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## The Evolution of Law in the Barrios of Caracas

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## RECENT BOOKS

### BOOK REVIEWS

THE EVOLUTION OF LAW IN THE BARRIOS OF CARACAS. By *Kenneth L. Karst, Murray L. Schwartz, and Audrey J. Schwartz*. Los Angeles: University of California Latin American Center. 1973. Pp. viii, 125. \$4.25.

Unlike most third-world countries, the major nations of Latin America have produced a legal literature that is voluminous and, within its genre, often of high quality.<sup>1</sup> The genre, however, is that of formal civil law scholarship. Traditional civilian conceptions of legal science seem to have retained a stronger hold in Latin America than in Europe; empirical research is still an exotic flower of uncertain prospects. Foreign-sponsored studies have perhaps been more inclined to delve beneath formal rule and doctrine, but the few empirical studies have been concerned principally with public law and public policy.<sup>2</sup> The role of law in everyday life has received little attention, and, consequently, we know surprisingly little about it.

We do know that the operation of law in Latin America differs considerably from the principles found in the codes and treatises. "Law-in-the-books" and "law-in-practice" never correspond precisely, of course, but their divergence appears to be especially great in Latin America.<sup>3</sup> However, the bare proposition that law and practice

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1. There is, however, no very satisfactory introduction to Latin American law. Perhaps the best starting point is J. MERRYMAN, *THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF WESTERN EUROPE AND LATIN AMERICA* (1969). Although it makes only passing reference to Latin American law, it offers a good introduction to the intellectual tradition within which Latin American lawyers work. Several recent articles illustrate some of the characteristics of the Latin American variant of the civil law tradition: Kozolchyk, *Commercial Law Recodification and Economic Development in Latin America*, 4 *LAWYER OF THE AMERICAS* 189 (1972); Means, *Codification in Latin America: The Colombian Commercial Code of 1853*, 52 *TEX. L. REV.* 18 (1973); Rosenn, *The Jeito: Brazil's Institutional Bypass of the Formal Legal System and Its Developmental Implications*, 19 *AM. J. COMP. L.* 514 (1971); Steiner, *Legal Education and Socio-Economic Change: Brazilian Perspectives*, 19 *AM. J. COMP. L.* 39 (1971). Dealing more generally with Latin American law are H. VRIES & J. RODRIGUEZ-NOVAS, *THE LAW OF THE AMERICAS: INTRODUCTION TO THE LEGAL SYSTEMS OF THE AMERICAN REPUBLICS* (1965); H. CLAGETT, *THE ADMINISTRATION OF JUSTICE IN LATIN AMERICA* (1952); and K. KARST, *LATIN AMERICAN LEGAL INSTITUTIONS: PROBLEMS FOR COMPARATIVE STUDY* (1966). The first two books provide a superficial overview. Karst's book has considerably greater depth; it is, however, a book of cases and materials and therefore may be heavy going for the novice bent on self-instruction.

2. Property law in its application to rural property is probably the best studied area of Latin American private law, because of its relationship to problems of land tenure and land reform. Much of the research has been connected with the Land Tenure Center at the University of Wisconsin. See, e.g., L. AREVALO-SALAZAR, *THE LEGAL INSECURITY OF RURAL PROPERTY IN COLOMBIA: A CASE STUDY OF THE NOTARIAL AND REGISTRY SYSTEMS* (Land Tenure Center Research Paper No. 45, April 1972).

3. There is an embarrassment of explanations for the gap between law and practice,

diverge is not very helpful. Law does have some practical effect in Latin America: Governments collect taxes, courts decide cases, individuals notarize contracts and transfers of property. Bribery, friendship, and arbitrariness may intrude, but even the intrusions are understandable only against a background of functioning law. What is lacking in the bare proposition is some account of the variables that determine where law is effective and where it is not, and a description of the informal mechanisms that fill the void where formal law is absent.

*The Evolution of Law in the Barrios of Caracas* provides a valuable description of such mechanisms in the urban squatter settlements of Caracas, Venezuela. The book makes only passing reference to code law. It draws on earlier empirical work and on the observations of individuals who lived within three Caracas barrios, but its major conclusions rely on responses to questionnaires administered in ten barrios during 1967. The book recounts the experiences and expectations of the barrio residents. Its approach to law is functional: If the patterns that it describes can be called "law," the reason is not that the patterns are grounded in code or doctrine, but that they perform functions that in modern society are expected of formal law.<sup>4</sup>

