

# INTRODUCTION

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## THE STUDY OF THE INDIAN LEGAL PROFESSION

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THE LAST TWO CENTURIES have witnessed a worldwide movement toward centralized, bureaucratic, professionally-staffed legal systems, sponsored by and closely allied with nation-states. One concomitant of these developments has been the emergence (or growth) of bodies of independent professionals whose members mediate between these systems and the populations they regulate. Thus the "expropriation" of the making and application of law into a purely governmental function has been accompanied by the growth of a corresponding "private sector"—the lawyers. The intimate involvement of lawyers in the emergence of modern nations has been recognized, but there has been little systematic comparative study of them. This issue contains a series of studies of one of the largest of these professional groups—Indian lawyers. These studies were prepared for a Conference on the Comparative Study of the Legal Profession with Special Reference to India, sponsored by the Committee on Southern Asia Studies of the University of Chicago, held at the Moraine-on-the-Lake Hotel in Highland Park, Illinois from August 10-12, 1967.<sup>1</sup>

The conference grew out of a series of conversations about the Indian legal system with my colleague, Bernard S. Cohn, which led to the notion that it might be worthwhile to bring together scholars in various

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1. The Editors would like to express appreciation to the Committee on Southern Asian Studies of the University of Chicago for its support of the Conference, and along with the Council for Intersocietal Studies of Northwestern University, for providing facilities for the preparation of this collection; to Mrs. Sara Lindholm for her extraordinarily able work of making the Conference arrangements; to Dr. Kali Bahl of the University of Chicago who helped on the glossary (that falls somewhat short of Indological standards); and to Miss Maureen Patterson, South Asian Bibliographer of the University of Chicago Library for her assistance with sources.

disciplines who shared an interest in Indian lawyers. The study of law in Asia, as nearer home, has been heavily preempted by professional interest in the rules and doctrines promulgated at the upper levels of the system. Rather than viewing the legal system as a body of rules, we proposed to view it as a body of men—who they are, what they do, how they interact with one another and with other social groups. What is the relation between this body of men and the legal system that they staff, support and produce? We felt that an inquiry of this kind would provide a forum for exchange among lawyers, social scientists, and Indianists whose interests converged on the Indian legal system. We hoped that it would provide an opportunity for examining the linkage between “law” and “society” in a more concrete and detailed way than is possible by concentrating on legal rules.

Our observations of India suggested two basic perspectives. First, we proposed to examine the lawyer as an intermediary, linking the “higher law” promulgated at the upper reaches of the system with the law as applied at the local level. Second, we wanted to examine the lawyer as the carrier of a nationwide “legal culture” who disseminates official norms while putting them in the service of various groups—as a broker or middleman linking “modern” and “traditional” segments of society.

Southern Asia seemed an auspicious place to undertake the comparative study of lawyers and their role in legal systems. The impact of the British-imposed legal system was of such a scale and intensity that if the impact of the profession were anywhere observable, it should be there. The area is relatively rich in documentation and is relatively accessible to researchers. The common framework of the “British” legal institutions offers a convenient base-line for comparison and the spread of similar formal rules over areas of vastly different culture and condition provides vast scope for comparison within the region.

We originally hoped to address ourselves to the whole of South Asia, but we were unable to find anyone who was studying lawyers in Pakistan or the smaller South Asian countries.<sup>2</sup> Although constrained to narrow our focus to India, we decided that the meeting should not be confined to India hands, old or new. We wanted to place the Indian experience in a broad comparative perspective. We were fortunate in enlisting several scholars who had examined the legal profession elsewhere and who were patient enough to listen to so much India lore. They included

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2. We did have available RALPH BRIABANTI's excellent survey of the legal profession in Pakistan RESEARCH ON THE BUREAUCRACY OF PAKISTAN (1966).

students of China (Jerome A. Cohen), Japan (Dan F. Henderson), Egypt (Farhat Ziadeh) and Europe (Mirjan R. Damaska).<sup>3</sup> In addition, Justice Suffian of the Supreme Court of Malaysia contributed his observations on the legal profession in his country. Richard Ellis, Lawrence Friedman, Jerome Skolnick and Alan Swan provided their expertise on lawyers in American society and helped check our tendency to employ an idealized version of the American profession as an implicit standard. When we finally assembled, the company included not only legal scholars and practicing lawyers, but political scientists, historians, anthropologists, sociologists and classicists—including a number who spanned several of these fields.

