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The Mystery of Legal
Empowerment: Livelihood
and Community Justice in
Bolivia

Tiernan Mennen



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LEGAL EMPOWERMENT WORKING PAPERS

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Published by:
International Development Law Organization
Viale Vaticano, 106
00165 Rome, Italy
Tel: +39 06 4040 3200
Fax: +39 06 4040 3232
Email: ido@ido.int
www.ido.int

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This project involves the preparation of a series of qualitative and quantitative empirical articles culminating in an edited volume on approaches to integrating justice and development in ways that benefit the poor and other disadvantaged populations.

The volume will be part of the IDLO book series *Lessons Learned: Narrative Accounts of Legal Reform in Developing and Transition Countries*. Consistent with the thrust of the book series, the legal empowerment book and online papers seek to identify successes, challenges and lessons springing from the integration of law and development.

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THE MYSTERY OF LEGAL EMPOWERMENT: LIVELIHOODS AND COMMUNITY JUSTICE IN BOLIVIA

Tiernan Mennen¹

Executive Summary

The linkages between good governance, rule of law and economic growth, once more fully understood, have the potential to unshackle economies and decrease poverty throughout the developing world. Currently, however, most initiatives are heavy in rhetoric and light on directly addressing the legal structures and policies that affect the poor. Until developing countries can enable their vast populations of poor citizens to actively participate in their economies, their growth and the creation of egalitarian societies will be severely hampered. Analyzing and building on the final report of the Commission on Legal Empowerment of the Poor and other previous work, this article outlines a functional approach to addressing the most critical needs of the poor, including but not limited to issues that directly affect livelihoods and economic opportunity. It accordingly aims to help the poor gain a foothold in effecting their own development and making legal empowerment a reality. By introducing important lessons in community-based justice from an access to justice program in Bolivia, the article provides tangible examples that might help shape legal empowerment initiatives to best address the needs of the poor.

The article particularly suggests six programmatic aspects that can enhance legal empowerment work. The first aspect is the need to adapt to the varying and complex legal environments that affect poverty in different countries, including reaching beyond the Commission's useful but narrow perspective. The second is a greater focus by legal empowerment programs to proactive, livelihood-oriented work. The third is the need to integrate the provision of legal services and other activities with existing community-based and informal justice systems. The fourth aspect, based on the successful use of community volunteers in Bolivia, is the expansion and systemization of programs that link law student interns and post-graduate public service to the provision of legal services in communities. The fifth aspect is the widespread training and deployment of community-based paralegal networks as an extension of justice centers and lawyers located in cities. Finally, based on the Bolivia experience, the article recommends implementation of legal empowerment programs by independent civil society groups and urges caution in allowing government ministries to take over programs created and executed by development agencies.

¹ Tiernan Mennen is Senior Program Manager for Legal Empowerment at the Open Society Justice Initiative. This article is based on his experiences while working on an access to justice program funded by the United States Agency for International Development (USAID) in Bolivia in 2009. He has worked on justice reform and legal empowerment initiatives around the world, including Sudan, Central America, Peru, the Democratic Republic of the Congo, Jordan and Malaysia. Mr. Mennen holds a Juris Doctor from Cornell Law and a Masters degree in International Development and Economics from Johns Hopkins School for Advanced International Studies. Mr. Mennen would like to thank program beneficiaries in Bolivia and other countries for their support and willingness over the past years to open their doors and share their personal stories.

Introduction

Co-chaired by international development authority Hernando de Soto and former U.S. Secretary of State Madeline Albright, the Commission on Legal Empowerment of the Poor aimed “to make legal protection and economic opportunity not the privilege of the few, but the right of all”.² The Commission’s final 2008 report, *Making the Law Work for Everyone*, accelerated recent years’ critical reconsideration among some law and development practitioners and scholars of how and why most law-oriented development aid has focused on judiciaries and other formal legal institutions that, inter alia: are often not the informal or governmental forums where the poor seek justice; are typically inaccessible to the poor due to overly complicated legal codes, geographic isolation and the expense of legal assistance/representation; and are permeated by corruption, favoritism and other undue influences.³ The Commission’s report has been influential in suggesting that such development efforts should focus more heavily on issues that directly address the informal economic sector in which the billions of poor worldwide scratch out a living.