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but most are somehow linked to underdevelopment. Underdevelopment may account for the gap in several ways: (1) Developing countries are, with a few exceptions, also "follower" countries—they tend to look to more developed countries for institutional models and almost inevitably the borrowed institutions are, initially at least, less congruent with the society and economy of the borrower country than with those of the country in which they initially developed. See Means, *supra* note 1, at 35-36. (2) Underdevelopment tends to be associated with particularistic values that conflict with the nominally universalistic rules of formal legal systems, and often a particularistic value wins out over a universalistic rule. See Rosenn, *supra* note 1, at 523; cf. Lipset, *Values, Education and Entrepreneurship*, in *ELITES IN LATIN AMERICA* 3, 5-15 (S. Lipset & A. Solari eds. 1967). To attribute particularism to underdevelopment implies that modernization is associated with a more universalistic value orientation. This implication has ethnocentric connotations, and not all would accept it. (3) Underdevelopment usually means that fewer resources are available for the legal system. The most obvious effect is that enforcement personnel are likely to be fewer and not so well paid as in wealthier countries. There may also be more subtle effects, for example, with respect to the institutions responsible for organizing and transmitting legal data. See Means, *supra*, at 39-40; cf. Seidman, *The Communication of Law and the Process of Development*, 1972 *Wis. L. Rev.* 686. (4) Although the civil law tradition may contribute to the divergence of law and practice, due to the great value attached to formal rationality by that tradition, the insulation of legal thinking from extrajuristic facts appears to be greater in Latin America than in Europe, despite their common civil law heritage. The reason may lie in the link between development and a more instrumental style of thought: While instrumental legal thinking presumably contributes to development, it probably is also true that development, however achieved, exerts pressures toward instrumental thinking in all areas, including law. However, if the latter relationship does exist, it holds only for the long run; in Germany, to take the most notable example, legal formalism did not reach its peak until after the country was well on its way toward becoming a major industrial power.

4. The authors' choice of this broad definition of law is linked to their evident concern to show that the barrios are ordered societies: "Whatever their origin, and

The book's theme is anti-Hobbesian: The authors argue that the barrios are not "jungles" but "relatively ordered communities" (p. 3). The data show that barrio residents are reasonably secure in house and land and run little risk of personal violence. Moreover, they are able to achieve security with little recourse to formal law. In a sense this is not remarkable. Countless primitive societies have achieved as much, and the authors cite the obvious parallels to primitive law.<sup>5</sup> The analogy is instructive only to a point. The Caracas barrios are not primitive societies but neighborhoods of a rapidly growing city. It is interesting that institutions similar to those of the Cheyenne or the Tiv can function there, but more significant—at least for comparative purposes—is the question "Why?"

The authors are not unaware of the question.<sup>6</sup> Their failure to pursue it or even to raise it clearly must be viewed against the controversy that has surrounded and even threatened the existence of the squatter settlements in Caracas and other large Latin American cities. On one side of the controversy is the "tinderbox school," on the other side the optimists.<sup>7</sup> The authors of *The Evolution of Law* stand with the optimists, and their position in the debate evidently has helped to shape their book. I do not suggest that the book's findings have been distorted for polemical purposes. The survey was apparently conducted with care, and the results presented honestly. But the controversy seems to have determined the issues that were raised. It is the existence of order that is important to refute those who, implicitly at least, advocate the destruction of the barrios. Why the order has been achieved, or even that it is not precisely coterminous with the order provided by a formal legal system, are matters of secondary importance. A comparativist might wish that these issues had been pursued. The choice of issues, however, is surely the minimum prerogative of authorship, and the Caracas barrios argu-

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whether . . . common expectations and the system ordering them can properly be characterized as 'law,' it is indisputably clear from the study that the barrios are not, as some have suggested, a 'jungle'" (p. 3). For this purpose the definition is useful, but, because of its breadth, it causes the authors to pass over important distinctions suggested by their data.

5. In this review I use the term "primitive society" to refer to a preliterate society, organized on a tribal basis, and the term "primitive law" to refer to the legal system typical of such a society. Neither term is intended to imply inferiority, moral or otherwise. They do imply, however, that various societies at given developmental stages tend to have legal systems with important common characteristics; they are therefore closely linked to an evolutionary view of law and society.

6. An initial hypothesis of the study was that "the system of order by which the barrios were regulated . . . was a product principally of the background of the rural residents, with their own indigenous code of customary law" (p. 2). This hypothesis was not borne out by the study, and no attempt to formulate an alternative explanatory hypothesis seems to have been made.

7. See J. GARDNER, *URBANIZATION IN BRAZIL* 102 (International Urbanization Survey, The Ford Foundation, n.d.).

ably present problems more important than the development of comparative theory. Nevertheless, the book is less useful than it might have been. The anti-Hobbesian thesis provides an analytical framework too narrow for the wealth of data that the authors have assembled.

The parallel to primitive law is closest in the area of barrio property rights. Barrios, in Venezuelan usage, are squatter settlements. Their inhabitants are trespassers, who cannot use the formal legal system to delineate and enforce their property claims. Yet rights are defined and disputes resolved. The resulting security likely would not satisfy a title insurance company, but it generally suffices for the residents' purposes.

