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## From the ALI to the ILI: The Efforts to Export an American Legal Institution

Jayanth K. Krishnan

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## From the ALI to the ILI: The Efforts to Export an American Legal Institution

Jayanth K. Krishnan\*

### ABSTRACT

*In this Article, the Author argues that those who believe that Americans can successfully export their visions of law and legal research to other countries need to consider—in addition to Japan and Germany, two countries that are often touted as exemplars—the case of India. India gained its independence from the British in 1947, and soon thereafter many U.S. experts traveled to India in an effort to foster a culture of Western legal intellectualism. As part of their mission to improve the status of law in India, the Americans, upon their arrival, strongly advocated for the construction of a national Indian legal research center—similar to the American Law Institute (ALI) which had been located in Philadelphia, Pennsylvania since 1923. The ALI had earned the reputation as a leading center that focused on the study and improvement of law. While almost all of the ALI's work concentrated on U.S. law, the idea was that India too could have such a center of its own where lawyers, judges, and academics worked to clarify outstanding legal questions. As the Author documents, however, U.S. efforts to create an Indian version of the ALI encountered serious difficulty. And as the Author concludes, the lessons from this*

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*study might well prove useful as U.S. experts attempt to help countries today, such as Iraq and Afghanistan, devise democratically-based legal systems.*

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## I. INTRODUCTION

On January 30, 2005, over eight million Iraqis went to the polls to cast their votes in what President George W. Bush referred to as a "great and historic achievement."<sup>1</sup> Indeed, even some of the harshest critics of the war in Iraq recognized the courage of the many who were willing to risk their lives to participate in this election.<sup>2</sup> Public admiration of the Iraqis was only heightened after the December 2005 election in which an estimated ten million people cast ballots for

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1. President George W. Bush, President Congratulates Iraqis on Election (Jan. 30, 2005), available at <http://whitehouse.gov/news/releases/2005/01/20050130-2.html>.

2. See e.g., *Meet the Press with Tim Russert* (NBC television broadcast, Jan. 30, 2005) available at <http://www.msnbc.msn.com/id/6886726> (interviewing Senator John Kerry who has criticized the President's handling of the war but conceded that January 30, 2005 was a good day for Iraq); see also Geoff Earle & Albert Eisele, *Elections Hearten Critic of Iraq War*, THE HILL, Feb. 2, 2005, available at <http://www.hillnews.com/thehill/export/TheHill/News/Frontpage/020205/elections.html>.

the national parliament. For President Bush, the ousting of Saddam Hussein, the two elections, and the recent drafting of a new constitution have served as important landmarks for Iraq as it begins the process of transitioning to democracy.<sup>3</sup> But as the President and his advisors have reiterated, meaningful change in Iraq will not happen overnight; the United States, they emphasize, must remain committed to helping the Iraqis build a free and just society—regardless of the time it takes.<sup>4</sup>

One critical aspect of this building process, according to the Bush administration, is that the rule of law needs to be established and consolidated in Iraq.<sup>5</sup> The U.S. government has already dispatched teams of legal experts to Baghdad to help the Iraqis develop a more transparent, rights-based judicial system.<sup>6</sup> Given the long history of U.S. lawyers, judges, and academics traveling to distant places to promote the democratic rule of law,<sup>7</sup> the President's belief that these experts might offer substantive assistance—even in a society so enormously different from the United States—thus seems reasonable.

Consider, for example, the cases of Japan and Germany following World War II. Although the United States' involvement differed in scope and extent, the U.S. government sent officials soon after the War to assist the Japanese and Germans in developing liberal, democratic legal systems.<sup>8</sup> In the years that followed, U.S. legal

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3. See e.g., The White House, *Renewal in Iraq*, <http://www.whitehouse.gov/infocus/iraq/> (last visited Oct. 6, 2005) (collecting various reports and speeches on Iraq documenting this point).

4. See, e.g., President George W. Bush, *President Address Nation, Discusses Iraq, War on Terror* (June 28, 2005); see also The White House, *Renewal in Iraq*, <http://www.whitehouse.gov/infocus/iraq/> (last visited Oct. 6, 2005) (collecting numerous other speeches where the President urged that the effort in Iraq will take time and the U.S. must stay its course).

5. See United States Institute of Peace (USIP), *Establishing the Rule of Law in Iraq*, <http://www.usip.org/pubs/specialreports/sr104.html> (last visited Oct. 6, 2005). The USIP is a federal institution whose mission involves helping to resolve and mediate international conflicts. Its "Board of Directors is appointed by the President of the United States and confirmed by the Senate." United States Institute of Peace, *About Us*, <http://www.usip.org/aboutus/board.html> (last visited Oct. 6, 2005).

6. United States Institute of Peace, *Focus on Iraq*, <http://www.usip.org/iraq/index.html> (last visited Oct. 6, 2005).

7. See e.g., PAUL D. CARRINGTON, *SPREADING AMERICA'S WORD: STORIES OF ITS LAWYER-MISSIONARIES* 3–11 (2005).

8. See *id.* Professor Paul Carrington notes that in Japan the Americans—from General Douglas MacArthur to General Courtney Whitney (a trained lawyer who was MacArthur's personal attorney) to other lawyers such as Charles Kades, Milo Roswell, and Alfred Hussey—played an integral role in the drafting of the Japanese Constitution and in the reorganization of the Japanese government. *Id.* at 262–65. By contrast, in Germany, Carrington notes that "reasonable minds have since differed on the degree of American influence" on the drafting of the Basic Law. *Id.* at 266. For example, General Lucius Clay "later admitted that he went beyond his directives from Washington in an effort to shape it . . . [And that] it seems unlikely that the German authors [of the Basic Law] would have embraced the principles of federalism absent

experts visited various countries in Latin America and Africa to help reform these societies' judiciaries.<sup>9</sup> And after the end of the Cold War, U.S. lawyers once again traveled abroad to promote the rule of law—this time to Eastern Europe and the former Soviet Union.<sup>10</sup> (In fact, the American Bar Association, beginning in 1990, established a program that to this day sends U.S. lawyers and academics to these two regions to aid “these emerging democracies in modifying and restructuring [their] laws and legal systems.”<sup>11</sup>)

Yet, whether it is the current legal work being done in the former Soviet bloc or the past work done in other parts of the world, the message from the U.S. lawyers to their hosts has been rather consistent: simply having citizens abide by constitutional provisions and democratically-enacted statutes is not enough to strengthen and consolidate the rule of law.<sup>12</sup> In addition, the law needs to be reflected upon, meticulously studied, and regularly researched to determine whether what is “on the books” is equitable and accommodating to that society's needs. And while many of the countries in which Americans have consulted are still not full-fledged democracies, Japan and Germany serve as democratic models that President Bush hopes the Iraqis, to one degree or another, will emulate.<sup>13</sup>

But what are the odds that in a country where democracy was silenced for decades the rule of law might soon be a subject that is contemplated and rigorously researched—as the Americans conceptualize it? This Article draws upon the lessons of history and argues that those who believe that Americans can successfully export ideals of law and legal research need to consider—in addition to Japan and Germany—the case of India. India gained its independence from the British in 1947 and, soon thereafter, many U.S. experts traveled to India in an effort to foster a culture of Western legal intellectualism. By all accounts, India would have seemed a hospitable environment to U.S. legal assistance; although it had been part of the colonial empire, India was exposed to various

American influence . . .” *Id.* As Carrington notes, however, “no American lawyer participated in the drafting” of the Basic Law. *Id.*

9. See Jayanth K. Krishnan, *Professor Kingsfield Goes to India*, 46 AM. J. LEGAL HIST. 449 (2005).

10. CARRINGTON, *supra* note 7, at 271–91.

11. See American Bar Association, Central European and Eurasian Law Institute, <http://www.abanet.org/ceeli/about/home.html>. Since this particular program was started, it has raised \$180 million dollars to support law reform work in these two regions. *Id.*

12. See generally CARRINGTON, *supra* note 7, at 294–99. Carrington has written the definitive study on this subject and his work covers the travels of America's “Lawyer-Missionaries” dating back to the 1800s. *Id.*

13. See *Full Text: Bush Speech Aboard the USS Abraham Lincoln*, WASH. POST, May 1, 2003, <http://www.washingtonpost.com/ac2/wp-dyn/A2627-2003May1> (providing the full text for President Bush's speech aboard the USS Abraham Lincoln, in which he talks about the United States' involvement in Germany and Japan after World War II).

Western legal principles by the British and, after independence, India established a constitutional democracy modeled much after the United States.<sup>14</sup>

As part of their mission to improve the status of law in India, the Americans, upon their arrival, strongly advocated for the construction of a national Indian legal research center—similar to the ALI which had been located in Philadelphia, Pennsylvania since 1923.<sup>15</sup> The ALI originally was established to cure “two chief defects in American law, its uncertainty and its complexity, [which] had produced a general dissatisfaction with the administration of justice.”<sup>16</sup> The ALI had earned the reputation as a leading center focused on the study and improvement of law.<sup>17</sup> While almost all of the ALI’s work concentrated on U.S. law, the idea was that India too could have a similar center where lawyers, judges, and academics would work to clarify outstanding legal questions. As this Article documents, however, U.S. efforts to create an Indian version of the ALI encountered serious difficulty. And as this Author concludes, the lessons from this study might well prove useful as U.S. experts attempt to help the Iraqis devise a democratically-based legal system.

In Part II, the Article discusses how after World War II, the legal, political, and educational environments within the United States and India helped spark the momentum for the establishment of an Indian legal research center. Parts III and IV focus on those U.S. legal academics who went to India during the 1950s and 1960s. These Americans traveled on behalf of the New York-based philanthropic organization, the Ford Foundation. Ford, after the War, became interested in India because the country had embraced democracy and appeared as an exciting environment in which to export U.S. law, U.S. legal research techniques, and in particular, the ALI-model.<sup>18</sup>

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14. See Marc Galanter & Jayanth K. Krishnan, *Bread for the Poor: Access to Justice and the Rights of the Needy in India*, 55 HASTINGS L.J. 789, 791–95 (2004); Jayanth K. Krishnan, *Social Policy Advocacy and the Role of the Courts in India*, 21 AM. ASIAN REV. 91, 95–96 (2003).

15. The next two Sections of this Article document this effort.

16. The American Law Institute, <http://www.ali.org> (follow “This is ALI” link in top-center of main page) (last visited Oct. 6, 2005).

17. *Id.* With its staff and consultants engaging in research, publishing “Restatements” of the law, and working with other organizations, such as the National Conference of Commissioners on Uniform State Laws and the American Bar Association, the ALI has played an important role in interpreting and shaping the development of legal doctrine in the United States. *Id.*

18. In 2004, I contacted Ford to inquire whether it might release to me all its materials relating to the legal work it did in India. To my surprise, Ford provided me with unprecedented access to all of its original reports and previously confidential memoranda on this topic. Ford granted me permission to use this material in the preparation of and researching for this manuscript.

As it happened, an “Indian Law Institute” (ILI) was soon established, and it eventually incorporated into its mission almost all of the U.S. law professors’ suggestions. But as this Article explains in Parts V and VI, a tension arose. While on paper the ILI purported to pursue an ALI-like agenda, the reality was much different. Part VII concludes by discussing how the Americans admittedly failed to anticipate these difficulties, but also how they did not recognize that for centuries past Indian scholars had indeed contemplated promoting ideas of law and legal research—but on their own terms. Although the Americans, along with their Indian hosts, sought to improve the functioning of the Institute, the goal of exporting a U.S.-type legal research center to India never materialized as its architects had hoped. The result was that by 1970 the Americans withdrew much of their financial and advisory support for the ILI. The implications of these historical findings, as this Article suggests, have direct bearing on the United States’ current hopes to assist the Iraqis (and other societies) develop a liberal, democratic legal culture.

## II. EARLY EXPORTING EFFORTS BY U.S. LEGAL ACADEMICS

India achieved its independence from Britain in 1947 and less than three years later adopted a broad, rights-based constitution.<sup>19</sup> Many U.S. observers looked on with awe as this economically poor yet fiercely independent nation sought to embrace political and legal principles that had long been valued within the United States. And as stated above, the Ford Foundation, in particular, soon also became infatuated with the promise and overall “idea of India.”<sup>20</sup>

By 1955, one area that Ford especially focused on involved the development of legal education. Policymakers at Ford headquarters in New York, as well as at Ford’s New Delhi office,<sup>21</sup> believed that for

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19. See GRANVILLE AUSTIN, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION* 25 (1966); CHARLES EPP, *THE RIGHTS REVOLUTION, LAWYERS, ACTIVISTS, AND SUPREME COURTS IN COMPARATIVE PERSPECTIVE* 23–24 (1998); GARY J. JACOBSON, *THE WHEEL OF LAW, INDIA’S SECULARISM IN COMPARATIVE CONSTITUTIONAL CONTEXT* 22 (2003); A.G. NOORANI, *CONSTITUTIONAL QUESTIONS IN INDIA* 1 (2000); S.P. SATHE, *JUDICIAL ACTIVISM IN INDIA* 2–3 (2002).