Apologies are due to Indian lawyers for conferring on them the dubious benefit of our distant and myopic scrutiny with so little participation on their part. Limited funds—the entire conference budget was barely equal to a couple of air-fares from India—were the main reason for this. And much to our regret, several eminent Indian legal scholars, who were scheduled to attend and whose presence would have enriched the proceedings, were unable to come at the last minute. The contribution of Msrs. Rao, Chaturvedi and Srinivasa Rao was invaluable and we would undoubtedly have benefited from greater Indian participation. We recognize that most of the work of developing understanding of the Indian legal system will have to be done by Indian scholars. The papers point to a vast range of questions, to which our answers are at best inconclusive. They also exemplify the great variety of techniques that can be employed to answer them—from interviews, questionnaire surveys, field observation and participant observation to biographical study, analysis of institutional records, legislative history and textual exegesis. Vast untapped sources await researchers in archives and in the field. We offer this collection as an opening wedge into the subject, in the hope that it will stimulate systematic study of the legal profession in India and elsewhere.

The Conference discussions emphasized the danger of employing the United States as a model and perceiving divergences from the U.S. pattern as deficiencies. We emerged with a sense of the uniqueness of

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3. Space did not permit inclusion in this collection of the non-Indian papers, abstracts of which appear at pp. 407-413. Professor Henderson's is part of a chapter in his forthcoming book on *FOREIGN ENTERPRISE IN JAPAN* (to be published by the University of North Carolina Press). Professor Ziadeh's paper in a slightly modified form will be published as the concluding chapter in a forthcoming book entitled *LAWYERS, THE RULE OF LAW, AND LIBERATION IN EGYPT* (to be published by the Hoover Institute of Stanford University).

TABLE 1  
LAWYERS IN SELECTED COUNTRIES

Country	Population in Millions	Year	Lawyers (1963 Unless Otherwise Noted)	Lawyers per Million Population
<u>ASIA AND MIDDLE EAST</u>				
Israel .....	2.1	1961	3,200	1,523
Philippines .....	27.0	1960	c. 27,500	1,018
Lebanon .....	est. 2.2	1964	c. 1,320	600
Thailand <sup>a</sup> .....	26.2	1960	c. 6,000	229
Ceylon .....	10.6	1963	c. 2,000	189
India .....	est. 410.6	1958	c. 75,000 (1958) *	183
United Arab Republic .....	26.0	1960	4,608	177
Pakistan <sup>b</sup> .....	est. 100.7	1964	c. 15,000 (1965) **	149
Japan <sup>c</sup> .....	93.1	1960	6,490 (1960) ***	70
Korea <sup>d</sup> .....	24.9	1960	1,649	66
Taiwan .....	est. 12.0	1964	c. 700	58
Malaysia/Singapore .....	7.7	1957	c. 270	35
Indonesia <sup>e</sup> .....	96.3	1961	c. 1,620 (1959) †	17
<u>AFRICA (Sub-Saharan)</u>				
Republic of South Africa .....	16.0	1960	c. 3,600	225
Sierra Leone .....	2.1	1963	c. 100	48
Kenya .....	8.6	1962	c. 380	44
Nigeria .....	55.6	1963	c. 1,600	29
Malagasay R. ....	est. 6.1	1964	c. 150	25
Tanganyika .....	8.7	1957	c. 175	20
Rwanda <sup>f</sup> .....	2.1	1952	c. 8	4
Ethiopia <sup>g</sup> .....	est. 22.1	1964	c. 18	1

<sup>a</sup> Includes judges, prosecutors, retired.

<sup>b</sup> Excludes legally-trained not engaged in work "related to their training."

<sup>c</sup> "Practicing lawyers" only.

<sup>d</sup> Only 632 are currently in practice.

<sup>e</sup> Includes judges, prosecutors, only 200-300 "lawyers."

<sup>f</sup> Two judges; 6 legal assistants in administration.

<sup>g</sup> "University-trained" only.

<sup>h</sup> "Active as lawyers."

<sup>i</sup> Avocats and avoues.

<sup>j</sup> Includes government service, educators, retired, etc.

\* I LAW COMMISSION OF INDIA, FOURTEENTH REPORT (REFORM OF JUDICIAL ADMINISTRATION) 584-85 (1958).

\*\* R. BRAIBANTI, RESEARCH ON THE BUREAUCRACY OF PAKISTAN 252 (1966).

\*\*\* T. Hattori, *The Legal Profession in Japan: Its Historical Development and Present State*, in LAW IN JAPAN 152 (A. T. von Mehren ed. 1963).

† Based on estimates by Daniel S. Lev, *The Politics of Judicial Development in Indonesia*, 7 COMPARATIVE STUDIES IN SOCIETY AND HISTORY 183, 189 (1965).