The residents' de facto control of their land is subject to contest from without and within the barrio. The external threat is greatest immediately after the first wave of invaders establishes itself on the land. The police may then make serious efforts to dislodge the settlers. Even if the police are successful, however, another invasion likely follows, ultimately leaving invaders rather than legal owners in possession of the area. All but one of the ten barrios surveyed had survived these initial rites of passage. Police still harassed the residents in the youngest barrio, founded only five months before the survey, but even there only twenty-four per cent of the invaders said that their right to remain had been challenged by the legal owner (p. 21); nearly half of the respondents did not even know who the owner was (p. 97).

The threat from within the barrio, though less serious, is more complex. Claims to barrio real estate are acquired in a variety of ways. Each invader seems free to select his own lot at will, although perhaps limited by an understanding that he may claim no more than a single lot of conventional dimensions.<sup>8</sup> Later arrivals may purchase a lot from its "owner" or may apply for a lot to the junta.<sup>9</sup>

8. Some invaders evidently are land speculators, who occupy a lot with the intention of selling it within a short time. Even in the newest barrio a substantial percentage of the owners had acquired their lot by purchase rather than invasion (pp. 18-19). Given the opportunities for speculation, the fact that invaders do not immediately monopolize the land indicates, first, that there is some limitation on the amount of land that each can legitimately claim, and, second, that the number of invaders is smaller than the number of potential lots. The latter is at first glance rather surprising in the land-scarce Caracas valley. Perhaps the explanation is imperfect knowledge: Not all would-be invaders may know that a tract of land is about to be invaded. Development of a barrio lot may also involve sufficient monetary and nonmonetary costs to keep the initial effective demand below the supply of lots. The latter explanation suggests an analogy to the United States experience under homestead legislation. Land eventually was free to homesteaders, but direct land acquisition costs were among the less significant costs of homesteading. See Danhof, *Farm-Making Costs and the "Safety Valve": 1850-1860*, in *THE PUBLIC LANDS* 253, 262 (V. Carstensen ed. 1968).

9. During the early years of the barrio's growth at least, there is a body, the junta, which renders decisions in a number of limited but important areas that in other

A strong junta will fix boundaries in the unclaimed land and assign lots to all persons except those deemed undesirable.

However acquired, the basic rights in barrio property are unlikely to be questioned by other barrio residents. The "owner" can build a house on the land without fear that a neighbor will dispossess him, and he can securely convey his rights by sale or gift. Disputes, when they arise, concern the peripheral incidents of the claim. For analysis I divide them into two categories: those between the owner-occupiers of adjacent houses, and those involving claims to the same land and house. Boundary and easement disputes typify the former category; they are apparently handled with little difficulty. If the parties cannot reach a settlement, there may be recourse to the junta, which will suggest—or dictate—a resolution.<sup>10</sup> Alternatively, the parties may invoke the aid of the police, the courts, or the municipal council to mediate or adjudicate the dispute. Whatever the procedure, the settlement will at minimum preserve each party's right to occupy his respective house.

Concurrent interests in land are the principal source of controversy in the second category. There appear to be two forms of such interests in the barrios. The first is a tenancy in which the tenant pays a fixed monthly rental to the barrio proprietor. The lessor merely allows the tenant occupancy; he assumes no obligation to improve or even to maintain the premises. Such arrangements are common, and the austere terms of the contract appear to be generally respected: Tenants indicated that they would expect eviction for failure to pay rent. In one circumstance, however, the rental arrangements break down. Under national law, if the appropriate agency certifies a dwelling unit as a "rancho"—a substandard shack—the tenant is entitled to continued possession without paying rent. Whether this official procedure has significance in the barrios does not appear, but in some barrios the junta has asserted the power to enforce the provision, and will, without obtaining official certification, prevent the rancho landlord from evicting his tenant for non-payment.<sup>11</sup> The rationale is apparently a social function theory of

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contexts would be considered "legal." Although the junta may not have the full force of, or be comparable to, the external law in carrying out its mandates, it does have the acceptance of the community during this period and is able to implement its decisions. [P. 4.]

10. The degree of coercion used in settling disputes is unclear. Despite a chapter devoted to the barrio junta, the book gives rather little idea of the specific manner in which disputes are resolved. Although the authors were limited in the number of questions they could ask in the questionnaire, one would have hoped that more detail would have been supplied by the participant-observers. But perhaps the armchair legal scholar underestimates the difficulty of such an undertaking.

11. "Thus a tenant can move into a rancho, paying the first month's rent; instead of going through the procedure of getting a certificate from the government, he can simply inform the junta, which will protect him from the landlord's harassment" (p. 24).

property. As one junta member expressed it, "if the owner rents his rancho, then he doesn't need it, and someone who needs it should have it" (p. 24).