20. SUNIL KHLNANI, *THE IDEA OF INDIA* 5 (1998). For Ford, India exhibited great potential: its political and military leaders opted for democracy rather than dictatorship; its first prime minister, Jawaharlal Nehru, was a dynamic, Western-educated figure committed to economic development and modernization; and it retained English as a main national language, thereby giving Americans, who so desired, a better opportunity to work more easily within the country. *Id.*

21. Ford’s headquarters, as stated, was in New York. Krishnan, *supra* note 9, at 450 n.22. The organization, however, also had “field offices” throughout the world. *Id.* In India, the Ford office was based in Delhi and was run in a pyramid manner. *Id.* The head of the office was designated as the “representative.” *Id.* This representative had one or two deputy representatives (DR), and below the DRs were program officers,

Indian democracy to succeed the country needed to have well-established, rule-based institutions administered by those educated in the legal principles of equity, due process, and individual rights.<sup>22</sup> These officials consulted with a number of Indian legal elites, several of whom had studied in the United States, and together these Americans and Indians concluded that law schools in India would be an ideal place to begin promoting such legal principles.<sup>23</sup> But at that time, Indian law schools faced certain problems. Several pre- and post-independence governmental commissions had issued reports deriding how poorly law students were being educated, the vast numbers of low quality faculty members being employed at law colleges throughout the country, the inadequate library facilities, and the overall culture of mediocrity permeating the law school environment.<sup>24</sup>

So beginning in 1955, Ford started investing a great deal of time and money trying to help Indians build stronger schools of law.<sup>25</sup> Elsewhere this Author has written in detail about this experiment,<sup>26</sup> but this Article focuses on how several prominent Indian academics believed that law schools could not be the sole institutions that disseminated legal education. This observation was highlighted in a report authored by two of Ford's first consultants to visit India, Carl

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who then had staff personnel below them. *Id.* Initially the top leaders in the Delhi office were Americans, but over time this has changed and the office has become much more Indian in composition. *Id.* (Today, the representative himself is an Indian.) *Id.*

22. See Krishnan, *supra* note 9, at 448.

23. *Id.*

24. See *id.*; see also University Education Commission of 1948–1949, <http://www.unesco.org/iiep/PDF/pubs/india.pdf>; Bombay Legal Education Committee Report, Bombay (1949); Government of India, Report of the All-India Bar Committee (1953); Rajasthan Legal Education Committee Report (1955) (on file with author); Motilal Chimanlal Setalvad and Law Commission Of India, Reform Of Judicial Administration (1958); Report of the Committee on the Re-Organisation of Legal Education in the University of Delhi (1964) (on file with author). And note, even as early as 1917, the British empowered Calcutta University to study how to improve Indian law schools. Krishnan, *supra* note 9, at 455.

25. Memorandum from Don Price to Program Committee, Ford Foundation (Oct. 26, 1955) (on file with author).

26. See generally Krishnan, *supra* note 9. From my research I discovered that the many American professors who traveled to India reported back to Ford that its experiment could not succeed for various institutional, political, cultural, and legal reasons. See *id.* at 448. But the biggest obstacle, as the Americans noted, was that any overhauling of Indian legal education had to come from Indians, not outsiders. See *id.* at 467. The evaluations it received led Ford to abandon its project in the early 1970s. *Id.* at 467–68. Subsequently, several Indians indeed began working to transform legal education in their country during the 1970s through the 1990s. See *id.* at 473–98. Ironically, as my research reveals, these Indian reformers actively drew upon the recommendations of Ford's early American consultants, as well as more generally the U.S. law school model. *Id.* at 473.



Spaeth and Herbert Merillat.<sup>27</sup> Spaeth, a well-known comparative law scholar, at the time was the dean of Stanford Law School; Merillat was a lawyer, independent writer, and historian who later went on to publish a book on the Indian Constitution.<sup>28</sup> As Spaeth and Merillat noted in their memorandum to Ford officials, many well-known Indian academics thought it critical that practicing lawyers and judges stay updated on whether the laws on the books were meeting the changes occurring in society; law schools had difficulty edifying their own students, let alone trying to provide other services—thus such education had to come from somewhere else.<sup>29</sup>

One ardent supporter of creating a center to focus on this type of work was L.R. Sivasubramanian, dean of Delhi University's Faculty of Law.<sup>30</sup> Sivasubramanian, one of India's leading academics, spent his illustrious career arguing that to have a just legal system, lawyers and judges require continual education on the status of the law.

27. See Memorandum from Carl B. Spaeth and H.C.L. Merillat to Ford Foundation (Dec.5, 1956) (on file with author) (hereinafter Spaeth-Merillat Dec. 1956 Memo). Spaeth and Merillat visited India for three weeks in 1956, and they wrote-up three reports for Ford based on their mission to India. The first two reports were drafts. See Memorandum from Carl B. Spaeth and H.C.L. Merillat to Ford Foundation (Jan. 7, 1957) (on file with author) (hereinafter Spaeth-Merillat Jan. 1957 Memo); Memorandum from Carl B. Spaeth and H.C.L. Merillat to Ford Foundation (Feb. 1957) (on file with author) (hereinafter Spaeth-Merillat Visit, Final Report). I will be referring to both of these documents, but mainly to the Final Report.

28. See HERBERT CHRISTIAN LAING MERILLAT, *LAND AND THE CONSTITUTION IN INDIA*, at vii–ix (1970).

29. Spaeth-Merillat Visit, Final Report, *supra* note 27, at 14. As this Author will discuss, both Ford and the American academics recognized they had a delicate task. On the one hand, they believed in the rigors of American legal research and wanted any new academic center to adopt the ALI's practices. Given that Ford was donating money for this project, the Americans knew they wielded an influential stick. On the other hand, Ford and its American consultants were unfamiliar with India. They therefore sought to work with and learn from their Indian hosts, partly for instrumental reasons, but also because they sincerely believed that the needs of the Indian bar could only be fully met by a legal research institute that was under Indian leadership. See *infra* Section IV.B.

30. Note, "up until the mid 1980s, the term "law school" was not one oft-used by Indians to describe legal educational institutions. A legal education institution in India was generally known as a "law faculty." A student studying law at Delhi University, thus, would say she is studying at the Delhi Law Faculty. Law faculties, like at Delhi University, could award, in addition to the LL.B, LL.M. as well as Ph.D degrees. But in some parts of the country (like Bombay), legal education institutions would be referred to as "law colleges." These law colleges would award the LL.B. degree and were basically autonomous institutions that fell under the auspices of a broad university structure. In these systems, the university might also have something called "law departments." These law departments would be places where students could pursue higher law degrees, such as an LL.M. or Ph.D. Bombay University, which has several law colleges under it, also has a law department as well. Throughout the course of this Article, when this Author is discussing—or describing the views Americans had of—Indian legal educational institutions, this Author will use the term "law school." When referring to specific institutions in India, however, this Author will use the proper names of those institutions. Krishnan, *supra* note 9, at 451 n.23.

Moreover, Sivasubramanian believed that studying the legal systems of other countries would provide new and useful insights for Indian lawyers and judges. As one Ford official noted, "this eminent Indian legal scholar is interested in studying American legal education, promoting closer relations between American and Indian law schools, and encouraging comparative studies in the constitutional law of the two countries."<sup>31</sup> Ford clearly appreciated this enthusiasm: in 1955 Ford sponsored Dean Sivasubramanian to visit the United States for one year so that he could travel the country and learn about how legal research was being conducted at the ALI and at various law schools.<sup>32</sup>

Sivasubramanian's experience in the United States greatly influenced his vision for establishing a legal research center in India. Before his journey, Sivasubramanian initially advocated for an Indian research center devoted to keeping the Indian Bench and Bar abreast of changes in three main areas of the law.<sup>33</sup> First, Sivasubramanian wanted this center's staff to monitor decisions from courts involving constitutional questions.<sup>34</sup> Especially with the Indian democratic experiment just underway, it was critical, Sivasubramanian believed, for legal professionals to be informed of how constitutional case law was evolving. Second, Sivasubramanian originally wanted the center to maintain tabs of all statutes passed by Parliament and to hold seminars to teach "careful"<sup>35</sup> legislative drafting.

Third, Sivasubramanian wanted judges, lawyers, and ordinary citizens to view this research center as the primary place where questions relating to family law could be answered.<sup>36</sup> Under British rule, recognized religious communities (e.g., Hindus, Muslims, Christians, and Parsees) had their family, or *personal law*, disputes settled in state courts, with judges regularly referring to the respective religious law when rendering a decision.<sup>37</sup> After

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31. Price, *supra* note 25, at 2.

32. *Id.* at 5. According to Ford documents, Ford spent \$11,600 to support Sivasubramanian for that year. *Id.*

33. Spaeth-Merillat Visit Final Report, *supra* note 27, at 14.

34. *Id.*

35. Spaeth-Merillat Jan. 1957 Memo, *supra* note 27, at 8.

Almost every Government legal officer we spoke with . . . mentioned as a serious problem the lack of lawyers skilled as legal draftsmen . . . Since Government programs loom so importantly in Indian national development, there is a heavy volume of legislation and administrative regulation, all calling for careful drafting.

36. Spaeth-Merillat Visit, Final Report, *supra* note 27, at 14.

37. Personal law in India at this time referred to issues of marriage, divorce, adoption, succession (inheritance), maintenance, and burial/cremation ceremonies. See GERALD LARSON, RELIGION AND PERSONAL LAW IN SECULAR INDIA (2001); WERNER MENSKI, HINDU LAW 4, 554 (2003); Marc Galanter & Jayanth Krishnan, *Personal Law and Human Rights in India and Israel*, 34 ISR. L. REV. 101, 101-33 (2000) (detailing

independence, India continued to adhere to this system, although in the mid-1950s Parliament made a series of changes specifically to the Hindu personal laws, which affected the vast majority of the population.<sup>38</sup> Because personal law disputes struck at the very core of human relationships, Sivasubramanian believed everyday citizens, as well as those working in the legal profession, needed to have a resource they could turn to for assistance on this complex area of the law.<sup>39</sup>

Yet after returning to India from the United States in the spring of 1956, Sivasubramanian considerably "enlarged the scope of the proposed Center to include training as well as [other] research activities . . . ."<sup>40</sup> The next part of this Article details what were Sivasubramanian's newest aspirations.

### III. EXPANDING THE MISSION AND THE REQUEST FOR U.S. INPUT

By the time he left the United States, Sivasubramanian was well-versed in different areas of U.S. legal research methodology.<sup>41</sup> As Professor Lawrence Ebb of Stanford Law School, who too became involved in Ford's India project, observed: "During the academic year 1955-56 . . . Dean L.R. Sivasubramanian of the Delhi Law Faculty visited a number of American law schools where he studied the organization and content of American legal research, including the work of the American Law Institute."<sup>42</sup>

Stanford was among the law schools at which Sivasubramanian spent a great deal of time.<sup>43</sup> There, he first met Dean Spaeth (and Professor Ebb) and became close with other members of the faculty from whom he sought advice regarding the creation of an Indian legal research center.<sup>44</sup> From his "consultations with the Stanford Law Faculty,"<sup>45</sup> and his studying of how the ALI operated, Sivasubramanian returned to Delhi in late summer of 1956 where soon thereafter he met with leaders of the Indian bar to discuss expanding the mission of the research institute beyond his initial three-point proposal.<sup>46</sup>

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how the British, and subsequently independent Indian courts, dealt with differing religious beliefs).