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TABLE 1 (continued)  
LAWYERS IN SELECTED COUNTRIES

Country	Population in Millions	Year	Lawyers (1963 Unless Otherwise Noted)	Lawyers per Million Population
<u>EUROPE</u>				
Norway .....	3.5	1960	c. 5,000	1,428
Finland .....	4.4	1960	c. 4,300	977
Sweden <sup>h</sup> .....	7.4	1960	c. 7,000	945
Italy .....	49.8	1961	30,000 (1957) ***	602
Denmark .....	4.5	1960	2,250	500
Switzerland .....	5.4	1960	c. 2,100	388
Germany .....	53.1	1961	19,445	366
Austria .....	7.0	1961	2,350	355
Portugal .....	8.8	1960	1,800	204
Poland .....	29.7	1960	5,744	193
Netherlands .....	11.4	1960	1,976	173
France <sup>i</sup> .....	46.5	1962	7,713 (1958) ***	165
<u>“OLD COMMON LAW”</u>				
United States <sup>j</sup> .....	179.3	1960	285,933 (1960) ††	1,595
New Zealand .....	2.4	1961	c. 2,273	947
Canada .....	18.2	1961	c. 14,000	769
Australia .....	10.5	1961	6,704	638
United Kingdom .....	52.7	1961	c. 26,735	507
<u>LATIN AMERICA</u>				
Bolivia .....	est. 3.6	1964	c. 2,750	764
Ecuador .....	4.6	1962	c. 3,500	760
Argentina .....	20.0	1960	c. 12,000	600
Costa Rica .....	1.3	1960	723	556
Chile .....	7.3	1960	c. 4,000	547
Dominican Republic .....	3.0	1960	c. 1,500	500
Nicaragua .....	1.5	1963	c. 700	466
Paraguay .....	1.8	1962	835	464
Haiti .....	est. 4.5	1964	c. 2,000	444
Peru .....	9.9	1961	c. 4,000	404
Mexico .....	34.9	1960	10,000+	286+
Honduras .....	1.8	1961	c. 305	169

†† STATISTICAL ABSTRACT OF THE UNITED STATES FOR 1967, at 159 (1966).

NOTE: Except where otherwise noted, lawyer figures are taken from AMERICAN BAR FOUNDATION, INTERNATIONAL DIRECTORY OF BAR ASSOCIATIONS (1964). Where the directory gave an estimated range, the middle figure was used. Population figures are from

(Note continued on following page)

the role-cluster found in the United States, where the lawyer is business adviser, negotiator, deviser of regulatory machinery and generally chaperon of enterprise, private and public. Yet, in spite of all the obvious differences, there are seductive parallels between the U.S. and India. Both are large and diverse societies which combine relative institutional stability with high rates of change and high levels of conflict and violence. In both there is a relatively great discrepancy between official law and going social practice; the decentralization of administration dissolves unity of precept into diversity of practice. In both there is heavy reliance on law to settle disputes, forward interests, ameliorate group rivalries, and promote development. In both, public issues are readily transformed into legal controversies. In both, lawyers exist in unusually large numbers and play an extraordinarily prominent role in public life.

The more than 75,000 lawyers in India comprise the second largest body of legal practitioners in the world. The ratio of lawyers to the population in South Asia is considerably higher than in Southeast Asia, East Asia or Africa. It is less than countries of the old Commonwealth, Scandinavia, or Latin America—about the same as much of Western Europe. Given the poverty of the region, one may hazard the guess that in no part of the world is a greater portion of national surplus spent on legal services than in South Asia. A rough indication of the prominence of lawyers in Indian public life is given by the presence in the highest legislative body of a proportion of lawyers second only to that in the United States.<sup>4</sup>

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*(Note continued from previous page)*

the STATISTICAL ABSTRACT OF THE UNITED STATES FOR 1967, at 898-900 (1966). Extreme caution is appropriate in using this table. While it reflects gross differences in lawyer densities, the data on which it is based lend no assurance of comparability in specifying the boundaries of the profession. In some cases figures include nonpracticing law graduates, judges, prosecutors, retired persons; in others they do not. A lag in population figures may add distortion—as may failure to take into account the differing age profile of the populations. It should also be recalled that some of the most radical differences are probably not so much reflections of the legal system as of an educational system, *e.g.*, that contains no separate training in business or the social sciences.

4. Lawyers have continued to comprise over a quarter of the Lok Sabha (see Table 3 below). This is far short of the 60% lawyer membership of the United States Congress, but it is strikingly higher than, for example, lawyer membership of the House of Com-

In spite of the parallels, the papers and the Conference discussions pointed to a cluster of characteristics which seemed to tie together many of our observations about Indian lawyers and which seemed to contrast them sharply with their American counterparts: the Indians' strong orientation to courts (as compared to other legal settings); their orientation to litigation rather than advising, negotiating or planning; the conceptualism in their handling of rules; and their individualism and lack of specialization. The contrast should not be overstated. Even in the United States specialized firm-organized client-caretaker advisers are not the most numerous kind of lawyers. But if we think of these characterizations not as dichotomies but as pointing to a series of continua on which relative positions can be assigned, Indian and American lawyers reveal very different dominant styles or central tendencies.