The substantive approach adopted by the Commission focuses on livelihood-oriented issues involving income and assets. The rights accordingly articulated by the Commission, termed livelihood-oriented legal empowerment for the purposes of this article, pertain to small and micro businesses, labor and property (mainly land), but bypass much of the wider spectrum of legal issues affecting the poor. The Commission’s focus thus contrasts with a broader approach to legal empowerment favored by many development scholars and practitioners that allows the contextual needs of the poor define subject matter emphasis. It includes many crucial issues and rights that are not directly livelihood-oriented such as those pertaining to gender, children, natural resources, input into governance and monitoring of government services, criminal defense, and racial, ethnic, religious and caste discrimination.

This article recognizes the importance of both the livelihood-oriented focus and the broader approach to subject matter emphasis without advocating one over the other. It furthers this debate by analyzing the impact of both approaches with data from five years of access to justice programming in Bolivia, while addressing the implementation challenges faced by each.

Although the Commission’s report has advanced theoretical concepts of legal empowerment, there is much analysis needed to turn theory into reality. This article draws a distinction between the Commission’s endorsement in principle of legal empowerment’s bottom-up nature (through which legal empowerment substantially overlaps with community-driven development) and the Commission’s programmatic emphasis on top-down initiatives driven by enlightened politicians, national-level policies and legal technicians. This distinction reflects the opinion in some circles that the Commission’s approach strays from the bottom-up principles of legal empowerment and does not

² See The Commission of Legal Empowerment of the Poor website:

<<http://www.undp.org/legalempowerment>> at 22 July 2009. The Commission also comprised such influential figures as former President of Brazil, Fernando Cardoso; former Prime Minister of New Zealand, Mike Moore; former President of Ireland and the United Nations High Commissioner for Human Rights, Mary Robinson; and former U.S Secretary of the Treasury, Lawrence Summers.

³ See T Carothers, ‘Promoting the Rule of Law Abroad: The Problem of Knowledge’, *Rule of Law Series, Democracy and Rule of Law Project*, Carnegie Paper No. 34 (2003); S Golub, ‘Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative’, *Rule of Law Series, Democracy and Rule of Law Project*, Carnegie Paper No. 41 (2003); V Maru, ‘Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide’ (2006) 31 *Yale Journal of International Law* 427.

adequately grapple with the challenges of obtaining effective top-down support for reform.⁴

Instead, this article advocates an approach based on a combination of legal service provision and empowering community-level actors to advocate for change, using examples and data from the access to justice program in Bolivia. Data from the operations of this network of 11 justice centers provides a unique insight into the legal reality and challenges faced by the poor. Lessons learned from the centers form the basis for the article's proposal to enhance legal empowerment through six programmatic aspects that increase the potential for effective advocacy and emphasize proactive interventions on livelihood issues of the poor. For as de Soto himself states in his book *The Mystery of Capital*, policies need to be informed by grassroots realities – or as he puts it, where “the dogs stop barking.”⁵

1. The legal empowerment approach

Legal empowerment is a term commonly used to differentiate from classic rule-of-law development approaches that focus aid on state institutions and the officials that oversee and operate them. Legal empowerment, however, recognizes that access to these institutions is limited for most vulnerable populations, especially in developing countries. Much rule-of-law attention by international development agencies and national governments has focused on increasing the technical proficiency of state institutions to ensure a legal environment more conducive to foreign direct investment and to improving the efficiency of the criminal justice system.

In contrast, the concept of legal empowerment, as articulated by the Commission and scholars such as Stephen Golub and Frank Upham, is based on substantial evidence that most poor and vulnerable populations are found outside the normative and organic framework of these institutions.⁶ These populations are legally marginalized due to inequitable power dynamics, inordinately complex and corrupt formal legal systems, and a host of other factors. As a result, they often employ informal systems and customary practices to protect and, where possible, enhance their incomes and assets.

In order to reach these populations and address their legal needs, law-oriented development has to be turned on its head. It should focus less on national-level institutions that institute top-down reforms and more on building solutions from the bottom up, based on the legal realities faced by the targeted beneficiaries. Legal empowerment can potentially cross-sect a large body of law that includes human rights, family law, property, and land law and contract enforcement/interpretation, but is best defined by its more grassroots approach that includes a wide range of community-based legal services, from mediation/alternative dispute resolution to legal orientation to formal legal representation.