38. See Galanter & Krishnan *supra* note 37, at 107-08.

39. Spaeth-Merillat Visit, Final Report, *supra* note 27, at 14.

40. *Id.*

41. *Id.*

42. Lawrence F. Ebb, *Comments: Conference of the Indian Law Institute*, 7 AM. J. COMP. L. 219, 219-238 (1958).

43. Spaeth-Merillat Visit, Final Report, *supra* note 28, at 14.

44. *Id.*

45. *Id.*

46. Ebb, *supra* note 42, at 219.

A group of twenty experts—including “Supreme Court justices, some government lawyers, educators, and private practitioners”<sup>47</sup>—met with Sivasubramanian on November 5, 1956.<sup>48</sup> (Sivasubramanian also invited Spaeth and Merrillat, who attended on behalf of the Ford Foundation.) Sivasubramanian expressed to his colleagues how he wanted to incorporate the lessons he learned in the United States into the new legal research center being contemplated. And it seems that he was successful in convincing one prominent member of the expert-group, Attorney General M.C. Setalvad, to follow his lead. As Spaeth and Merrillat describe, when the meeting opened, Setalvad “launched into a general outline of the proposed Institute. Its main object [Setalvad stated] would be legal research, and its organizational form would be modeled on the American Law Institute, adapted to local Indian conditions.”<sup>49</sup>

Having India’s top law enforcement official make such an endorsement so early in the meeting seemed to bode well for Sivasubramanian’s plans. But there were some who questioned whether it was useful to rely on the “American experience in organizing an Indian Law Institute.”<sup>50</sup> Dean Spaeth was

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47. See Spaeth-Merillat Jan. 1957 Memo, *supra* note 27, at 5. From this report, it is unclear exactly who all of the other experts were that met with Sivasubramanian. *Id.* Spaeth and Merrillat talk about how they met with the “group” but only specify certain attendees. *Id.* For example, they note that Attorney General M.C. Setalvad, Supreme Court Justices B. Jagannadhadas, B.P. Sinha, and S.K. Das, Home Minister B.N. Datar, Minister for Works, Housing, and Supply Swaran Singh, and Solicitor General Daphthary were present. *Id.* at 2–3. In the appendix of their memo, however, they list other individuals who they met during the course of their three weeks in Delhi, but they do not cite the time and place of these meetings. *Id.* at Attachment A. The other names include: Chief Justice S.R. Das, Justices N.G. Bhagwati, Syed Jafer Iman, P.G. Menon, T.L. Venkatarama Ayyar, and Former Chief Justice Mahajan. *Id.* Other government ministers and officials who they met included: Law Minister C.C. Biswas, Minister of Legal Affairs H.V. Pataskar, Defense Minister K.N. Katju, Secretary of the Ministry of Law, K.V.K. Sundaram, Secretary of Home Affairs A.V. Pai, and Advisor to the Ministry of External Affairs B. Sen. In terms of educators, Spaeth and Merrillat met: Vice-Chancellor of Delhi University Mahajani, Professors Sivasubramanian, Jain, and Chaco all of Delhi University, Professor A. Appadorai who was director of the School of International Studies, and Professor Ram Urga Singh of Lucknow Law Faculty. *Id.* And finally, others who they met included the vice president of India, Dr. S. Radhakrishnan, Dr. P.S. Lokanathan, director of the National Council of Applied Economic Research, Mr. S.B. Bapat, an official in the Home Ministry and the director of the Indian Institute of Public Administration, Clifford Manshardt of the U.S. Embassy, Dr. Woodman of the U.S. Wheat Loan Fund Representative, Professor Fowler Harper of Yale Law School, and Eric da Costa, editor of the Eastern Economist. *Id.*

48. *Id.* See also Spaeth-Merillat Visit, Final Report, *supra* note 27, at 15 (noting that Spaeth and Merrillat were part of the group that Sivasubramanian put together. Their recordation is the only written document known to date that describes the actions undertaken by the “expert-group.”).

49. Spaeth-Merillat Visit, Final Report, *supra* note 27, at 15.

50. *Id.*

subsequently asked<sup>51</sup> to explain how the ALI operated, and if it could serve as an organizational model for an Indian research center. Spaeth characterized the ALI as:

a forum for joint research by judges, legal educators, private practitioners, and government lawyers. The ALI worked on any particular problem through a Rapporteur assisted by a committee of experts who might be drawn from all parts of the country representing all sections of the legal profession . . . [The Rapporteur] and possibly other members . . . would draft papers on assigned aspects of the subject under study, circulate these among themselves by correspondence and at an appropriate time meet for an exchange of views. Thereafter there would be further rounds of re-drafting, exchanges of comments and meetings. Eventually their research project would come before a larger group interested in the subject and finally before a general meeting of the American Law Institute.<sup>52</sup>

Ultimately, according to Spaeth, the ALI's mission was to make the law more understandable for the bench, bar, and academy;<sup>53</sup> the most frequent method of accomplishing this goal was through the publication of materials, primarily "restatements."<sup>54</sup> Where case law proved confusing or statutes were inconsistent among jurisdictions, these restatements would attempt to offer "the best legal thought"<sup>55</sup> on where the law stood. Given that India, like the United States, had a federal, constitutional system, a growing legal profession, and an increasing number of judicial decisions, controversies over doctrine were bound to arise; Spaeth thus suggested that having a research center like the ALI dedicated to studying such issues could be valuable for those Indians working within the judicial process.<sup>56</sup>

Persuaded by Sivasubramanian's pitch, Setalved's endorsement, and Spaeth's comparative contribution, other committee members at the November 5, 1956 Delhi meeting agreed to enlarge the research agenda of what was to be called the "Indian Law Institute." The committee supported Sivasubramanian's long-held view that comparative constitutional law should be a key area of research.<sup>57</sup> At the suggestion of the well-respected Supreme Court Justice, S.K. Das,

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51. *Id.* The memo does not state specifically *who* asked Spaeth to comment, but given the context of the written memo one might reasonably infer that those who raised this question sought his input. *Id.*

52. *Id.*

53. *See id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.* at 16. And it appears as though this idea had traction. As Spaeth and Merillat state, "it was very widely agreed that, among the Indians whom we talked with, that constitutional law was both the most urgent field for study in terms of Indian needs and also the most promising field for comparative and cooperative work with scholars from the United States and other countries." *Id.*

administrative law was added to the list.<sup>58</sup> The committee also decided that tax law, labor law, irrigation law, land law, and commercial law might be fields of focus in the future.<sup>59</sup>

With a tentative research curriculum now in place, the discussion then moved to who should staff the Institute, what ought to be the purpose of the research conducted, and from where funding should come. Once again, committee members turned to their U.S. counterparts for advice. Spaeth and Merillat recommended that the Institute needed to have a well-paid, committed director who would encourage, monitor, and if required, aggressively push staff members to engage in academic research.<sup>60</sup> To assist the director in his or her new duties, Spaeth and Merillat stated that it might be useful to have an U.S. scholar familiar with the ALI spend an extended period of time working with the ILI staff.<sup>61</sup> Furthermore, they suggested that the research conducted at the ILI should be aimed at helping government officials develop sound public policy. For example:

A research group might study the way in which various nations have dealt with the legal problems of delegating government powers to administrative agencies and how similar problems were now handled in several specific Indian agencies. The results of such a study might point to some conclusions that would be of value to the Government.<sup>62</sup>

In addition, the ILI could serve as a practical training center for judges, lawyers, and law teachers interested in honing their legal knowledge and legal skills.<sup>63</sup>

Yet as Spaeth and Merillat emphasized, for the ILI to have an effective director and staff members willing to conduct meaningful research and training sessions, it needed strong financial support. Because the existing thirty-some law schools in the country could not afford to sustain such an institute, and because there were no well-endowed domestic philanthropic organizations, the ILI had to rely on the government to make a long-term monetary commitment.<sup>64</sup> Spaeth and Merillat recognized that government involvement could

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58. *Id.* Here, from what they describe, Das was "most insistent on the need for administrative law studies. Particular problems suggested for study included: prerogative writs; judicial review; administrative procedure; constitutional interpretation; [and] delegation of powers." *Id.*

59. *Id.*

60. Spaeth-Merillat Jan. 1957 Memo, *supra* note 27, at 5-6.

61. *Id.* at 7 (noting that ideally the American scholar "would be appointed for a three-year period" and "would identify more specifically the problems on which research would be initiated, the methods to be followed, the person who would participate, and the facilities to be used").

62. Spaeth-Merillat Visit, Final Report, *supra* note 27, at 17.

63. *Id.* at 17-18. Spaeth and Merillat even suggested that the ILI could offer post-LL.B. students an opportunity to pursue advanced degrees and that even current LL.B. students might be able to take specialized research courses at the Institute. *Id.*

64. Spaeth-Merillat Jan. 1957 Memo, *supra* note 27, at Attachment B.

compromise the independence of the ILI. To offset this potential government dependence, they suggested that Ford “Foundation assistance in this [initial] phase might be somewhere between \$50,000 and \$100,000.”<sup>65</sup> But, ultimately, Spaeth and Merillat believed, and conveyed to their hosts, that the only way the ILI could survive would be with “the financial support of the Government.”<sup>66</sup>

Before adjourning, the committee members at the November 1956 meeting wrestled with two final questions. First, would the establishment of the ILI cause a “turf-war”<sup>67</sup> with a governmental body that already existed? Specifically, within the cabinet office of the Law Ministry there was a board known as the National Law Commission. The Law Commission, which traces its roots back to the British Raj,<sup>68</sup> focused primarily on implementing “improvements in judicial administration and . . . [on] revis[ing] statutory law.”<sup>69</sup> The Law Commission had also been studying ways to reform the country’s legal education system.<sup>70</sup> Despite the seeming overlap with the ILI’s agenda, the committee, after consulting with members of the Commission, concluded that because the Commission focused mainly on matters relating to private law<sup>71</sup>—unlike the public-oriented mission of the ILI—it would be rare for “conflict of work . . . [to] develop.”<sup>72</sup>

Second, there was the question as to where the ILI would be located. Although named the country’s capital after independence, Delhi at that time was considered a “legal desert”;<sup>73</sup> the bar was small, legal research was nonexistent, and except for the presence of

65. *Id.*

66. Spaeth-Merillat Dec. 1956 Memo, *supra* note 27, at 8.

67. These are my quotations, but the term captures the sentiment expressed by some about a potential conflict among the various governmental agencies.

68. Krishnan, *supra* note 9, at 460; See Law Commission of India, Ministry of Law and Justice, <http://www.lawcommissionofindia.nic.in>. (follow hyperlink for “Early Beginnings”).

69. See Spaeth-Merillat Visit, Final Report, *supra* note 27, at 20.

70. *Id.* See MOTILAL CHIMANLAL SETALVAD AND LAW COMMISSION OF INDIA, REFORM OF JUDICIAL ADMINISTRATION (1958).

71. Spaeth-Merillat Visit, Final Report, *supra* note 27, at 21. The “private law” areas that the Law Commission worked on included focusing on the following statutes: Law of Registration; Sale of Goods Act; Contract Act; Partnership Act; Land Acquisition Act; Insolvency Act; Negotiable Instruments; Specific Relief from Income Tax; and the Code of Tort Liability. *Id.*

72. *Id.* There were two other governmental bodies that the committee wondered whether the ILI would be in conflict with: (1) the Institute of Public Administration, which was not “to look behind the statute(s) to consider general problems of delegation of power and the like, or to examine the relationship between administrative tribunals and courts of law”; and (2) the National Council of Applied Economic Research, which was “to do research on problems of immediate significance to economic development.” *Id.* at 22. The possibility of overlap, the committee found, was even more attenuated than with the Law Commission. *Id.*

73. *Id.* at 19.

the Supreme Court, no legal institutions of stature stood. In contrast, cities such as Madras, Bombay, and Calcutta had long legal traditions, with strong bars, prominent judges, and decent library facilities.<sup>74</sup> In fact, Spaeth and Merillat mentioned to the group how in their travels to these cities, legal elites would emphatically make the case for why their particular city deserved to house a national research center.<sup>75</sup> In the end, however, the committee decided that placing the ILI in Delhi would avoid the certain geographical enmity that would ensue if Madras, Bombay, or Calcutta were selected over the other.<sup>76</sup> Moreover, the committee hoped that the presence of the Institute in Delhi would enhance the reputation of a capital that was seeking to be both a domestic and international hub for legal research.<sup>77</sup> Once this and the previous issue were resolved, the committee decided to proceed with the establishment of the ILI. This Article next examines how subsequent events unfolded.

