 35-52) were followed by doubt, a sense of failure, increased emphasis on research and inquiry (pp. 211-30), and, finally, by the virtual abandonment of research on law and development (pp. 231-35).

After concluding his case studies, Gardner undertakes to analyze the descriptive information that they provided. He briefly acknowledges the ethnocentrism and hubris of the American law and devel-

opment movement, but argues that the movement's significance runs deeper, "touching on the particular strengths and vulnerabilities of the American legal models carried abroad and their interaction with diverse patterns of social change and human choice in the developing world" (p. 247). In the remainder of the book, Gardner attempts to identify, describe, and analyze both the strengths and vulnerabilities of American legal models as revealed by the assistance programs and their interaction with the societies that he examined. He finds that the legal assistance programs in Latin America left us with many fundamental questions about the nature of American legal models, the feasibility of legal transfer, and the relationship between law, development, and society.

One leaves *Legal Imperialism* with a sense that Gardner set out to do too much. The answers to each of the questions that he raises on legal transfer, law and development, and American legal models could fill a book. But his effort is valuable nevertheless, as an historical inquiry, as a guide to future assistance efforts, and as a call for additional research.