⁴ See generally, M Stephens, 'The Commission on Legal Empowerment of the Poor: An Opportunity Missed' (2009) 1 *Hague Journal on the Rule of Law* 132; S Golub, 'The Commission on Legal Empowerment of the Poor: One Big Step Forward and a Few Steps Back for Development Policy and Practice' (2009) 1 *Hague Journal on the Rule of Law* 101.

⁵ The analogy refers to how property lines are often defined in untitled areas outside government influence – where a landowner's property ends is often best defined by where his/her dogs stop barking. See de Soto, below n 28, 179, 187.

⁶ S Golub, 'Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative', *Rule of Law Series, Democracy and Rule of Law Project*, Carnegie Paper No. 41 (2003); F Upham, 'Mythmaking in the Rule of Law Orthodoxy', *Rule of Law Series, Democracy and Rule of Law Project*, Carnegie Paper No. 30 (2002).

Compared to more traditional areas of rule of law reforms – e.g. support for judicial and other training institutes, courthouse construction and repair, the establishment of management and administration systems of judiciaries, technological upgrades, the strengthening of bar associations and the development of international exchanges for judges and court administrators – legal empowerment approaches attract significantly less funding from development agencies. The World Bank, for example, has implemented a number of programs to provide legal services for women, but funding pales in comparison to judicial reform efforts. In Ecuador, the World Bank's Judicial Reform Program devoted less than US\$400,000 of its US\$10.6 million budget in 2002 to projects providing legal services to the poor.⁷

While the efficiency of the formal legal system is important, legal empowerment emphasizes alternative approaches to legal system reform that are broader in focus and incorporate both formal and informal aspects. Legal empowerment works with local and community sources of the rule of law and builds advocacy for programs and policies using customary and local practices as a complementary mechanism to improving efficiency.⁸

Advocates of the legal empowerment approach tend to focus on rights and political disenfranchisement; however, the theory also has important implications for economic development and access to economic justice. The Commission's report and economic rule of law theories by de Soto, Posner and Reed,⁹ presented in greater detail in Section III, present important legal reforms needed to increase economic opportunities for the poor and increase economic growth as a whole. However, much of these proposed reforms will continue to exist as "paper tigers" if their implementation ignores the informal legal system and the empowerment of local actors. Legal empowerment is an intriguing but underappreciated part of the solution to these complicated reforms and the apparent paradoxes they present.

Rule of law "orthodoxy" has long been an aspiration of international institutions focused on increasing the stability of formal legal adjudication and predictable dispute resolution.¹⁰ Golub states that "as most prominently practiced by multilateral development banks, this top-down, state-centered approach concentrates on law reform and government institutions, particularly judiciaries, to build business-friendly legal systems that presumably spur poverty alleviation."¹¹ The problem lies in the means to this end, as institutions rely on questionable assumptions, unproven impact and insufficient attention to the legal needs of the disadvantaged.¹²

The legal empowerment approach instead focuses on the use of legal services, advocacy, and related development activities to foster "critical consciousness"¹³

⁷ World Bank, *Impact of Legal Aid: Ecuador* (2003) 2.

⁸ See generally, M Stephens, 'The Commission on Legal Empowerment of the Poor: An Opportunity Missed' (2009) 1 *Hague Journal on the Rule of Law* 132; S Golub, 'The Commission on Legal Empowerment of the Poor: One Big Step Forward and a Few Steps Back for Development Policy and Practice' (2009) 1 *Hague Journal on the Rule of Law* 101.

⁹ See generally, O L Reed, 'Law, The Rule of Law and Property: a foundation for the private market and business study' (2001) 38(3) *American Business Law Journal* 441; R Posner, 'Creating a Legal Framework for Economic Development' (1998) 13(1) *The World Bank Observer* 1; H de Soto, *The Mystery of Capital: why capitalism triumphs in the West and fails everywhere else* (2003).

¹⁰ F Upham, 'Mythmaking in the Rule of Law Orthodoxy', *Rule of Law Series, Democracy and Rule of Law Project*, Carnegie Paper No. 30 (2002) 8.