#### IV. NOW THAT IT'S BUILT, WHAT DO WE DO?

##### A. Cooperation at the 1957 Stanford Workshop

On December 27, 1956, just seven weeks after the conclusion of the committee's November meeting, the Indian Law Institute opened its doors.<sup>78</sup> Housed in a government building in the heart of New Delhi, the ILI had an impressive group of officials serving as its leaders. The Chief Justice of the Indian Supreme Court was the ILI's first president, while "the Attorney General of India, Associate Justices of the Indian Supreme Court, and other prominent lawyers, government officials, and law teachers . . . [were] members of the governing council."<sup>79</sup> But these prominent individuals believed that any future staff or fellows selected to work at the new ILI would require mentorship on how to translate the ideas discussed during the November meeting into an actual set of working initiatives. They expressed this concern to Dean Spaeth, who upon invitation, remained as a consultant to the ILI. Spaeth suggested organizing a smaller, follow-up workshop in Stanford, California during the

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74. See Spaeth-Merillat Dec. 1956 Memo, *supra* note 27, at 9; Spaeth-Merillat Jan. 1957 Memo, *supra* note 27, at 6; Spaeth-Merillat Visit, Final Report, *supra* note 27, at 18-20.

75. Spaeth-Merillat Visit, Final Report, *supra* note 27, at 19.

76. See Spaeth and Merillat Memo, Dec. 5, 1956, *supra* note 27, at 9; Spaeth and Merillat Memo, Jan. 7, 1957, *supra* note 27, at 6; and Spaeth-Merillat Visit, Final Report, *supra* note 27, at 18-20.

77. *Id.*

78. See The Indian Law Institute, Profile, at <http://www.ilidelhi.org/Profile.htm>.

79. Ebb, *supra* note 42, at 220.



summer of 1957 that would focus on methods to encourage legal research.<sup>80</sup>

The Stanford workshop brought together four U.S. law professors and five Indians; the Indians included two judges, one lawyer, one academic, and one retired lawyer who was also a former professor.<sup>81</sup> In addition to the new relationships that developed and the rich experience both the Americans and Indians gained from this intimate working session, the Stanford conference produced an important series of articles focusing on "Comparative Constitutional Law, Administrative Law, and other fields relating to law and social change."<sup>82</sup> The conference participants had two goals for these papers. First, they hoped that the works might spur researchers at the ILI to delve further into one or more of these areas. Second, they also wanted to highlight the relevance of considering legal problems in both a historic and comparative perspective, as well as in terms of how law and public policy intersected.<sup>83</sup> Traditionally, the main way Indian lawyers and judges learned the law was by memorizing the black-letter rules, typically while as a student. For those meeting at the Stanford conference, a key objective thus was to revamp this method of pedagogy.

The cooperative results that came out of the 1957 Stanford meeting also underscored how Spaeth and the other Americans sought to carry themselves throughout their dealings with the Indians. While the Americans were excited to assist in the development of Indian legal research, they recognized that their enthusiasm needed to be balanced against how their efforts *appeared* to those being helped.<sup>84</sup> They were sensitive to the fact that simply having large sums of money and liberally doling out advice would do little more than condescend to their Indian colleagues.<sup>85</sup> The best way, in their view, to encourage legal research within India would be through the deliberate and patient study of Indian society and by

80. PUBLIC LAW PROBLEMS IN INDIA—A SURVEY REPORT v–ix (Lawrence F. Ebb ed., 1957).

81. *Id.* Spaeth convinced Ford to fund this program and a final report on this conference was published by Stanford. *Id.* The Indian participants included: Chandra Bhan Agarwala, former justice on the Allahabad High Court; G.N. Joshi, Supreme Court lawyer and former professor at Bombay Law College; Prasanta Behari Mukharji, a justice on the Calcutta High Court; S.M. Sikri, a governmental lawyer from the state of Punjab; and Professor Pradyuma Tripathi of Delhi Law School. *Id.* The American law professors included: Clark Byse (University of Pennsylvania Law School); Lawrence F. Ebb (Stanford Law School); W. Howard Mann (Indiana-Bloomington Law School); and Nathaniel L. Nathanson (Northwestern Law School), and, of course, Carl Spaeth. *Id.*

82. PUBLIC LAW PROBLEMS IN INDIA, *supra* note 80, at vi.

83. *Id.* at v–ix. Also in my reading through the fifteen different entries, I saw this theme comes up repeatedly.

84. *Id.*

85. *See id.*

advocating that Americans and Indians work together and learn from one another—rather than by having the former serve as advisers to the latter.<sup>86</sup>

B. *The ILI's First Formal Conference, December 1957: Setting the Agenda*

The productive interactions between U.S. and Indian legal experts eventually led to the first formal conference sponsored by the ILI in New Delhi during December of 1957.<sup>87</sup> Before the conference began, the ILI's governing council held a grand ceremony in the Central Hall of the national Parliament. The dignitaries who attended included the president of India, Rajendra Prasad, as well as Prime Minister Jawaharlal Nehru who served as the keynote speaker.<sup>88</sup> For many attendees, the conference served as a promising omen that the ILI was on its way to becoming a leading legal research center. Hopes were high; even Prime Minister Nehru stated that the Institute was both "necessary and important"<sup>89</sup> for consolidating India's nascent democracy. As one observer present during the ceremony recorded, "Mr. Nehru [also] said he had no doubt that the Institute would perform an essential task in the development of a welfare state."<sup>90</sup>

As for the conference itself, around fifty lawyers, judges, and advocates-general participated.<sup>91</sup> Moreover, with the exception of people like Spaeth, Merillat, and a few other foreigners, the proceedings involved "a purely Indian audience."<sup>92</sup> During the course of the seven day conference, participants engaged in small group meetings, plenary sessions, and presentations of papers, all in an effort to define further the research direction of the ILI. These participants, however, were not working within a vacuum; they actively drew upon the discussions that took place during the

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86. *Id.*

87. The meeting took place at the Indian Cultural Institute, or Bharatiya Vidya Bhavan, in New Delhi. Ebb, *supra* note 42, at 219. (It could better accommodate the guests of the meeting than the ILI's building.) *Id.* The meeting lasted one week, between December 14, 1957 and December 21, 1957. *Id.* During this portion of the discussion, this Author refers to the final report that was produced by the conference participants as ILI, *Final Report* (1957). The report can be found in Ebb, *supra* note 42, at 233 [hereinafter ILI, *Final Report* (1957)].

88. See Ebb, *supra* note 42, at 220–222 (discussing the ceremony).

89. *Id.* at 220, available at <http://www.ilidelhi.org/Profile.htm>.

90. *Id.* at 221.

91. *Id.* at 219.

92. *Id.* at 220.

November 1956 meeting in Delhi and the 1957 summer workshop at Stanford.<sup>93</sup>

The participants eventually agreed to a final report that focused on five areas to which ILI members would devote their immediate energies: four relating to administrative law and one relating to constitutional law. With respect to administrative law, first, the participants decided that more research was needed on the degree to which administrative agencies should be free from judicial review of the formal courts.<sup>94</sup> On the one hand, there were some who argued that under the Indian Constitution, specifically Article 226, formal courts had unfettered discretion to review all matters adjudicated by administrative agencies.<sup>95</sup> Others, however, worried that so few or no restraints on the courts' power to exercise judicial review would "clog the administrative process and thus impede realization of the

93. *Id.* at 227 (noting, in particular with respect to the Palo Alto meeting, that "the Final Report of the Indian Law Institute conference . . . is the end product of these deliberations").

94. ILI, *Final Report* (1957), *supra* note 87, at 234.

95. The relevant text:

Power of High Courts to issue certain writs.- (1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.] (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without-

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and (b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated. 4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

legitimate aspirations of a [large] welfare state.”<sup>96</sup> The lack of consensus served as the impetus for the participants to make this issue a key component for ILI scholars to study.

A second administrative law area that was encouraged involved researching how agency administrators might best (and most efficiently) promulgate rules and regulations.<sup>97</sup> Over the past decade, various judicial dicta from Indian judges had stated that Parliament, although delegating to agencies great amounts of power, had not provided sufficient guidance to agency administrators on how to carry out its goals.<sup>98</sup> As a result, courts were left in the prickly position of determining whether the promulgated rules were “ultra vires the statutory delegation,”<sup>99</sup> or whether administrators should have the flexibility to implement policies they believed served the public interest. Along with urging further research of this matter, the conference participants also suggested that ILI fellows look at other legal systems where this issue existed and consider whether the implementation of a structured notice-and-comment-type process of proposed regulations—like what occurs today in administrative agencies in the United States—might be useful in the Indian context.<sup>100</sup>

A third and related area in need of more research involved examining how agency administrators arrived at their decisions, especially in cases where an individual’s civil, economic, or social welfare rights were at stake.<sup>101</sup> Because post-Independence India opted to embrace a large administrative bureaucracy, a wide array of public policy decisions affecting everyday Indians were made by bureaucrats. The conference participants thought it only fair that there be systematic study of how these governmental officials reached their conclusions.<sup>102</sup> And fourth, the founders wanted ILI academics to research ways to end the ongoing corruption present within much of the state’s bureaucracy.<sup>103</sup> Bribing agency officials to obtain favorable policy decisions was both a long tradition and an open

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96. ILI, *Final Report* (1957), *supra* note 87, at 234.

97. *Id.* at 234–35.

98. *Id.*

99. *Id.*

100. *Id.* The rationale behind this latter point was that the Indian courts, upon seeing that the public, governmental officials, and others had a say in how the regulation was promulgated, might feel less of a need, say, to strike down the regulation (assuming it was challenged), justifying its deference on the fact that there had been a wide array of input from different interests before the rule or regulation was recorded. *Id.*

101. *Id.* at 235–36.

102. *Id.* Clearly, the conference participants recognized that this would be a labor-intensive, long-term project. Nonetheless, in order to promote transparency within this nascent democracy, they strongly believed that ordinary citizens should know how their government officials arrived at their public policy decisions. *Id.*

103. *Id.* at 237.

secret, and those at the December 1957 conference believed that if their institute was to help consolidate India's democracy—as Prime Minister Nehru hoped—then solving this endemic problem had to be on the radar of the ILI scholars.

In terms of researching constitutional questions, the conference participants advocated that the ILI should focus its attention on the relationship state and local governments ought to have vis-à-vis the central government—particularly with respect to issues of commerce, trade, and developing the country's economy.<sup>104</sup> Organizers like Sivasubramanian knew that this was a current issue of contention in the United States, and that in three recent cases the U.S. Supreme Court had sided with the federal government's efforts to exercise greater power in regulating commerce both between and within states.<sup>105</sup> He and his colleagues wanted the ILI fellows to study the Court's decisions to see whether they had any usefulness in India.<sup>106</sup>

Thus, the agenda for the ILI was set. With the beginning of the new year (1958) just days away, such consensus among the conference participants seemed to signal an auspicious start. But would the aspirations of the supporters be realized? As stated above, the Ford Foundation was an important financial contributor to the ILI. To stay updated on its investment, Ford hired a number of prominent U.S. law professors between 1958 and 1970 to travel to New Delhi to evaluate the performance of the ILI.<sup>107</sup>

This Article next describes the early workings of the ILI, including the observations of a familiar individual who returned to India on the Foundation's behalf: Carl Spaeth. Following this discussion, this Article presents the evaluations made by Ford's subsequent consultants.

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104. *Id.* As the Final Report argues:

[R]esearch should be conducted on the general question of the extent to which state and municipal governments, through legislative and administrative action, set up barriers to the free movement of individuals, trade and industry across state boundary lines in India, and the extent to which such barriers are consistent with constitutional provisions and the national requirements of a dynamic developing economy and society.

*Id.*

105. See *NLRB v. Jones & Laughlin Steel*, 301 U.S. 1 (1937); *United States v. Darby*, 312 U.S. 100 (1941); *Wickard v. Filburn*, 317 U.S. 111 (1942).

106. ILI, *Final Report* (1957), *supra* note 87, at 238.

107. Recall, from earlier in the text, that many of these scholars were also evaluating how Ford's efforts to reform the entire legal education system in India were progressing as well. See *supra* note 26 and accompanying text.