The second type of concurrent interest might more accurately be termed a "concurrent noninterest." Under the Venezuelan civil code husband and wife are generally co-owners of property acquired during marriage, and they are therefore entitled to share equally in the property on the dissolution of the marriage.<sup>12</sup> This property regime, familiar to United States lawyers as community property, presumptively applies to stable informal unions as well.<sup>13</sup> However, it does not extend into the *barrio*. Under *barrio* law, the husband generally retains sole possession of the house and land upon dissolution of a marriage, even if the property was purchased or built during the union. Only when the wife acquires property on her own is she entitled to keep it, and even then she may be unable to enforce her right.<sup>14</sup>

The institutionalization of property law is unique in the *barrio*, although the authors implicitly present *barrio* family obligations and credit transactions as also part of the *barrio* legal system. The *barrio* family and the intra-*barrio* credit system are, in fact, orderly. If that order is due to "law," however, it is a law very different from the *barrio* law of property. Neither the junta nor any other specialized body interprets such law or resolves disputes arising under it; there is rarely even intervention by neighbors or friends. Nothing seems to distinguish *barrio* family or credit obligations from the many other obligations imposed by morality, etiquette, or self-interest that no one would think of calling law.

I do not wish to debate the meaning of law. It is not really important whether one applies the term to *barrio* property relations alone or extends it also to the area of family and credit. What is important is that institutions that have no counterpart in other areas of *barrio* life have arisen to deal with property relations. It is this phenomenon that has to be explained, whatever one's choice of terminology.

The explanation of the evolution of a property law structure in the *barrios* must, of course, begin with the *barrio* residents' lack of title, but it cannot end there. In relations among themselves, the illegality of the residents' occupation means only that they cannot rely on formal law to define and protect interests. But neither do

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12. See 1 M. ARGAYA, CODIGO CIVIL art. 148 (1968).

13. See 2 *id.* art. 767 and accompanying commentary.

14. The more extensive rights given to wives by the civil code would also be valueless unless they could be enforced, but the special treatment given property relations in the *barrio* suggests that the rights would have at least some value in negotiating post-marital arrangements.

they rely on formal law in their family relations or credit transactions. Barrio families regulate their internal affairs with little or no support from the formal legal system; barrio merchants sell on credit with no intention of resorting to formal law if the debtor defaults. Only with respect to property, however, has a barrio law (as I would use the term) emerged. The reason is, I think, that only with respect to property are nonlegal mechanisms inadequate for the residents' needs. Family obligations rest on the strongest of primary ties. Rarely in any legal system does formal law enforce them; generally it intervenes only when the primary ties have broken down or when protection is needed against the grossest forms of oppression. In the barrio, formal law is too distant and too expensive even for these limited purposes, but the burden of its unavailability falls principally on women and children. In a male-dominated society, it is a burden that is easily ignored. Intra-barrio credit relations, on the other hand, are supported by reciprocal self-interest. Barrio merchants sell on credit to compete with merchants outside the barrio, and barrio residents pay their bills because they wish to continue receiving credit. Defaults inevitably occur, but self-interest keeps them within manageable bounds. They are simply one of the costs of doing business, reflected in the barrio merchant's higher prices.

Greater institutionalization, however, is necessary to protect the residents' property interests. One reason is the greater need for certainty. The amounts at stake are large, and reliance on the security of one's land may extend over decades. A risk acceptable in small credit transactions, and scarcely even considered in family relations, will not be tolerated if it can be avoided. Another reason is the arbitrary limits of the interest to be protected. There are socially accepted standards for the obligations of spouses and debtors. There is, however, no intrinsic reason why a boundary line should be in one spot rather than three meters to the north or two to the south. Common morality may dictate that a resident should enjoy the quiet possession of his property, but such a moral obligation assumes some definition of just what his property is. The first function of barrio legal institutions, therefore, is to provide that definition by parceling lots and later by resolving boundary and easement disputes.<sup>15</sup>

Institutions may also be needed to enforce the rights. Primary ties are insufficient because, particularly in the barrio's early days, the persons challenging a resident's property interests may be almost total strangers. Nor do property relations involve the mutual self-interest that would permit reliance on reciprocity in the strict sense.<sup>16</sup>

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15. The significance of law and legal institutions in this sense is not that they enforce moral obligations but that they provide a definite point on which the parties' sense of moral obligation can converge. Cf. T. SCHELLING, *THE STRATEGY OF CONFLICT* 72-73 (1966).