Public and profession in India concur in visualizing the lawyer in the role of courtroom advocate, rather than business adviser or negotiator, much less social planner. Lawyers see themselves this way and clients typically come to them at a relatively late stage of a dispute, already committed to go to court. Ties with clients (and regulatory agencies other than courts) tend to be episodic, not enduring. This orientation to courts is vividly displayed in spatial terms—lawyers are to be found literally at the court.<sup>5</sup> The office, rarely separate from the home, does not serve as a staging area for operations in various arenas.

Since the lawyer's business is usually at a court, he typically spends his working life at a particular level of the system. But in spite of the stratification that this entails, the profession is relatively undifferentiated in character. The profusion of appeals, the tendency to have little nar-

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mons (solicitors and barristers: 19% in 1955), the French National Assembly (avocats, avoués, notaires: 14% in 1951) or the West German Bundestag (jurists, lawyers, notaries and other legal officials: 11% in 1957). Figures taken from John J. McCloy, *The Extra-Curricular Lawyer* (a lecture given at Washington and Lee University, 1958).

5. Physical attachment to a particular court goes back to the earliest days of the Indian legal profession. In the first regulation of vakils in Bengal in 1793, vakils were admitted to practice before only a single court and "Daily and Regular attendance at that court was compulsory." P. N. K. SAHAY, *A SHORT HISTORY OF THE INDIAN BAR* 24 (1931). In 1814 this rule of attendance was loosened to the extent that it was no longer necessary to obtain the leave of the court in case of absence, but merely to give written notice to the court. In 1853 the requirement of daily attendance was dropped. *Id.* at 33, 39. Sahay points out that this requirement reflected that the early regulation was intended to establish the vakil not as an independent profession but as "an office under the Government." *Id.* at 26.

rowing down of the issues in higher courts, and the latter's broad original jurisdiction lead to courts at all levels dealing with the same kinds of problems. Although those at the higher levels have more prestige and influence, lawyers at each level do much the same sort of thing. Within each level lawyers are stratified by skill, influence, prestige and wealth. But there is little division of labor by specialization (beyond civil-criminal) and little coordination in the form of partnerships and firms. Basically, all lawyers offer the same kind of service under conditions of chronic oversupply. Competitiveness limits solidarity and capacity for corporate action. Prestige and power do not serve to coordinate activity within the profession. Koppell points out that leaders of the metropolitan bar "did not have a following of young lawyers who would implement plans and projects developed by their seniors"—an observation that parallels Morrison's account of the isolation of "leading lawyers."

The emphasis on litigation and the barrister role reinforces lawyers' rule-mindedness. Where the lawyer's task is to win disconnected battles, rather than to pattern relationships, there is little to induce the practicing lawyer to go beyond the kind of conceptualism that is characteristic of much of Indian legal scholarship and that pervades legal education. Writing and teaching are, with significant exceptions, confined to close textual analysis on a verbal level with little consideration either of underlying policy on the one hand or problems of implementation on the other.

Our discussions made us painfully aware of the gaps in the rudimentary picture assembled here. In our picture of this stratified profession, there are many missing strata. We know something of lawyers in district towns from Morrison and Rowe. But what of their big-city counterparts, including those who practice at the High Courts (whose predecessors are discussed by Schmitthener)? And what of their country cousins, the lawyers out in the subdistrict towns? If court-centeredness, individualism, lack of specialization and rule-mindedness characterize all levels, how alike are these men at different levels in social origins, group affiliations, attitudes and operating style? Do they differ in the degree to which they have internalized the principles of the official system or express them in their work? We know little about the networks of professional ties that connect lawyers at one level with those at other levels. And we have only glimpses here of their relations with



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the population at large. Who uses lawyers? For what? And how do they contact them? How widespread is the use of touts and other intermediaries? What does their presence connote about the social organization of legal services?

We have some picture of lawyers as they ascended to the higher levels of the legislature (Levy) and the judiciary (Gadbois). But what of their counterparts in lesser legislative and judicial roles? Do lawyers on District and Municipal Boards exhibit the same imprint of professional style and enjoy the same carryover of professional prestige as those in the highest legislative councils? Do lower court judges exhibit the same remoteness from political life as do judges on higher courts?

The papers suggest the need for regional comparisons. There is some evidence of considerable regional variation in the numbers and social origins of the bar. Does this reflect variations in social function and political role? Are there regional variations in the incidence and kind of litigation and in the way that lawyers are used by the public?