### C. Initial Steps and Preliminary Observations

The first two years of the ILI's existence as a formal institution of legal research were 1958 and 1959. During this early period, the ILI began publishing what remains today the most continuous legal periodical in the country, the *Journal of the Indian Law Institute*. The Journal's first editor was Dr. A.T. Markose, a young, bright law professor from the state of Kerala. Markose was a scholar who believed that legal research done at the ILI should seek to improve law and justice in India.<sup>108</sup> Like Sivasubramanian, Markose had visited several law schools in the United States, as well as the ALI. He appreciated what he learned during his visit and returned to India committed to making the ILI the epicenter of legal research in Asia.<sup>109</sup>

As a way of realizing this goal, Markose wanted the Institute's journal to be the continent's leading legal publication.<sup>110</sup> Beginning in 1958, he organized different workshops, inviting esteemed lawyers and scholars from within India and from around the world.<sup>111</sup> Among the most prominent Indians who participated included Attorney General Setalvad, Professors M.P. Jain and V.N. Shukla, and Justice P.B. Mukharji.<sup>112</sup> As for foreign legal scholars, U.S.-based academics such as Clark Byse, Lawrence Ebb, Nathaniel Nathanson, H.C.L. Merillat, and William Rice visited the ILI. The British comparative law scholar Alan Gledhill also came, as did Jiro Matsuda, a Japanese law expert who had worked with a legal training and research center headquartered in Tokyo.<sup>113</sup> Markose's goal was to hold symposiums at the ILI where scholars like these could discuss such topics as constitutional and administrative law. From there, he solicited all those involved to submit articles on their respective areas of research, which he subsequently published in the Journal.<sup>114</sup>

Over the next couple years, the ILI sponsored additional conferences and lectures, which spawned a series of new manuscripts

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108. See Upendra Baxi, *Professor Pradyumna Kumar Tripathi: A Tribute*, 5 S.C.C. (Jour) 1 (2001). See also Interview with Professor Baxi (Mar. 20, 2001) (on file with author) (a close colleague of Markose providing insight on Markose's contribution to the ILI and, more generally, to Indian legal education).

109. See Interview with Marc Galanter (July 21, 2004) (on file with author). Professor Galanter, another close colleague of Markose, was a visitor to the ILI during 1957 and the early part of 1958. Galanter returned to the ILI as a visitor during the mid 1960s and contributed several articles to the Institute's journal. *Id.*

110. See *supra* note 107.

111. *Id.*

112. 1 J. INDIAN L. INST. (1958-59). Others who participated were C.B. Agarwala, N.C. Chatterjee, and V. Ramaswamy.

113. *Id.*

114. *Id.* Interestingly, eight of the eighteen contributors who published articles in the first volume were non-Indians.

that were published in later volumes of the Journal.<sup>115</sup> The Journal remained primarily focused on issues of administrative and constitutional law, with a smattering of comparative law essays included as well.<sup>116</sup> It thus seemed that a major goal of those who helped start the ILI was being realized: domestic and international scholars were contemplating and researching key doctrinal and policy issues with the intention of strengthening the rule of law.

While the ILI was making progress on this front, its staff and backers sought to pursue other research endeavors. Recall that the Ford Foundation supported the ILI as part of its larger effort to reform legal education in India. In Ford's view, having the ILI conduct rigorous legal research on administrative and constitutional law issues would surely contribute to the growth of legal knowledge, which might then likely trickle into the legal education process. But Ford policymakers also believed that the ILI should investigate other ways that law schools might improve how they were educating their students. Thus, in 1959 Ford, in conjunction with the ILI, called upon Stanford's Carl Spaeth to return to India.<sup>117</sup> Spaeth was asked to spend four months collecting information and specifying what else the ILI could do to strengthen legal education in India.

During his extended stay, Spaeth interviewed judges, lawyers, academics, politicians, and students; he also conducted on-site inspections of fifteen different law schools throughout the country.<sup>118</sup> Of his various observations, probably his most blunt point was that Indian legal education remained in a far from ideal state.<sup>119</sup> The training and examination of law students lacked analytical and theoretical rigor.<sup>120</sup> He believed as well that admissions tests ought to be more stringent and that a baccalaureate degree—which at the

115. See generally 2 J. INDIAN L. INST. (1959–60).

116. For example, in the second volume, the comparative articles included C.H. Alexandrowicz, *The Secular State in India and in the United States*, 2 J. INDIAN L. INST. 273 (1959–60); M. Ramaswamy, *Indian Constitutional Provisions Against Barriers to Trade and Commerce Examined in the Light of Australian and American Experience*, 2 J. INDIAN L. INST. 321 (1959–1960); Michael Stassinopoulos, *The Thirtieth Anniversary of the Council of State of Greece*, 2 J. INDIAN L. INST. 235 (1959–60); R.B. Tewari, *Marital Law in England*, 2 J. INDIAN L. INST. 71 (1959–60); R.B. Tewari, *Martial Law in the United States*, 2 J. INDIAN L. INST. 539 (1959–60).

117. See Draft Memorandum from Carl B. Spaeth on Indian Legal Education (March 1960) (on file with author) [hereinafter Spaeth 1960].

118. *Id.*

119. As he highlights at the outset of his report, the 1958 findings of the Law Commission as well as the recommendations of those bodies that preceded the Commission greatly influenced his views on this subject. *Id.* at 2. (“Although for many years high-level commissions have been reporting the sad condition of legal education, the condition seems to get worse and not better.”).

120. *Id.* at 5 (noting that “[t]he idea of professional training that begins with a thorough grounding in theory and history, analysis and synthesis, and moves to sophisticated study of complex contemporary legal problems but does not include law office and court house practice is almost totally unknown”); see also *id.* at 13–16.

time was not required by many Indian law schools—should be a prerequisite.<sup>121</sup> He expressed disappointment that Indian law schools still lacked a clear vision on curriculum and pedagogy.<sup>122</sup>

Spaeth urged the ILI fellows to address these problems in their research. He also thought it was important to understand why only “10 to 15% of the thousands of law graduates go into ‘actual practice.’”<sup>123</sup> That such a seemingly small number of law graduates were deriving economic benefits through “actual practice,” he believed, had a “direct bearing [not just on the financial sector but also] on the policies and plans for legal education of the future.”<sup>124</sup> Spaeth encouraged ILI researchers to examine what role caste, language, and university bureaucratic politics played in the following groups: those who were admitted as law students, those who were hired as law teachers, and those who gained legal employment after graduation.<sup>125</sup>

Spaeth’s suggestions seemed like a tall order for the ILI to fill; the Institute, after all, was still quite new. As a way to help train the staff on how to carry out such work, ILI officials invited several well-known U.S. law professors to New Delhi over the next decade to spend time working together with the ILI fellows to develop substantive research agendas. This Article next examines how this experiment fared.

#### V. U.S. ATTEMPTS TO STRENGTHEN THE ILI—SOME SUCCESSES, SOME DISAPPOINTMENTS

In 1962, the ILI invited the comparative and international law scholar from Harvard University, Arthur von Mehren, to spend ten months in India. Funded by the Ford Foundation, von Mehren went to India to promote “the sound development of the Indian Law Institute . . . [and to study] legal education generally, and, more broadly, . . . law in the Indian society and economy.”<sup>126</sup> During his stay, von Mehren worked closely with the president of the Institute, Chief Justice B.P. Sinha, as well as with B. Jagannadhadas, the executive chairman.<sup>127</sup> He also consulted with A.T. Markose, the above-mentioned editor of the *Journal of the Indian Law Institute*,

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121. *Id.* at 9–13.

122. *Id.* at 3–5.

123. *Id.* at 7.

124. *Id.* at 7.

125. *Id.* at 6–9.

126. See ARTHUR VON MEHREN, ASPECTS OF LEGAL SCHOLARSHIP AND EDUCATION IN INDIA 1 (1963). Von Mehren served as a visiting professor at the ILI from August 7, 1962 to June 11, 1963.

127. *Id.*



and the famous Indian academic, Dr. M.P. Jain, who in April of 1963 succeeded Markose at his post.<sup>128</sup>

Von Mehren's first task was to organize a seminar at the ILI where resident scholars would learn techniques of conducting empirical legal research.<sup>129</sup> Von Mehren, however, wanted to highlight the importance of research methodology through a substantive law lens. As he noted then:

The general theme explored by the seminar was "The Influence of Social and Economic Change on Theories of Tort Liability." My effort was to bring the group to look at law as a complex institutional, social, and human phenomenon rather than as a mass verbalization that can be analyzed in simple, dictionary terms. In particular, I wanted to emphasize the processes through which law can grow and adapt as the needs of the society change.<sup>130</sup>

Von Mehren sought to show these students—most of whom already had earned their law degrees and were seeking advanced training in hopes of pursuing an academic career—that to maximize the educational process, classroom participation, dialogue with the instructor, and writing exercises were critical. As von Mehren knew from his many visits to Indian law schools throughout the country, law students historically had little of this type of training.<sup>131</sup> Instead, they typically would sit in class without assigned readings, listen to uninterrupted lectures from teachers, and then return home to memorize the black-letter rules they had just been taught for one final exam at the end of the academic year.<sup>132</sup> That von Mehren required, for example, his ILI students to read Auerbach and Mermin's famous *The Legal Process* (along with von Mehren's own *The Civil Law System*), participate in class, and then submit a series

128. *Id.* at 1–2.

129. *Id.* at 2. Von Mehren makes mention in his memo that he was not the first American to conduct training sessions of this type for ILI-fellows. In fact, "the first training seminar was conducted in 1960–61 by Professor Ralph F. Fuchs [of Indiana University-Bloomington Law School]; the second, in 1961–62, by Professor Robert E. Mathews [of Ohio State Law School]." Little is known about what Fuchs and Mathews did during their sessions. Presumably, they were invited by the ILI (and funded by Ford), but Ford did not have memos from either of these scholars in their archives. See *A Closer Look Ralph Fuchs and Patrick Baude*, at <http://www.law.indiana.edu/publications/particulars/2002winter/fuchsidebar.shtml> (giving background on Fuchs). See also *In Memoriam—Robert E. Mathews*, at <http://www.utexas.edu/faculty/council/2000-2001/memorials/AMR/Mathews/mathews.html> (giving background on Mathews).

130. Von Mehren, *supra* note 9, at 2.

131. Krishnan, *supra* note 9. Also, some years after von Mehren's trip to the ILI, Professor Upendra Baxi, arguably today's most well-known and intellectually rigorous scholar on Indian law, wrote a devastating critique of how law students were being trained in India. See Upendra Baxi, *Notes Towards a Socially Relevant Legal Education*, 5 J. B. COUNCIL INDIA 23–55 (1976).

132. *Id.*

of papers that were “closely criticized,”<sup>133</sup> challenged these individuals in new and different ways.

But in addition to making his classroom intellectually stimulating, von Mehren believed that research emerging from the ILI needed to focus on improving the state and practice of the law in India. For example, India was a country in which statutes played a huge role in governing society. Of course, because of the British influence, a common law tradition had been passed on to independent India. But even during the colonial period, India adhered to national criminal and civil procedure codes, which continued to serve as good law after 1947.<sup>134</sup> In reviewing these codes, however, von Mehren found that many of the provisions remained “static”<sup>135</sup> and wedded to “their antiquity.”<sup>136</sup> Even though it was the early 1960s, these codes did not reflect a “rational relevance to the maintenance of a given social order and the forwarding of social and individual values.”<sup>137</sup> In other words, the codes in significant parts were archaic. Von Mehren argued that research fellows from the ILI—who had developed their writing and analytical skills and who had been trained to think about the functional importance of ensuring that law met the current “needs and conditions”<sup>138</sup> of society—could be in a valuable position of updating these codes.<sup>139</sup>

In addition, as von Mehren learned, the ILI researchers also felt their own sense of obligation to uplift the status of lawyers in India. Because much of the public associated the law and the legal order as a carryover from the colonial regime, those who worked within this system—specifically lawyers—were negatively viewed.<sup>140</sup> It also did not help that lawyers were mainly atomistic actors who often dealt with clients, cases, and causes in a discrete, isolated fashion, and

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133. See von Mehren, *supra* note 126, at 3; THE LEGAL PROCESS (Carl A. Auerbach & Samuel Mermin, eds., 1956) (rev'd version of LAW IN SOCIETY (Lloyd K. Garrison & Willard Hurst, eds. 1941)); ARTHUR VON MEHREN, THE CIVIL LAW SYSTEM: CASES AND MATERIALS FOR THE COMPARATIVE STUDY OF LAW (1957).

134. The Indian Code of Civil Procedure dates back to 1908. INDIA CODE CIV. PROC. (1908). The Indian Penal Code dates back to 1862, while there was a version of the Indian Criminal Procedure Code as early as 1898. See India, The Criminal Justice System, <http://www.country-data.com/cgi-bin/query/r-6165.html> (last visited Oct. 6, 2005).

135. Von Mehren's memo discusses Indian law in general. von Mehren, *supra* note 126. However, in two separate interviews with the Harvard scholar, he specified that during his time in India, he frequently reviewed the two codes, and that he was dismayed at their lack of adaptability to the present times. See Interviews with Arthur von Mehren, Harvard Scholar (Feb. 19, 2004 & July 13, 2004) (on file with author).