16. Reciprocity in the strict sense means that a rational individual will perform

Undoubtedly, respect for property rights is supported by barrio public opinion, but social pressure may be more effective if mobilized and channeled by the barrio junta.<sup>17</sup> Residents thus turn to the junta to define their property rights and to resolve disputes. In other areas, where less is at stake or alternative mechanisms are available, the junta plays little or no role. This pattern has implications for the operation of formal law in more conventional Caracas neighborhoods. Community property aside, the barrio residents' lack of title has no evident effect on family or intra-barrio credit relations. Formal law thus probably has no more relevance for family relations or small credit purchases in other neighborhoods than it does in the barrio. Real property is different, however. Law is needed. If necessary, residents will create their own, but outside the barrio, where formal law is available, it probably is used. There may be irregularities: For example, bribes may be paid to secure the expeditious registry of transfers of title.<sup>18</sup> But behavior is generally oriented toward the formal law—toward ensuring that the institutions of the formal legal system are available to enforce property rights.

Analysis of why an institutionalized barrio law evolved only with respect to property relationships leads to a further question: How can this barrio property law serve the needs that bring it into existence? The law resembles that of a primitive society. Its regularity is more substantive than formal—seemingly more a matter of respect for certain underlying principles than of adherence to sharply defined rules. Order is maintained with a minimum of institutional structure. The junta plays an important role, but it operates with little in the way of formal mandate from the barrio and apparently employs neither formal rules of procedure nor specialized agents to enforce its decisions. Resemblance to primitive law extends even to barrio law's evident preference for claims of use and possession.

However, the barrios are clearly not primitive societies. They are neither preliterate nor tribally organized. Barrio inhabitants are in-

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his obligation to another because the benefits of continuing the relationship with the other exceed those to be gained by renegeing on the obligation. Strict reciprocity is unlikely in barrio real property relationships, where gains and losses are likely to be once-and-for-all propositions involving relatively large amounts. Reciprocity might be used in a broader sense, however. In a primitive society, for example, the benefits and burdens of the norms dictating sharing can be expected roughly to balance out over the long run for most individuals, although they may not do so over shorter periods of time or even over the longer run for everyone. See M. GLUCKMAN, *POLITICS, LAW AND RITUAL IN TRIBAL SOCIETY* 71 (1965). Reciprocity in this more general sense resembles the Marxist concept of class interest and does help to support the barrio property law system.

17. It is unclear from the book whether the barrio juntas in fact perform this latter function. See note 10 *supra*.

18. See L. AREVALO-SALAZAR, *supra* note 2, at 15.

tegrated with the Caracas metropolis by ties of employment, commerce, and political affiliation; their expectations "are not importantly different from what would unquestionably be found in other areas of the city where the residents are of a higher socioeconomic status" (p. 3). The authors' findings thus confront the basic assumptions of the evolutionary tradition of legal theory. That informal law is able to function in the barrios might be taken as evidence that formal law and specialized institutions are not in fact necessary concomitants of social evolution. I think, however, that the explanation is different and more limited.

Marxist evolutionary theory, as developed by Engels in *The Origin of the Family*,<sup>19</sup> provides a useful framework for analyzing the ability of informal legal institutions to function successfully in a nonprimitive setting. Not least among its merits for this purpose is its sympathy with the kind of noninstitutionalized legal structure found in the barrios.<sup>20</sup> Engels did not argue for the necessity of the state because he preferred formal law; rather he believed that development creates problems beyond the capacity of primitive institutions to resolve. For such institutions to function, the persons governed must be few and united by primary ties, and their society undivided by class interests. Increased economic productivity, however, brings specialization, commerce, and the differential accumulation of wealth. Means must then be developed to resolve disputes among merchants linked only by trade and among individuals separated by class. The means are, in Engels's view, the state and its formal law.

In short, Engels posited that primitive legal institutions are unable to cope with two kinds of relationships: those among strangers and those among members of groups possessing systematically different interests. Barrio property law functions not so much because it transcends these limitations as because it accommodates itself to them. It succeeds largely because, for the most part, it does not deal with relations among strangers or conflicts involving divergent class interests.

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19. F. ENGELS, *THE ORIGIN OF THE FAMILY, PRIVATE PROPERTY AND THE STATE* (E. Leacock ed. 1972). Engels provides the fullest Marxist discussion of the development of state and law prior to the Soviet writings of the 1920's and 1930's.

20. One might argue that even Engels was unable to escape fully the ideology of the culture in which he lived, and that he too readily accepted the necessity of state and law. Presumably the starting point for a more radical critique would be the humanist writings of Marx and the Marxist literature discussing the ultimate communist society. See K. MARX, *THE ECONOMIC AND PHILOSOPHICAL MANUSCRIPTS OF 1844* (D. Struik ed. 1964); V. LENIN, *STATE AND REVOLUTION* 71-85 (1932 & 1943); F. ENGELS, *supra* note 19, at 233-37. I do not see in either Marx or the eschatological literature any hint as to how one obtains the benefits of large-scale economic organization while subjecting people to neither impersonal economic laws nor an impersonal planning bureaucracy, *cf.* note 25 *infra*, but then great vision is not to be expected of a bourgeois law professor.