TABLE 2

APPROXIMATE NUMBER OF LAWYERS PER MILLION INHABITANTS  
IN INDIAN STATES, 1958

State	Number of Lawyers*	Number of Inhabitants (in millions)**	Lawyers per Million Inhabitants***
West Bengal .....	9,198	34.926	263
Bombay .....	15,516	60.187	257
Kerala .....	4,199	16.903	248
Mysore .....	4,541	23.586	192
Punjab .....	3,500	20.306	172
Madras .....	5,679	33.686	168
Andhra Pradesh .....	5,283	35.983	146
Uttar Pradesh .....	10,554	73.746	143
Bihar .....	6,186	46.455	133
Rajasthan .....	2,446	20.155	121
Madhya Pradesh .....	3,323	32.372	102
Assam .....	911	11.872	76
Orissa .....	1,321	17.548	75
TOTAL .....	72,657	427.725	2,096

\* Source: LAW COMMISSION OF INDIA, FOURTEENTH REPORT, 584 (1958).

\*\* Source: I CENSUS OF INDIA, 1961 pt. II-A (i), 182.

\*\*\* Calculations rounded off to the nearest whole number.

Comparisons of level and region must be supplemented by comparisons over time. Gadbois' judges were apolitical men whose careers took shape before independence. Are judges who rise through the ranks on the basis of promotion by elected officials going to be equally apolitical? Levy's legislators, too, were men whose careers antedated mass electoral politics. Does their lawyer role remain as salient in this new setting? How prevalent is the movement that Levy discerns from lawyer-scholar to lawyer-politician?

Is the public role of the profession declining, as is commonly believed? There is some evidence of a decline in the preeminence of lawyers in public life since the early 20th century. In 1916, excluding special-interest constituencies, lawyers comprised 54% of elected members of the Indian Legislative Council and 70% of the elected members of the provincial councils, a dominance that inspired the Montagu-Chelmsford Report to suggest that "in framing our new constituencies

TABLE 3

## LAWYERS IN THE LOK SABHA

Lok Sabha	Total Membership	Information Available On	Law Degree and Practice, etc.	Law Degree, No Practice	Practice Without Law Degree	Total, Law Trained or Practice
First, 1952-57 ...	489 <sup>a</sup>	467 <sup>b</sup>	108 <sup>b</sup> 23.1%	46 <sup>b</sup> 9.8%	11 <sup>b</sup> 2.3%	165 <sup>b</sup> 35.3%
Second, 1957-62 ...	494 <sup>a</sup>	468 <sup>c</sup>	93 <sup>c</sup> 19.8%	45 <sup>c</sup> 9.6%	9 <sup>c</sup> 1.9%	147 <sup>c</sup> 31.4%
Third, 1962-67 ...	494 <sup>a</sup>	476 <sup>d</sup>	99 <sup>d</sup> 20.7%	34 <sup>d</sup> 7.1%	10 <sup>d</sup> 2.1%	143 <sup>d</sup> 30.0%
Fourth, 1967— ...	520 <sup>a</sup>	505 <sup>e</sup>	79 <sup>e</sup> 15.6%	49 <sup>e</sup> 9.7%	8 <sup>e</sup> 1.7%	136 <sup>e</sup> 26.9%

Sources: <sup>a</sup> INDIA VOTES 242 (R. Chandidas, Ward Morehouse, Leon Clark, Richard Fontera eds. 1968).

<sup>b</sup> PARLIAMENT OF INDIA, HOUSE OF THE PEOPLE WHO'S WHO 1952 (1952).

<sup>c</sup> LOK SABHA WHO'S WHO 1957 (1957).

<sup>d</sup> LOK SABHA WHO'S WHO 1962 (1962).

<sup>e</sup> LOK SABHA WHO'S WHO 1967 (1967).

Explanation: Based on biographical sketches provided by the members.

Judicial posts were computed as practice.

All percentages are of those for whom information was available.

an important object to be borne in mind is to ensure that men of other classes and occupations find a sufficient number of seats in council.”<sup>6</sup> In the indirectly elected Constituent Assembly/Provisional Parliament of 1947-1952, 32% were lawyers.<sup>7</sup> Since 1952 the Parliaments chosen by universal adult suffrage have contained fewer lawyers—but still remarkably many in view of the much smaller portion of the educated that they now comprise. Today more than a quarter of the members of the Lok Sabha are holders of law degrees. However, the numerical continuities may conceal differences in professional standing and experience—as the relative increase in those without careers as practitioners suggests.

The decline may be more precipitous at the state and local levels. For example, it is reported that in the pre-1952 Bombay Legislature, 41% of the combined membership of both Houses were lawyers,<sup>8</sup> but that in the Legislative Assembly of 1952-57 only 18% were lawyers.<sup>9</sup> A 1965 estimate of the number of lawyers in the Maharashtra Legislative Assembly places them at 3 to 5%.<sup>10</sup> And in Madras, the percentage of lawyers in the Legislative Council dropped from 24% in 1957 to 11% in 1962 to 8% in 1966.<sup>11</sup> However, Indian public life as a whole has expanded so greatly since independence that, although the relative share of lawyers has undoubtedly declined, it is difficult to conclude that in absolute terms lawyers exercise less authority and influence than they did before.