136. See *id.*

137. See von Mehren, *supra* note 126, at 7.

138. *Id.* at 8.

139. *Id.* at 8–12.

140. *Id.* at 8 (noting that in a society like India, “the lawyer tends to be looked upon as a manipulator”).

primarily in the courtroom.<sup>141</sup> Lawyers rarely provided non-litigation advice—those tasks were left to others. And because most individuals and groups in need of legal representation were resource-poor, “the economic basis of the legal profession [in turn was] distinctly poor.”<sup>142</sup> This low economic position further contributed to the public’s low image of lawyers.

As von Mehren discovered, the ILI fellows believed that through their research and writing they could help practitioners conceptualize their profession in a more imaginative fashion—where lawyers would be encouraged to engage in transactional work, bureaucratic service, politics, and even “social engineering.”<sup>143</sup> And for von Mehren, the potential, positive impact of a vigorous bar on India’s young democracy could not be overstated. He was convinced in “the enormous contribution that the legal order . . . [could] make to the effective harnessing and releasing of a society’s human energy and talent.”<sup>144</sup>

Yet von Mehren, like others before him, recognized that strengthening legal research at the ILI was only one part of the larger process involved in reforming India’s legal system. He too viewed improving legal education within the country’s law schools as integral to any meaningful change.<sup>145</sup> In fact, von Mehren was the only non-Indian who sat on a 1963–1964 University of Delhi panel to study this issue of legal education.<sup>146</sup> The panel’s findings, which

141. *Id.* at 8 (noting, more harshly, that people only went to lawyers “when their behavior and values . . . [were] not those that are generally accepted. The law and the lawyer provide official sanction and support for such deviant behavior.”).

142. *Id.* at 9.

143. *Id.* at 11. von Mehren stated that he was drawing upon Roscoe Pound’s vision of law being a tool of “social engineering” when making this reference. *Id.* See ROSCOE POUND, SOCIAL CONTROL THROUGH LAW (Archon Books 1968) (1942).

144. von Mehren, *supra* note 126, at 10.

145. As he stated, quite strongly:

In my judgment, the most promising—indeed probably the only potentially decisive—key to the problem [of India’s lack of legal and socio-economic development] is legal education . . . [L]egal education, by shaping the men and minds that will address themselves to the problems of law, offers the best—probably the only substantial—hope of accelerating, and consciously assisting, the process.

*Id.* at 9–10.

146. The other committee members were: Justice P.B. Gajendragadkar (Chair); P.N. Saprú, a member of the upper house of Parliament; S.V. Gupta, additional solicitor general of India; Dr. Anandjee, principal, Law College Banaras; and Professor M. Ramaswamy, dean, Delhi Law School. The body was formally known as: The Committee on the Re-Organisation of Legal Education in the University of Delhi (1964), however, it soon came to be called the Gajendragadkar Committee, after the person who chaired this body. See THE COMMITTEE ON THE RE-ORGANISATION OF LEGAL EDUCATION IN THE UNIVERSITY OF DELHI: REPORT (1964).

drew upon recommendations from past observers<sup>147</sup> and which von Mehren readily endorsed, concluded that to raise the standard of legal education in India,<sup>148</sup> law schools needed to do the following: raise admissions standards,<sup>149</sup> improve teaching quality and testing methods,<sup>150</sup> hire only dedicated, full-time faculty interested in scholarly publishing,<sup>151</sup> and construct “a well-furnished library.”<sup>152</sup>

But even if strong law schools were to emerge, there was a sense among observers that an independent legal research center was needed in order to serve practicing lawyers and judges. Thus, the amount of time, money, and effort both the Americans and Indians invested in developing the ILI continued. And moreover, these reformers did not view the goal of improving Indian law schools and the goal of improving the ILI as mutually exclusive.

For example, just two years after he made his first trip, Ford asked von Mehren to return to India in order to provide a report on the overall state of legal education.<sup>153</sup> Together with another U.S. law professor, Bertram Willcox (a legal consultant also hired by Ford), and Delhi Law Faculty’s Dean, P.K. Tripathi, von Mehren submitted a detailed set of observations and recommendations to Ford reiterating many of the comments made by Delhi University’s education panel.<sup>154</sup> In addition, however, this report recommended that law schools begin engaging in a cooperative relationship with the ILI.<sup>155</sup> Because the ILI, the report pointed out, had “a fairly

147. In particular, many of the recommendations put forth by Carl Spaeth as well as the 1958 Law Commission of India (which Spaeth himself drew on), were incorporated into the panel’s set of conclusions.

148. von Mehren, *supra* note 126, at 1–6.

149. *Id.* at 6–10.

150. *Id.* at 10–24. The Committee, in discussing how to improve law teaching, cited the debate between Roscoe Pound (who favored the case method approach) and Morris Cohen, who, according to the Committee, believed that teachers should focus more on social reasoning and social policy than on the importance of precedent. *Id.* The Committee also cited Harlan Fiske Stone’s views that law has to be thought of in terms of socio-economic policy. *Id.* Ultimately, the Committee opted not to adopt any particular approach and instead stated that Indian law teachers needed to experiment and find the method that most challenged and energized how students were taught. *Id.*

151. *Id.* at 24–29.

152. *Id.* at 29. In making this recommendation, the Committee drew upon Justice Robert Jackson’s views that a good library was the lifeblood of a productive law faculty. *Id.*

153. For the two reports that von Mehren filed documenting this mission, see Arthur von Mehren, P.K. Tripathi, and Bertram F. Willcox, Discussion Paper: Proposals Respecting the Delhi Law Faculty, Ford Foundation, (Aug. 1966) (authored with another Ford consultant, Professor Willcox of Cornell Law School, and Tripathy, Dean of the Delhi Law Faculty) [hereinafter von Mehren August 1966 Discussion Paper]; and Arthur von Mehren, Report on Short-Term Assignment: July 11–Sept. 2, 1966, (Sept. 1, 1966) [hereinafter von Mehren Sept. 1, 1966 Report] (both on file with author).

154. See von Mehren August 1966 Discussion Paper, *supra* note 153.

155. *Id.* at 25.

respectable law library” with a collection that surpassed any existing law school in the country,<sup>156</sup> literary exchanges were one way to promote this cooperation. The report also suggested that law faculties could benefit from teaching materials produced by ILI fellows and by ILI-sponsored workshops that focused on pedagogy and scholarship.<sup>157</sup> In a later report, von Mehren continued to stress this cooperation point, wondering whether the ILI could even “assist an interested law school in establishing a legal aid project . . . .”<sup>158</sup> He made the following suggestions; that law students help in the publication of the Institute’s journal, that the Institute and law schools work together to help graduating law students find employment, and that the Institute and law schools form a committee that would “guide future collaborative effort[s] in”<sup>159</sup> other areas not yet considered.<sup>160</sup>

The emphasis on cooperation was echoed by other U.S. consultants Ford sent to India in the following years. Between July 1966 and February 1967 Ford asked Georgetown University Law Center’s Kenneth Pye to follow up on the work completed by von Mehren.<sup>161</sup> Pye agreed with his predecessor that “the [Ford] Foundation should use its auspices to create a framework in which cooperation between . . . [law schools and] the Indian Law Institute . . . can be facilitated.”<sup>162</sup> In particular, during the course of

156. *Id.*

157. *Id.* at 26.

158. See Memorandum from Arthur von Mehren on Cooperation on Problems of Legal Education and Legal Research in India, to Ford Foundation (also addressed to Dean Anandjee of the Banaras Law Faculty, Dr. G.S. Sharma of the Indian Law Institute, and P.K. Tripathi, Dean of the Delhi Law Faculty) (February 23, 1967) (on file with author).

159. *Id.*

160. *Id.*

161. See Memorandum from A. Kenneth Pye, to Dr. Douglas Ensminger, Ford Foundation, Progress Report on Grant to Law College, Banaras Hindu University: July 8, 1966–Feb. 6, 1967 (1967) [hereinafter Pye Progress Report] (on file with author). In 1968, Pye became Dean of Duke Law School. Duke University, Chancellor A. Kenneth Pye Records, 1970–1983, <http://www.duke.edu/web/Archives/holdings/admin/chancpye.html>.

162. *Id.* at 22. The two law schools Pye cited specifically were Delhi University’s Law Faculty and Banaras University’s Law Faculty. *Id.* The choice of Delhi was not surprising, given its location and the fact that many of its faculty had some type of relationship or affiliation with the ILI. Banaras, however, which was located in the state of Uttar Pradesh, was identified by Pye because it had been selected by Ford as a testing site in which the Foundation would attempt to improve legal education. See Krishnan, *supra* note 9. Although located in a more isolated setting, where resources were poor and students and faculty were not highly reputed, Ford selected Banaras because it had been quite impressed with the ambitions and vision espoused by the then Dean, a Dr. Anandjee. *Id.* In fact, von Mehren was particularly supportive of Anandjee and convinced Ford to begin granting money to Banaras University, even before granting funds to Delhi University. *Id.* As it turned out, neither Anandjee nor Banaras University lived up to the hopes of von Mehren, Pye, or Ford. *Id.* For a discussion of why the law college at Banaras University struggled, see *id.*

his mission in India, Pye noticed that the language skills of the students he observed at different law schools varied greatly. Some students knew their regional dialect but struggled with modern standard Hindi; there were those who knew multiple Indian languages, but many students had difficulty with English. This variation caused tension in the classroom, and given that the Indian judiciary was using English as its language of record, Pye believed that the ILI specifically ought "to investigate the problem arising from decreasing proficiency in English among law students."<sup>163</sup>

Yet hoping for cooperation can be quite distinct from seeing it become a reality. In September of 1966, von Mehren wrote a private memorandum to Ford, much of which was dedicated to the problems percolating at the ILI.<sup>164</sup> According to von Mehren, funding for the Institute from the government and from Ford was not the issue.<sup>165</sup> Rather, he expressed concern over the administration of the ILI. Dr. G.S. Sharma, the then director of the ILI apparently "spent little time trying to build up the Institute's esprit de corps."<sup>166</sup> Indeed, Sharma was an accomplished, ambitious scholar. Still, Sharma did not appear willing to sacrifice his own time for the sake of the Institute, and von Mehren worried that key leadership responsibilities were being neglected. Moreover, on those few occasions when he did assert himself, Sharma, according to von Mehren, came off to many as an intolerant and hostile administrator who micromanaged both staff and research fellows.<sup>167</sup>

Von Mehren was not alone in his angst over Sharma's directorship. Kenneth Pye, in a subsequent memo to Ford, stated that he had "personal doubts whether Dr. Sharma's devotion to cooperation is as great as he has expressed at our meetings."<sup>168</sup> Similarly, in several memos of his own, Bertram Willcox displayed skepticism.<sup>169</sup> Willcox, who would eventually spend four years (on-and-off) in India working for Ford, was very familiar with the Indian legal landscape. Although initially a strong supporter of the ILI's involvement in improving legal education and the legal system

163. Pye Progress Report, *supra* note 161, at 22.

164. von Mehren Sept. 1, 1966 Report, *supra* note 153, at 1.

165 In fact, according to von Mehren, "a recurring, annual grant of 4 lakhs [was] being authorized under the Fourth Plan" of the government. *Id.* at 4. Four lakhs is equivalent to 400,000 Indian Rupees.

166. *Id.*

167. *Id.*

168. Memorandum from Kenneth Pye, to Ford Foundation, Status of the Grant to Banaras Hindu University Law College (Apr. 27, 1967) (on file with author).

169. See Memorandum from Bertram Willcox, to Ford Foundation, Confidential Terminal Report (Sept. 1. 1967) (on file with author). Willcox first went to India in 1963. *Id.* While he was there he helped the faculties at Banaras and Delhi Law Schools develop labor law courses and casebooks. *Id.* He also established training sessions on teaching at the Indian Law Institute between 1963-1965. *Id.*

overall, Willcox soon became disillusioned with the Institute's leadership.<sup>170</sup> For Willcox, a key problem was the internal politics present at the ILI.<sup>171</sup> Willcox believed Director Sharma abused his authority "through pride of place, shiftiness, and arbitrary and dictatorial rule."<sup>172</sup>

The last set of consultants that Ford hired between 1968 and 1970 also noticed similar problems in the ILI's administration. This Article next discusses their recommendation that because of its leadership issues, the ILI needed to pursue a different research agenda and reset its priorities.