Thus, it is significant that the barrios are small. One barrio had 2,000 houses, but it already may have exceeded the capabilities of informal barrio institutions;<sup>21</sup> the rest had only a few hundred. They are also relatively homogeneous with respect to property interests, since most of the houses are occupied by persons claiming ownership under barrio law. The relationships typical of an undeveloped society thus are still important in the barrio. So long as disputes arise out of these relationships—so long as they are confined within the barrio and within the class of owner-occupiers—the informal institutions operate reasonably well. Not all disputes fall within these bounds, however. Where they do not, barrio property law tends to function poorly or not at all.

Within the barrio, class division<sup>22</sup> is at the root of the difficulty. The barrios are dominated by a class of male heads-of-household who "own" their home but assert no claim in other barrio real estate. So long as disputes arise within this class, common interests and expectations permit their resolution under informal law. It is when a dispute cuts across class lines—when it occurs between former spouses or between landlord and tenant—that the barrio legal system shows its weakness. To include among the system's weaknesses its allocation of rights and obligations between former spouses no doubt betrays a cultural bias. Yet, to leave the woman with the children and the man with the principal economic asset, the house, strikes this reviewer as rather unfair, although I might view the matter differently were I a male (or perhaps even a female) barrio resident. In any case, Marxist analysis is not at its best in discussing questions of fairness. It is not the need for fairness that provides the major impetus for the development of formal law in Marxist theory.<sup>23</sup> Formal law develops be-

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21. The barrio *La Silsa* had seven identifiable subsectors; there was "some sectional rivalry and some talk among the residents of the uphill zones of the formation of a separate junta" (p. 15). Cf. F. ENGELS, *supra* note 19, at 217-18. *La Silsa* is in fact no larger than a number of stateless tribal societies. See M. GLUCKMAN, *supra* note 16, at 84-85. Probably the size of the unit governable by informal institutions is smaller when the unit is embedded in a modern society.

22. Although Engels provides support for treating the sexes as separate classes, see F. ENGELS, *supra* note 19, at 129, I do not suggest that the "classes" defined here can be considered as such for purposes other than the analysis discussed in the text. Moreover, even for this limited purpose a more extended discussion would require asking whether the fact that, say, landlord and tenant are in a broad sense members of the same economic class might mitigate the conflicts discussed here.

23. Marxist analysis takes account of fairness at two levels. First, the ideology of the ruling class may portray legal institutions as serving the interests of all society, and indeed members of the ruling class may themselves believe this to be the case. See F. ENGELS, *supra* note 19, at 236; K. MARX, *THE EIGHTEENTH BRUMAIRE OF LOUIS BONAPARTE* 46-47, 54 (2d ed. 1963). Second, legal institutions are conceded to possess some autonomy, and to the extent that fairness is accepted as an idea, they may *in fact* operate with greater fairness than is required by the interests of the ruling class. See F. Engels, *Letter to Conrad Schmidt*, Oct. 27, 1890, in K. MARX & F. ENGELS, *CORRESPONDENCE, 1846-1895*, at 477 (D. Tors ed. 1934). Although Marxist analysis thus recognizes the possibility of genuine fairness, it contributes little to its understanding; for

cause the interests of the ruling class are jeopardized by a class conflict unmediated by state and law. The interests of barrio males appear to be in no such jeopardy.

Marxist analysis is more useful in dealing with the landlord-tenant relationship. The barrio legal system's most obvious weakness here is its failure to protect the rights of a person who rents out a dwelling determined by the barrio junta to be a rancho. If this is a weakness, however, it is one that is shared by the formal Venezuelan legal system. More to the point is barrio law's treatment of ordinary rental contracts. The typical rental contract is, as already noted, simple in the extreme. The tenant agrees to pay a monthly rental, which is unlikely to be increased, and the landlord permits the tenant to occupy, without assuming responsibility for improvement or maintenance. In principle there is nothing wrong with such a contract. To explain its use in almost every case, however, one must assume either that the respective interests of landlords and tenants are substantially homogeneous or that the parties are contracting subject to constraints that restrict their agreements to a standard form. The latter explanation seems more plausible, and I suspect that the constraints are the limitations of the barrio legal system in dealing with the landlord-tenant relationship. The typical rental contract appears calculated to place the least possible strain on the system's ability to coerce payment from an unwilling tenant. Its fixed rent and simple terms offer little room for rationalizing nonpayment on grounds of claimed unfairness or misunderstanding; on the other side, the landlord's investment in reliance on the contract is kept at a minimum by leaving maintenance and improvement to the tenant.