Schmitthener's discussion of the role of lawyers in domesticating and disseminating the constitutional style of politics reminds us that lawyers may be political actors in their professional work as well as in office. We have only hints here of the kind of corporate political action by the profession that Ziadeh describes in Egypt or Braibanti in Pakistan. The bar itself as a pressure group or a constituency remains unexplored here. It would be interesting, for example, to ascertain the impact of the bar in bringing about the termination of the 1962-67 state of emergency.

We find little here about the lawyer at work within the government, though we know that there are a large number of legally trained persons at the highest level of the executive and in administrative positions.

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6. REPORT ON INDIAN CONSTITUTIONAL REFORMS 55 (1918).

7. W. H. MORRIS-JONES, *PARLIAMENT IN INDIA* 120 (1957).

8. L. B. Wilson, cited in *id.* at 128.

9. MORRIS-JONES, *supra* note 7, at 120.

10. JOHN POLLACK, *The New Caste: Political Leaders in Maharashtra* 67 (Mimeo, 1966).

11. MADRAS LEGISLATIVE COUNCIL WHO IS WHO (1957, 1962, 1966).

Legal services within the government seem to follow a pattern much like that of private practice—there is little specific organizational provision for the advising and planning functions. Government tends to view lawyers as either draftsmen or advocates—and much of the latter service it purchases from private lawyers.

Rowe and Merillat discuss the role of the private practitioner in implementing government policy. In the matter of land reform and family law the lawyer not only disseminates and “enforces” government policy, but helps to resist and subvert it; he not only dispels but maintains the discrepancy between official rules and going practice. Do lawyers ordinarily contain and muffle change—at least change as promulgated from the top? Are there spheres in which they amplify change?

In another dimension we see lawyers depicted as influential agents of change. Levy and Rowe point to the prominence of lawyers as organizers and spokesmen of civic and reform groups. They are not only instrumental in the formation of “modern” groups like labor unions, but also in the reorganization of traditional groups along modern lines, as in the formation of caste and sectarian groups along the lines of voluntary associations.<sup>12</sup> Whether the interests and concerns are traditional or modern, lawyers seem to be instrumental in devising modern organizational forms articulated to action in the national world of government policies and plans. The contribution of lawyers to the political and social expression of various groups may differ sharply.<sup>13</sup> We need comparisons of the relation of lawyers to various sectors, groups, and interests in the society.

The purported decline of the profession is not reflected in any numerical attrition. The number of law colleges increased from 19 in 1950-51 to 44 in 1961-62 and their enrollments more than doubled in this period.<sup>14</sup> The picture here, as elsewhere, is one of absolute increase

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12. Cf. the observations of William McCormack on the lawyers' influence in the development of a unified Lingayat culture. *Lingayats as a Sect* (pt. 1) 93 J. THE ROYAL ANTHROPOLOGICAL INSTITUTE 67 (1963).

13. For example, consider the contrast between India's two largest “minorities” in the matter of legislative representation. Theodore Wright found that of 332 Muslim legislators who served between 1947 and 1962, 32% were Lawyers. *Muslim Legislators in India: Profile of a Minority Elite*, 23 J. ASIAN STUDIES 262 (1964). It seems that a much smaller fraction of Scheduled Caste legislators are lawyers. In the Third Lok Sabha, among the 74 occupants of seats reserved for Scheduled Castes on whom information is available, there were only nine lawyers (12%). LOK SABHA WHO'S WHO 1962.

14. G. K. Ojha in HUMAYAN KABIR, ET AL., *THE TEACHING OF SOCIAL SCIENCES IN INDIA* (1947-67), at 408 (1968).

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and relative decline. The proportion of law students to all university students has fallen throughout the century to 2.1% in 1964-65—a drop that provides a dramatic measure of the shift in opportunities and ambitions in India.<sup>15</sup>

TABLE 4  
LAW STUDENTS IN INDIA

	Years	Total University Students	Law Students	Law Students as % of Total
UNDIVIDED INDIA .....	1906-7	25,168 <sup>a</sup>	2,898 <sup>a</sup>	11.5%
	1920-21	61,324 <sup>a</sup>	5,232 <sup>a</sup>	8.5%
	1940-41	153,962 <sup>b</sup>	6,362 <sup>b</sup>	4.1%
- - - - -				
REPUBLIC OF INDIA .....	1950-51	396,745 <sup>c</sup>	13,649 <sup>c</sup>	3.4%
	1964-65	1,528,227 <sup>d</sup>	32,000 <sup>d</sup>	2.1%

Sources: <sup>a</sup> STATISTICAL ABSTRACT FOR BRITISH INDIA FROM 1911-12 TO 1920-21, at 56-57 (288).