## VI. CHANGING DIRECTION—DIFFERENT IDEAS BUT FADING HOPES

While Carl Spaeth and H.C.L. Merillat were its first main legal consultants on India, and Arthur von Mehren, Bertram Willcox, Kenneth Pye and others made up the second wave, beginning in 1968 Ford sent a third and final group of U.S. law professors to evaluate the Indian Law Institute. Professor Harry Jones of Columbia University Law School spent the early part of 1968 visiting the ILI, as well as other law schools throughout India.<sup>173</sup> Jones, unlike his predecessors, did not assume that strengthening Indian law schools ought to be a priority for the ILI. As he pointedly stated in his memo to Ford:

To what extent should the Institute participate directly in matters of legal education . . . ? Is this the best use of the Institute's unique potential for public service? Are there perhaps other things that urgently need doing to maintain and extend the rule of law in India, tasks that may never be accomplished unless the Institute addresses its attention to them?<sup>174</sup>

Jones also did not believe that the ILI should serve as a training ground for law teachers to improve their pedagogical skills.<sup>175</sup> Instead, Jones envisioned the ILI playing a deeply "formative"<sup>176</sup> role

170. *Id.*

171. *Id.* at 2–13.

172. *Id.* at 13.

173. Jones submitted two reports to Ford. See Memorandum from Harry W. Jones, to Ford Foundation, A Training Program for Indian Law Teachers—Some Perspectives (Mar. 12, 1968); and Memorandum from Harry W. Jones, to Ford Foundation, Observations and Impressions of Delhi University Faculty of Law (May 7, 1968) (both on file with author).

174. Jones Memo, Mar. 12, 1968, *supra* note 173, at 4.

175. See *id.* at 7 (noting that "it should not be assumed in forthcoming consultations that teacher training and related educational activities are the most appropriate—or even the most important—functions for the Indian Law Institute") (emphasis in original).

176. *Id.* at 4–5.

in how the legal system and rule of law developed in India; thus legal education was just one small component in what were much larger issues at stake. For example, given how stagnant Indian statutes were, ILI researchers needed to concentrate on providing “a systematic and up-to-date restatement”<sup>177</sup> of many different areas of the law. In addition, the ILI could perform a valuable service—as the American Bar Association had done in the United States two decades earlier—by conducting a large-scale study on what people with law degrees actually do in India.<sup>178</sup> Such a study could examine how many lawyers worked in government, how many worked in the private sector, lawyers’ impact on the economic growth of the country, and the unmet legal needs of everyday Indians.<sup>179</sup> As Jones argued, “until one has solid information on questions like these, discussion about the rule of law in India, or about the proper directions of legal education in India, will inevitably be abstract and unhelpful.”<sup>180</sup>

Ford sponsored other U.S. law professors to travel to India who were even blunter than Jones in their assessments of the ILI. One such professor was Julius Getman, who not only lacked confidence in the ILI staff’s ability to improve legal education but generally “was unimpressed by the caliber of the people at the Law Institute”<sup>181</sup> to do much of anything. Most of the staff, according to Getman, had inadequate research and writing skills and little imagination to develop substantive programs to rectify the troubled Indian legal system.<sup>182</sup> Thus, before expecting any real research to emerge from the ILI, Getman believed that its leaders had to purge the current staff and replace them with people who could perform true scholarly work.<sup>183</sup>

But the most detailed report arguing for a revamping of the ILI came from John H. Jackson, a young professor at the time who later would go onto become one of the world’s leading international law scholars. Jackson began his report by noting that “after more than 10 years of existence, considerable government support and much Ford aid, the ILI remains a rather undistinguished organization.”<sup>184</sup>

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177. *Id.* at 5.

178. *Id.* at 6.

179. *Id.*

180. *Id.* Relatedly, Jones suggested that the ILI could also “exert its influence” by working with the Law Commission of India (mentioned above), whereby ILI-staff could engage in monitoring legislative proposals and deliberations—similar to what American legal researchers had been doing in the United States for years. *See also id.* at 5.

181. Memorandum from Julius G. Getman, to Ford Foundation, End of Tour Report 1 (June 12, 1968) (on file with author).

182. *Id.*

183. *Id.*

184. Memorandum from John H. Jackson, to Ford Foundation, Short Reflections on the Indian Law Institute (May 6, 1969) (on file with author). Jackson goes on to say “why this is so I cannot say, since my contact with the ILI has been infrequent, and



Jackson's analysis involved examining the ILI in a four-fold manner. First, he focused on its advantages. As he noted, the ILI library was the best in all of India.<sup>185</sup> He also admired the *Journal of the Indian Law Institute*, which had become the most respected legal publication in the country.<sup>186</sup> And Jackson believed that some ILI programs—particularly seminars that concentrated on doctrinal subjects like contracts, torts, and criminal law—indeed were beneficial for visiting teachers seeking to improve their research and teaching skills.<sup>187</sup>

The second part of Jackson's report, however, discussed the "not-so-happy activities"<sup>188</sup> in which the ILI engaged. Jackson critiqued the ILI's leaders,<sup>189</sup> who he claimed failed to nurture their scholars and provide a clear vision of where the ILI should focus its attention.<sup>190</sup> Another shortcoming Jackson found reflected a similar sentiment expressed by Harry Jones. Notwithstanding the few seminars and the *Journal*, in terms of improving legal education overall, Jackson observed that "the ILI appears to have been a flat failure."<sup>191</sup> Minimal substantive research on this subject had occurred and material that did emerge proved of little value for law school teachers.<sup>192</sup> That the ILI struggled to make a contribution, according to Jackson, was again because several people in positions of power knew "nothing about legal education."<sup>193</sup> Moreover, because of professional turf-guarding and because they perceived it as lacking real prestige, many law school administrators refused to work with the ILI in a cooperative fashion.<sup>194</sup>

The third part of Jackson's report involved offering suggestions on how the ILI should organizationally structure itself in the future. Of course the ALI initially had served as the archetype for the ILI,

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much of my information is second or third hand hearsay." *Id.* Nevertheless, Jackson's report remains one of the soundest analyses that Ford received on the status of the ILI to that point.

185. *Id.* at 2-3.

186. *Id.* at 3.

187. *Id.* at 3-4.

188. *Id.* at 3.

189. *Id.* ("I know personally some of the Indians who have been on the Institute staff for research purposes in past years, and some of them are first-rate people . . .").

190. *Id.* at 3 (noting that, problematically, the leaders

tended to organize research in group efforts, with lines of responsibility blurred and crossing, little clear direction, and a tendency to treat younger scholars as just employees whose work goes unheralded while the project director gets the authorship title and the kudos thereby . . . . There is thus little incentive for the individual scholar to tackle problems of significance, and to finish them within a given time.

191. *Id.* at 4.

192. *Id.* (citing as illustration, casebooks which were published by the ILI were "too costly," "too lengthy," and not "pedagogically very sound").

193. *Id.*

194. *Id.*

but Jackson wondered if this was the appropriate model. After all, the ALI was:

basically a 'contracting out' organization. It has [had] no research staff, and no library or building of consequence. Its directors (who are law professors at major law schools, plus some eminent judges and practitioners) contract with specific law professors around the country to do research leading to model statutes or to 'restatements' of the law. The professor works at his [her] own university . . . [rather than at the ALI itself].<sup>195</sup>

By contrast, the ILI had an in-house staff, a nice library, and its own large building. It also attempted to engage in programs and projects beyond working on statutes and restatements. For these reasons, Jackson wondered whether Germany's Max Planck Institutes might be a better model for the ILI. The Max Planck Institutes were (and remain) government-funded organizations where research in various academic disciplines took place.<sup>196</sup> The legal institutes, in particular, sought to recruit recent law graduates who would then spend two to four years working on specific projects (typically requested by courts or governmental agencies) and thereafter move onto either full-time academic or governmental positions.<sup>197</sup>

Alternatively, Jackson proposed that the ILI might want to model itself after the Brookings Institution in Washington, D.C. Although this research center did not emphasize legal studies, because its structure was more in line with how the ILI currently stood, Jackson believed the Brookings Institution might serve as the most useful example.<sup>198</sup> For instance, the Brookings Institution had a number of permanent research fellows as well as a set of visitors from both the U.S. and abroad;<sup>199</sup> the Brookings Institution also had a voluminous library, good facilities, and a community of scholars who sought, through their writings, to impact public policy.<sup>200</sup>

Yet Jackson ended his report with some sobering conclusions. He deeply wanted the ILI to succeed, but he feared the political inertia that existed was too difficult to overcome. There would be little chance, for example, that the leadership would acquiesce to revamping the organizational structure of the ILI.<sup>201</sup> Also, Indian judges were increasingly meddling in ILI affairs. Powerful judges, particularly those who held *ex officio* positions, were thought to have

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195. *Id.* at 5.

196. *Id.* at 4–5 (noting that each Institute was headed by a university professor, whose university position was often nearby the Institute he/she was heading).

197. *Id.* at 5.

198. *Id.* (noting that the Brookings Institution, at the time, focused on "economics and finance studies, primarily").

199. *Id.* at 6.

200. *Id.*

201. *Id.* at 8–9.

influenced the research agendas of ILI fellows.<sup>202</sup> Because of these forces, Jackson remarked that “many of the major evils [at the ILI] have been perpetuated, at least for some years to come.”<sup>203</sup> He thus concluded that while Ford should still finance certain endeavors—such as the continued development of the library—its comprehensive funding should cease.

Jackson’s advice was direct and, if adhered to, would cause a major policy shift in Ford’s commitment to the ILI. Before reaching a conclusion, Ford officials decided to solicit once again the input of their long-time consultant, Professor Arthur von Mehren. This Article now turns to his evaluations and assesses the implications of this Article on current efforts to export U.S. legal culture abroad.

#### VII. A FINAL ASSESSMENT OF THE ILI AND WHAT WAS OVERLOOKED— CONCLUDING REMARKS

In late 1969, nearly fifteen years after it first began trying to improve the state of legal research in India, the Ford Foundation asked Arthur von Mehren to return to the ILI. Would von Mehren’s assessment differ from Jackson’s? What would Ford’s reaction be to another critical evaluation? Von Mehren’s report to Ford on the ILI was short, and it reiterated many of the points made by Jackson. For example, von Mehren agreed that the library and Journal were important contributions to the academy and that at times the ILI did coordinate projects of value.<sup>204</sup> But overall, his view was bleak:

[T]he accomplishments [of the ILI] fall far short of hopes. In general, the research has been rather pedestrian in conception and execution. The Institute has never developed effective working relations with the law schools. For a variety of reasons, it has never been able to solve its leadership problem . . . . [A] growing sense [has developed] that even a fully successful Indian Law Institute could not bring about the changes that were needed if law and the legal profession were to contribute to wise solutions of India’s many problems . . . .<sup>205</sup>

This Author recently interviewed von Mehren and asked him to recall his final mission to the ILI on behalf of Ford.<sup>206</sup> Von Mehren remembered how dismayed he was at the lack of scholarly productivity occurring at the Institute. “For the most part, nothing was happening there,”<sup>207</sup> he stated. Like Jackson, von Mehren

202. *Id.* at 9.

203. *Id.*

204. Confidential Memorandum from Arthur von Mehren, to Ford Foundation 2 (Jan. 17, 1970) (on file with author).

205. *Id.* at 2–3.

206. Interview with Arthur von Mehren (July 13, 2004) (on file with author).

207. *Id.*

ultimately recommended that Ford needed to fund only those projects (like the library and the Journal) where substantive progress had been made.<sup>208</sup>

And, indeed, by 1970 Ford began scaling back its financial commitment to the ILI.<sup>209</sup> After reviewing all the conclusions of its past consultants, Ford policymakers decided to re-prioritize their goals for India.<sup>210</sup> Although Ford had expended great time, energy, and resources to study and improve the ILI, the bulk of its work in India remained focused on a different area: agricultural reform.<sup>211</sup> Ford officials decided that they would continue to work on the Indian agricultural sector; however, because the task of strengthening the ILI seemed more monumental than ever, the Foundation ceased concentrating on legal research.<sup>212</sup> The sentiment among policymakers was that the problems identified by the U.S. consultants would take many years to address and require a substantially greater financial contribution from Ford; and even then there was little guarantee that these efforts would succeed.<sup>213</sup>

It is clear that the ideas and recommendations of people like Harold Spaeth, Arthur von Mehren, Bertram Willcox, and John Jackson greatly impacted Ford policymakers. Yet to what extent did these U.S. scholars who were advising Ford consider the legal scholarship traditions that in fact existed in India not only during colonial times but also in the pre-colonial era? Were the Americans even aware that such traditions existed? How might a more detailed historical understanding of this region have affected not only the perceptions the Americans had of the Indian legal landscape but also the advice they gave to Ford and to their Indian hosts?