The burden of such constraints does not fall on landlords alone. The barrio legal system's inability to protect those outside the dominant class narrows the range of cooperative relationships and thus ultimately disserves the interests of that class as well. Probably some rental contracts simply are not made, because the terms that would bring landlord and tenant together are not enforceable. It is also likely that there is less improvement of rented properties: The tenant cannot fully realize the benefits of improvements because he cannot sell the property; the landlord cannot do so because apparently he cannot increase the rent, or, perhaps, even sell the house free of the tenancy.

The constraints imposed on development of cooperative relationships by the limitations of barrio law appear more clearly in the barrios' external relations. The external threat to the barrios comes from persons whose class interests, as legal owners, conflict with those

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this purpose the sociological tradition emphasizing societal consensus rather than societal conflict has more to offer. Cf. R. DAHRENDORF, *CLASS AND CLASS CONFLICT IN INDUSTRIAL SOCIETY* 164 (1959).

of the barrio residents. Reasonable security against the external threat is eventually achieved, but the protection is principally due to sheer strength of numbers. Government is not likely to antagonize the barrio residents unless their presence threatens some well-defined interest; and most successful barrios develop where no such interest exists: "When title to vacant land is clearly held by a private individual, the governments have tended to be rather firmly committed to protecting the land against invasion by squatters. When the land is held by the church or by some branch of the government itself, official tolerance is more likely, as it is when the title to 'private' land is disputed among several claimants" (p. 7). One can call this protection part of barrio law if one chooses; security is one of the functions generally expected of modern property law. In comparison with law in the conventional sense, however, the barrio's political power is a clumsy instrument. It secures residents' property against the claims of legal owners, but it cannot provide the assurances that would induce outsiders to risk their funds on the security of that same property. The inability of a barrio resident to mortgage his house or land probably is due not so much to the insecurity of his interest as to its very security—to his inability to assure that the property would indeed be forfeit on nonpayment of his debt.<sup>24</sup> More precise rules would be needed to provide such assurance, administered by an institution both more effective and less committed to barrio interests than the junta. This need is precisely Engels's justification for the state and its formal law. Without state and law, the alternatives are to forgo the benefits of transacting outside the small society or to offer outsiders reliable protection on the basis of the society's own informal institutions.<sup>25</sup> The former can be done but at a price; nothing in *The Evolution of Law* suggests that the latter is possible.

This does not mean that formal law is preferable. If inclusion within the formal legal system would entail developer-owned rental

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24. Compare Schelling's description of the problem of the kidnap victim. His captor would release him if the victim could bind himself not to inform the police; the fact that the victim cannot effectively limit his own future freedom works to his disadvantage. T. SCHELLING, *supra* note 15, at 43-44.

25. This dichotomy assumes that control of economic resources is decentralized among a plurality of decision-makers, who are to some extent free to cooperate or not as they choose. Cf. Trubek, *Max Weber on Law and the Rise of Capitalism*, 1972 Wis. L. Rev. 720, 740-45. In an ideal command economy, in which all resources are effectively controlled by a central authority, there would be no need to offer such assurances, and the economic argument for formal legal rules therefore would not apply. See Trubek, *Toward a Social Theory of Law: An Essay on the Study of Law and Development*, 82 YALE L.J. 1, 28-29 (1972). The control must be effective, however; mere state ownership is not sufficient. Cf. Bettelheim, *On Socialist Planning and the Level of Development of the Productive Forces*, in *MAN AND SOCIALISM IN CUBA* 81, 39-44 (B. Silberman ed. 1971); Feurerle, *Yugoslavia's Economic Courts: Between Central Planning and Enterprise Autonomy*, 12 COLUM. J. TRANSNATL. L. 274, 287 (1973).

housing and inaccessible government, the marginal gains in economic efficiency may not be worth their cost. Even by the measure of economics the advantages of formal law may be illusory. Barrio institutions, the authors argue, contribute significantly to economic development. They do so both by encouraging residents to invest money and labor in housing and by altering individual attitudes: "The move to the barrio itself implies a sense of control over one's destiny, a sense that the world can be manipulated through rational effort. The security of tenure that encourages housing investment also promotes the investor's sense that the world responds to effort" (p. 76). The key to the success of barrio institutions is thus decentralization: decentralization in the economic area through the device of private property, albeit property not formally recognized by the Venezuelan civil code, and decentralization in the legal political area through the structure of the barrio legal system, above all its accessibility. The legal institutions, such as they are, are within the barrio, and their use entails neither court costs nor lawyer's fees. Their accessibility is also intellectual; in their limited scope and lack of specialization the institutions are still comprehensible to the persons whom they govern.