<sup>b</sup> STATISTICAL ABSTRACT, INDIA 1952-53. No. 4: 92.

<sup>c</sup> INSTITUTE OF APPLIED MANPOWER RESEARCH, FACT BOOK ON MANPOWER 136 (1963).

<sup>d</sup> REPORT OF THE EDUCATION COMMISSION 1964-66: EDUCATION AND NATIONAL DEVELOPMENT 401 (1966).

Bastedo shows that in Bihar the growth of law student bodies reflects a widening social base of recruitment and suggests that expansion has entailed a lowering of academic quality. Most observers believe these trends prevail generally. The striking dissociation between legal education and the practice of law has been intensified. The practice of law is widely felt to have little dependence (intellectual, practical or social) upon legal education. But of course legal education does not lead only to practice. Our attention was focused on those who go on to practice, yet these are only a fraction of the law graduates (who are in turn only a fraction of those who spend time in the law colleges). Between

15. In Pakistan, with similar educational and legal institutions, law degrees represented 17% of total degrees awarded from 1954-61. RALPH BRAIBANTI, RESEARCH ON THE BUREAUCRACY OF PAKISTAN 249 (1966).

1952 and 1958, the two years in which there was a count of lawyers, the total number of enrolled practitioners increased from 72,425 to 75,309.<sup>16</sup> Yet in the six-year period 1953 to 1958, a total of 34,668 law degrees were awarded.<sup>17</sup> Allowing for replacement of deceased and retired lawyers and the delay of new lawyers gaining admission, it is evident that by far the larger number of law graduates do not go into practice. We have no precise evidence of what they do, although many remain in various clerical jobs, where their degrees help them to obtain promotion.<sup>18</sup> Legal education is evidently a channel of mobility for many, but we remain ignorant of how many of them utilize the skills imparted by their legal training and what kind of impress this training has upon their job-performance.

Was the striking preeminence of lawyers a transitional phenomenon as Schmitthener suggests when he concludes that other groups have now "caught up" with the profession? Or is there, in spite of the relative decline, something in the nature of Indian society that calls forth such a large and prominent legal profession by putting so much reliance on law to handle matters that are dealt with differently in other societies? We come back then to the largely unexplored question of how the legal system is related to its Indian surroundings. To answer this we need to know more about the day to day work of the lawyer—his relationship to the disputes of his client, his influence on the way the client thinks about and conducts his affairs. And we need to know more about the way in which the larger society visualizes the law and these lawyers—including antilawyer sentiment, both popular and among politicians and administrators.

The development of the modern Indian legal system represents a remarkable instance of the virtually total displacement of a major intellectual and institutional complex in a highly developed civilization with one largely of foreign origin or at least inspiration.<sup>19</sup> And, of course, it

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16. REPORT OF THE ALL-INDIA BAR COMMITTEE 72-73 (1953); I LAW COMMISSION OF INDIA, FOURTEENTH REPORT (REFORM OF JUDICIAL ADMINISTRATION) 584-85 (1958). Both figures are slightly inflated by the inclusion of Supreme Court practitioners, most of whom are enrolled elsewhere as well.

17. STATISTICAL ABSTRACT OF THE INDIAN UNION 1963 & 1964, at 622.

18. A survey of University of Delhi graduates conducted in 1958-59 indicates that about half of the 1950 and 1954 LL.B.'s who were then employed were employed as clerks. V. K. R. V. RAO, UNIVERSITY EDUCATION AND EMPLOYMENT: A CASE STUDY OF DELHI GRADUATES 13, 43 (1961).

19. See Marc Galanter, *The Displacement of Traditional Law in Modern India*, XXIV J. SOCIAL ISSUES 65-91 (1968).

represents the replacement of the savants and practitioners of the older system by a new elite. Rocher and Calkins show that the earlier legal elites were not strictly comparable. Whether there was any carryover at all of style or personnel (beyond the family links noted by Gadbois) and whatever continuity is suggested by the prominence of Brahmins) remains unclear in view of the paucity of information about the early British period.