In combing through the reports written by the Americans, one is struck by the glaring absence of how law or legal research functioned in India before they arrived. It is almost as though, as Professor Upendra Baxi has stated in his pointed reference regarding the British colonizers, the Americans believed their hosts only “had a notion of authority but not of legality which it was the [Americans’]

208. *Id.*

209. *Id.*

210. *Id.*

211. Interview with Dr. Carolyn Elliott, professor emeritus, University of Vermont, and former Program Officer, Ford Foundation, Delhi Office (Apr. 1, 2004) (on file with author). Also around this time, Ford decided to abandon its efforts to bolster law schools in the country, for many of the same reasons listed above. The two year Emergency Rule period of Indira Gandhi between 1975 and 1977 also contributed to a change in Ford’s priorities: after 1977, Ford began looking to support the non-governmental organization sector within the country. *See also* Krishnan, *supra* note 9.

212. *Id.*

213. *Id.*

proud civilizing mission . . . to inculcate to India.”<sup>214</sup> In fact, as Baxi argues, for centuries indigenous societies in India debated and studied issues of “prescriptions, prohibitions, punishments—the grammar and even the practice of power.”<sup>215</sup> That Westerners—whether they be the British or the Ford Foundation’s U.S. consultants—appropriated and then defined what the concepts of law and legal research ought to be in no way should diminish the contemplation that occurred among the local civilizations.<sup>216</sup>

This idea of an indigenous scholarly tradition existing in India prior to, during, and after the colonial period has recently been discussed by Werner Menski, in his 600-plus page opus on Hindu law.<sup>217</sup> Although problematic in various parts (of which an insightfully critical essay has been written<sup>218</sup>), Menski’s book does underscore the point that in spite of Western legal influences, Hindu law is thriving and currently governs how much of the Indian population lives today.<sup>219</sup> It retains its vibrancy and relevance, according to Menski, in large part because of its basis in centuries’ worth of negotiated norms to which individuals continue to adhere—either because of personal, conscientious decisionmaking or exerted societal pressure.<sup>220</sup>

Irrespective of whether the particular contentions by scholars like Menski and Baxi are accurate, the fact remains that India was not a legal research vacuum when Ford’s U.S. consultants began arriving in the 1950s. Given this, several questions emerge. First, had the Americans considered the history and traditions that existed might their frames of reference been different? Second, could this perhaps have led to meetings with and learning from people not necessarily connected to Ford or the Indian government, the latter of which was eager to receive Ford-funding? And if the Americans had engaged, say, Hindu law scholars, or scholars well-versed in indigenous legal customs, might their assumptions and subsequent recommendations to Ford have changed? Of course these are all counter-factual inquiries that historians have the luxury of pondering

214. Upendra Baxi, *The State’s Emissary: The Place of Law in Subaltern Studies*, in *SUBALTERN STUDIES VII: WRITINGS ON SOUTH ASIAN HISTORY AND SOCIETY* 252 (Partha Chatterjee & Gyanendra Pandey, eds., 1992).

215. *Id.* at 251.

216. *Id.* at 247–64. It is important to note, however, that while Baxi is critical of Westerners not taking into account the scholarly, legal traditions of the indigenous society, Baxi is equally miffed by those who actually do study these marginalized or subaltern communities but nevertheless “disregard the law” in their analysis. *Id.* at 249.

217. See WERNER MENSKI, *HINDU LAW* (2003).

218. See Donald R. Davis, Jr., *Traditional Hindu Law in the Guise of ‘Post-Modernism’: A Review Article*, 25 *MICH. J. INT’L. LAW* 735 (2004).

219. MENSKI, *supra* note 217, at 22–29.

220. *Id.*

well after events of the time have taken place. Yet one wonders whether those Americans who today travel overseas to promote legal research methods, or the "rule of law" more generally, are more sensitive to the norms, cultures, and traditions of local societies than when Ford's consultants went to India between the 1950s and 1970.

In the last three decades since Ford ended its legal exporting experiment, India has endured a series of great changes.<sup>221</sup>

From this Author's years of work on Indian law, frequent visits to New Delhi, and observations of the ILI, it appears as though certain U.S.-backed initiatives between 1955 and 1970 have had some staying power. For example, the ILI's library and its Journal remain two valued legal resources in the country. In addition, the ILI today has better legal research tools that allow its members to access more information than ever before. Legal education in India also has improved,<sup>222</sup> and unlike in the past, today there is greater cooperation between the ILI and a number of the country's law schools.<sup>223</sup> And a steady stream of foreign scholars continues to visit

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221. These changes included two years of Emergency Rule between 1975 and 1977. In the 1980s two of the country's prime ministers were assassinated and religious violence grew at a troubling rate. During the 1990s, India saw a rise in political prominence by Hindu nationalists, eventually resulting in a Hindu-nationalist, coalition government coming to power. It was this government that in 1998 oversaw the testing and subsequent detonation of India's nuclear bomb. To the surprise of many, however, in 2004 India witnessed one of the most electrifying elections since Independence, when the historic Congress Party, which advocated a more secular, anti Hindu-nationalist message, returned to power. In addition, there has been a series of important legal developments, including, and perhaps the most important, the use of the public interest petition by claimants. There is an important literature on this topic. See, e.g., P.N. Bhagwati, *Judicial Activism and Public Interest Litigation*, 23 COLUM. J. TRANSNAT'L L. 561 (1985); Rajeev Dhavan, *Law as Struggle: Public Interest law in India*, 36 J. INDIAN L. INST. 302 (1994); Carl Baar, *Social Action Litigation in India: The Operation and Limitations on the World's Most Active Judiciary*, 19 POL'Y STUDIES J. 140 (1990); Jamie Cassels, *Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?*, 37 AM. J. COMP. L. 495 (1989); Clark D. Cunningham, *Public Interest Litigation in Indian Supreme Court: A Study in the Light of American Experience*, 29 J. INDIAN L. INST. 494 (1987); Marc Galanter, *New Patterns of Legal Services in India*, in LAW AND SOCIETY IN MODERN INDIA (Rajeev Dhavan & Marc Galanter eds., 1989); Oliver Mendelsohn, *Life and Struggles in the Stone Quarries of India: A Case-Study*, 29 J. COMMONWEALTH & COMP. POL. 44 (1991); G.L. Peiris, *Public Interest Litigation in the Indian Subcontinent: Current Dimensions*, 40 INT'L & COMP. L. Q. 66 (1991); Susan D. Susman, *Distant Voices in the Courts of India: Transformation of Standing in Public Interest Litigation*, 13 WIS. INT'L L. J. 58 (1994); Madhava Menon, *Justice Sans Lawyers: Some Indian Experiments*, 12 INDIAN B. REV. 444 (1985). For a viewpoint which challenges the conventional wisdom that India has in fact seen a rise in public interest litigation petitions at the Supreme Court, see CHARLES R. EPP, *THE RIGHTS REVOLUTION* 71-110 (1998).

222. Krishnan, *supra* note 9.

223. *Id.*

the ILI, with a few ILI researchers even having the opportunity themselves to study overseas.<sup>224</sup>

But the Indians with whom this Author has spoken recognize that the ILI still has areas that could be strengthened, including engaging in more empirical legal work. For example, a serious crisis facing India, but one that has received only passing scholarly attention, is the inefficiency of the country's judicial system. The courts in India are thought to be the most crowded of any in the world.<sup>225</sup> One published report states there are "23 million pending court cases—20,000 in the Supreme Court, 3.2 million in the High Courts and 20 million in lower or subordinate courts."<sup>226</sup> Cases take decades, and sometimes generations, to resolve, yet little substantive research has been done to try to solve this problem.<sup>227</sup> Perhaps the

224. From this Author's observations, many foreign academics use the ILI as a hub of sorts—keeping an office there, holding colloquiums at the Institute while they are in Delhi, but also not limiting themselves to simply staying at the ILI while in India.

225. Bibek Debroy, *Losing a World Record*, FAR EASTERN ECON. REV., Feb. 14, 2002, at 23. For a discussion on this idea of Indian "culture" being litigious, which incidentally dates back to British times, see Marc Galanter, *The Aborted Restoration of 'Indigenous' Law in India*, in LAW AND SOCIETY IN MODERN INDIA 37 (Rajeev Dhavan ed., 1989). For a discussion on the post-Emergency developments in the courts, see M. Jagannadha Rao, *Need for More ADR Centres and Training for Lawyers and Personnel*, in ALTERNATIVE DISPUTE RESOLUTION: WHAT IT IS AND HOW IT WORKS 103 (P.C. Rao & William Sheffield eds., 1997) (noting that "[l]ike the Americans and others, we [Indians] too are a litigious society"). There is also the view that after 1977, when the Supreme Court expanded legal standing, the result was a mass influx of cases into the judiciary. For a discussion of this point, see S.P. SATHE, JUDICIAL ACTIVISM IN INDIA 195–248 (2002). In contrast, however, there is data from the late Professor Christian Wollschläger which shows that on a per capita basis Indians are in fact among the least litigious people in the world. See Christian Wollschläger, *Exploring Global Landscapes of Litigation Rates*, in SOZIOLOGIE DES RECHTS: FESTSCHRIFT FÜR ERHARD BLANKENBURG ZUM 60 GEBURTSTAG, (Jurgen Brand & Dieter Stempel eds., 1998). Two scholars who have picked up on this data (and discussed its limitations) have argued that in India the main problem for the massive backlog in the courts stems not so much from the number of cases going into the system but how few come out. See Marc Galanter & Jayanth K. Krishnan, *Bread for the Poor: Access to Justice and the Rights of the Needy in India*, 55 HASTINGS L. J. 789, 789–834 (2004). The frequent lack of resolution, they argue, is namely because of the endless interlocutory appeals that are currently permitted by the Indian Criminal Procedure and Indian Civil Procedure Codes. *Id.*

226. See Debroy, *supra* note 225.

227. It should be noted that some scholars, including former, prominent justices on the Supreme Court and some well-known Indian academics have argued that a more accountable system of alternative dispute resolution (ADR) could provide structural assistance for those groups that wish to resolve issues in a less adversarial, perhaps even more efficient manner, which would then help to reduce the backlog in the courts. See Galanter & Krishnan, *supra* note 225. Beginning in the 1980s India formally adopted a system of ADR, with an institution known as the *lok adalat* (people's court) serving as the main dispute resolution forum. *Id.* There are many different types of *lok adalats* today, each one focusing on individual civil and criminal matters. *Id.* In some cities, *lok adalats* have been established to hear cases relating to women's rights, environmental pollution, and other social policy issues. *Id.* Professor

dearth of research and scholarship on important matters like these stems from the fact that there are not many opportunities for academics to publish their works. Aside from the ILI's journal, there are only a few other respected legal publication outlets in the country. Furthermore, professors often find themselves encumbered by large teaching loads, which inevitably reduces the amount of time that can be spent on writing.

But notwithstanding the few acknowledged improvements the ILI needs to make, there are lessons from this cross-cultural, cross-country exchange which might be useful, in particular, for U.S. policymakers today. Consider the situation in Iraq. Iraq in the post-Saddam era is a country with many more disadvantages than India had after gaining its independence in 1947. The rebel insurgency, the historic absence of exposure to Western institutions, the lack of large numbers of Americans who understand the region's history and traditions, and the ongoing presence of a foreign military force are only some of the hurdles facing Iraq. India, after independence, never encountered these types of problems, and while most of its institutions were able to consolidate themselves after the end of the colonial rule, some, like the ILI, are still working towards achieving the goals its founders first promulgated nearly five decades ago. Thus, observers today might wish to learn from this historical episode, engage in a bit of self-reflection, and keep expectations for Iraq at bay—even if the country gains some semblance of democratic order in the near future.

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Marc Galanter and I are involved in a yearlong project evaluating how these forums function, but our preliminary data gives us pause. *Id.* Thus far, we have found that the *lok adalat* system suffers from several serious problems. *Id.* There are often huge power differentials between the opposing parties that place into question the fairness of agreed-upon settlements. *Id.* At some of our observation sites, we have discovered that arbitrators are more concerned with disposing of cases than reaching equitable resolutions. *Id.* There are also questions of whether poorer claimants, particularly in social policy-oriented *lok adalats*, have their claims adequately presented. *Id.* And we have raised queries regarding the consistency of outcomes and the overall efficiency of the process. *Id.* If alternative dispute forums are to serve as an arena for social policy organizations to present their claims, these issues first need to be resolved. *Id.*



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