Yet, for all their strengths, barrio institutions are of limited practical significance. Their inability to deal with certain kinds of relationships makes them largely irrelevant as models where relations among strangers or across class lines must be securely regulated; in these contexts formal law is indispensable, and the costs involved in its use unavoidable. Even within the barrios, the special character of the institutions is lost with the passage of time. The junta tends to decline in importance, and the percentage of rental housing and of houses held under formal legal title tends to increase. In the end there is little left to distinguish the former barrios from neighborhoods of more conventional origins.<sup>26</sup>

The latter limitation may be viewed as a problem of market failure. Barrio institutions are, by the authors' account, superior to more conventional frameworks for urban development, yet ultimately the institutions decline. They are not destroyed by outside forces—it is the barrio residents themselves who rent their houses, acquire legal title, and eventually cease to participate actively in the junta. Presumably these decisions are rational for the individuals concerned. If in the aggregate they produce socially undesirable results, the problem must be that the persons making the decisions do not bear all of the resulting costs and benefits. There

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26. The former barrio may or may not become an urban slum (p. 68). Even if it does not, it no longer provides an institutional setting basically different from other Caracas neighborhoods. If the authors are correct regarding the connection between barrio institutions and development, then the former barrio eventually becomes incapable of playing its former role in encouraging investment and shaping attitudes.

apparently are significant externalities,<sup>27</sup> which allow individually rational decisions to produce socially irrational results.

Analysis of the barrios' decline as a problem of externalities suggests government intervention as a remedy. However, barrio legal institutions appear to be afflicted with internal contradictions that would make it difficult to stabilize them even with active government support. The basic contradiction is between the two kinds of decentralization—economic and legal-political—achieved in barrio institutions. The economic freedom of barrio owners encourages legal relationships with which decentralized legal institutions cannot easily deal. Up to a point the problem is one of marginal inefficiency: Some potentially advantageous relationships are not established; others are channeled into less than optimum forms. In the long run, however, economic decentralization triumphs over legal-political decentralization. Increasing land values widen the gap between the gains possible under formal law and those possible within the barrio legal system, and the incentive to convert barrio-law property into code property grows.<sup>28</sup>

The complete disintegration of barrio institutions perhaps is not the inevitable outcome. However, barrio law seems powerless to stop it. Probably some resort to the formal legal system is necessary if anything is to be salvaged, although even with state support barrio institutions probably cannot be stabilized in their initial form; to reconcile laissez-faire economics with participatory democracy is likely beyond the power of even a modern state. But compromise and variations may be possible. Cuba is an example of participatory development rationalized in terms not too dissimilar from those used by the authors in evaluating the institutions of the Caracas barrios.<sup>29</sup>

27. It is easiest to see how externalities might exist with respect to the barrio junta. Participation in the junta, or presumably even active support of it, involves costs, the most obvious being time. Participation no doubt to some extent carries its own reward, but benefits from the junta and its activities will be realized by nonparticipants as well. A rational selfish person is therefore not likely to participate in the junta, and rational selfishness evidently becomes more prominent as the barrio settles into an established community.

28. Although *The Evolution of Law* substantiates the gradual shift to code-recognized property, it does not discuss how or why the shift occurs. The mechanism assumed here—the pressure of increasing economic incentives—seems the most plausible explanation.

29. The Cuban popular tribunals suggest a means of institutionalizing the informal legal mechanisms that the authors find in the Caracas barrios. See Berman, *The Cuban Popular Tribunals*, 69 COLUM. L. REV. 1317 (1969). For an analysis of the Cuban rationale for participatory development, see R. FAGEN, *THE TRANSFORMATION OF POLITICAL CULTURE IN CUBA* (1969), especially at 148-50. However, even if the Cuban government is successful in instilling a sense of community that would sustain participatory institutions, see note 27 *supra*, it is not clear that its success could be duplicated in a nonrevolutionary society. Cf. R. FAGEN, *supra*, at 155-56. For the Cubans the crucial question is whether indoctrination is only a transitional necessity, to be discontinued with the emergence of the new socialist man, cf. Che Guevara, *Man and Socialism in Cuba*, in *VENCEREMOS! THE SPEECHES AND WRITINGS OF CHE GUEVARA* 387,

To explore such possibilities would, however, entail not merely a description of the institutions found in the barrios but analysis of their limitations. I have attempted in this review to suggest a possible framework for such an analysis; however, a book review is not the place nor a stranger to the data the person for analysis that would warrant serious consideration outside the classroom. A comparativist can be grateful for the book's data and use them according to his own inclinations, but it is doubtful to me that a development planner can find much guidance. In the end, paradoxically, the authors' unwillingness to undertake a more thorough analysis makes their book more useful for academic than for practical purposes.

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390-92 (J. Gerassi ed. 1968), but a nonrevolutionary regime may be unable to reach the point where this question is even relevant.

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