The lawyer as we know him is very much part of the new India—and yet his prominence may owe something to the nature of the older society with its endless subdivision, accompanied by devolution of a broad measure of autonomy to many cross-cutting groups. The weakening by the British of the controls that regulated relations between and within these groups created a widespread demand for intervention by governmental courts and for specialists who could manipulate these new agencies. The new official law displaced but did not destroy traditional law, leaving much of the Indian population legal amphibians, articulated to both official and traditional norms (and in some cases tribunals). The lawyers successfully domesticated and disseminated the official part (and helped to transform the traditional part) so that in spite of the tensions and discontinuities, it too seems wholly indigenous. After analyzing the ethnographic materials on the relation of villages to courts, Cohn concludes that “The inadequacies of procedure, scope for chicanery and cheating, and lack of fit with indigenous jural postulates notwithstanding, the court system is not now an alien or imposed institution but part of the life of the village.”<sup>20</sup>

To the lawyer, modern Indian law is “notwithstanding its foreign roots and origin . . . unmistakably Indian in its outlook and operation.”<sup>21</sup> There is little sentiment within (or outside) the profession for the revival of “indigenous law.”<sup>22</sup> The attempt to revive traditional village justice in the form of *panchayats* had its impetus outside the profession and is, as Rowe shows, ignored and disdained by the lawyers. While lawyers are critical of some features of the present system, they are wholly committed to it. My own observations confirm Rowe’s conclusion that lawyers are

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20. Bernard S. Cohn, *Anthropological Notes on Disputes and Law in India*, 67 *AM. ANTHROPOLOGIST*, No. 6, pt. 2, at 108 (1965).

21. M. C. SETALVAD, *THE COMMON LAW IN INDIA* 225 (1961).

22. The Law Commission repulsed agitation for an “indigenous system” with the observation that “had the ancient system been allowed to develop normally, it would have assumed a form not very different from the one that we follow today.” *LAW COMMISSION OF INDIA*, *supra* note 16, at 30. *Cf.* the conclusions of G. D. KHOSLA, *OUR JUDICIAL SYSTEM* 67 ff. (1949).

quite unable to visualize any basic change in either the legal system or the organization of professional services.

We know little about the economics of the profession and the legal system. What role does the law play in transferring wealth—and consuming it? Our attention tended to concentrate on the supply side rather than the side of demand from the consumers of legal services. In considering the distribution of lawyers' services we must think not only of those who are served by lawyers but those who are not. Koppell's discussion of legal aid indicates that there are strata to whom lawyers are unavailable. And we lack information about the jobs that lawyers do not do—the intermediary, negotiator, trustee, adviser, and spokesman functions that in other settings gravitate to lawyers. To what extent are those functions performed by clerks and touts, village notables and businessmen, by politicians and administrators? Compared to the protean, expansionist American lawyer, the Indian lawyer remains restricted in his role. It is only a slight exaggeration to think of him as a somewhat enlarged, popularized version of the barrister<sup>23</sup> half of his British counterpart (although in Britain barristers make up less than 10% of the legal profession<sup>24</sup>). But the Indian lawyer lives in a society in which legal regulation is called upon to play a vastly greater role than in Britain where, a recent study observes “the law’ plays a less important role than in almost any other Western country.”<sup>25</sup>

India's simultaneous commitments to economic development, a welfare state and democracy imply vast new demands on the legal system—demands for systematic but flexible regulation, for new forms of protection and participation, and for broader distribution of legal resources. Will the Indian legal profession expand its role to meet these new demands? The problem of adapting to broader functions is not primarily a problem of lack of skills or drive, but of lack of appropriate organizational forms for mobilizing skills and channeling them to meet emerging needs. Will lawyers detach themselves from the courts and learn to operate in a wider range of legal settings? Will they overcome their

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23. An exception must, of course be made for the solicitors in the cities of Bombay and Calcutta where the divided profession still prevails on the Original Side of the High Courts. In 1958, out of the 75,000 lawyers in India, 1,100 were solicitors. LAW COMMISSION OF INDIA, *supra* note 16, at 584-85.

24. In 1963 there were 2,050 practicing barristers in England and Wales and approximately 20,000 practicing solicitors. AMERICAN BAR FOUNDATION, INTERNATIONAL DIRECTORY OF BAR ASSOCIATIONS 45-47 (1964).

25. BRIAN ABEL-SMITH & ROBERT STEVENS, LAWYERS AND THE COURTS: A SOCIOLOGICAL STUDY OF THE ENGLISH LEGAL SYSTEM 1750-1965, at 1 (1967).



individualism to find forms of enduring collaboration that will permit the development of expertise in the substantive problems of those they serve? Will they temper their rule-mindedness into a more flexible and pragmatic problem-solving approach? Such a transformation depends upon the adaptative capacity of the profession and upon the capacity of legal education to impart the needed skills and attitudes. But to an equal extent it requires that the demand for more differentiated, complex and widely distributed legal services be made effective. Here, major initiatives would seem to lie with the government as dispenser of legal regulation, as a major consumer of legal services, and (potentially) as distributor of legal resources. Only informed and imaginative collaboration between government, legal education and the profession can create the conditions under which the profession can provide in full measure its potential contribution to a developed and democratic India.