¹¹ S Golub, 'Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative', *Rule of Law Series, Democracy and Rule of Law Project*, Carnegie Paper No. 41 (2003) 3.

¹² *Ibid.*

¹³ The "critical consciousness" concept was developed by Paulo Freire. See P Freire, *Pedagogy of the Oppressed* (1970); P Freire, *Education for Critical Consciousness* (1973).

and increase disadvantaged populations' control over their lives¹⁴ - focusing directly on the poor rather than state institutions. In its most advanced form, it imparts "critical consciousness" - the ability of women, the poor and other marginalized groups to understand and think critically about the inequitable power relationships that affect their lives and to take action to challenge and transform those relationships.¹⁵ The approach also incorporates community-driven and rights-based development, and offers concrete mechanisms, including legal services that alleviate poverty, advance the rights of the disadvantaged, and make the rule of law more of a reality.¹⁶ Emphasis is placed on strengthening the roles, capacities and power of the disadvantaged and civil society; addressing issues and strategies that flow from the evolving needs and preferences of the poor. Activities can include community organizing, group formation, political mobilization, micro-credit provision, natural resource management and use of media, with integration of all a key element.

The legal empowerment paradigm is not intended to replace all orthodoxy programs with legal empowerment programs, but rather to shift focus and pursue legal empowerment strategies as a complement. Grounded in grassroots activities, legal empowerment can also translate community-level needs into reforms of national laws and institutions.¹⁷ Golub analogizes the current rule of law reform paradigm to a public health campaign that only concentrates "on urban hospitals and the doctors staffing them, while largely ignoring nurses, other health workers, maternal and public education, other preventative approaches, rural and community health issues, building community capacities, and non-medical strategies."¹⁸ Rule of law, like health, cannot be addressed merely by central institutions, but must involve a wide spectrum of societal actors, especially the informal institutions of the poor, indigenous and disenfranchised.

Legal empowerment approaches go hand in hand with rights-based approaches to development and programs to enhance civil society. Legal empowerment uses legal services through civil society groups to help the poor learn, act on and enforce their rights in pursuit of development and the goal of poverty alleviation. Legal empowerment, however, goes much further than rights-based approaches by focusing on the connections between development, freedom and power. Building on Amartya Sen's conclusions on development being a measure of freedom, legal empowerment is an avenue by which the poor can increase freedom in the areas that most affect their capacity to progress.¹⁹

2. Commission on legal empowerment of the poor: livelihood-based legal empowerment

Over the past two decades, the widespread transformation to democracy and market-based economies around the world has largely assumed the existence of the requisite rights and market characteristics on which these systems are based; establishing a well-functioning market economy without them has proven to be extremely difficult. Despite radical changes to the economies of many countries,

¹⁴ Golub, above n 10.

¹⁵ Asian Development Bank, *Law and Policy Reform at the Asian Development Bank 2001, Legal Empowerment: Advancing Good Governance and Poverty Reduction* (2000) <http://www.adb.org/Documents/Others/Law_ADB/lpr_2001.asp?p=lawdevt> at 22 July 2009.

¹⁶ Golub, above n 11.

¹⁷ Ibid, 5.

¹⁸ Golub, above n 11, 6.

¹⁹ A Sen, *Development as Freedom* (2000).

millions remain mired in poverty. The diagnoses and remedies provided by the West and its institutions, such as the International Monetary Fund and the World Bank, have not brought the predicted changes and have often exacerbated the efforts of countries to lift the majority of their citizens out of poverty. The "lost decade"²⁰ of the 1980s in Latin America was a particularly egregious result of how market policies such as the now largely defunct Washington Consensus²¹ can go awry. As dire as the market-based approach has become, it has not failed completely, and still represents the best opportunity for lifting millions of citizens out of the poverty trap in which they find themselves. To do this, however, the focus of economic development must be radically altered from macroeconomic policies to address the underlying foundation of market economies – the rule of law.²²

As many famous theorists and academics have argued, from economists such as Hernando de Soto to jurists such as Richard Posner, the success of market economies in countries such as the United States and Japan is due to the fundamental, but often overlooked, characteristics of secure, delineated property rights and contract enforcement.²³ Market approaches have largely ignored or found it too difficult to address this foundation and have focused instead on macroeconomic policies and central government operations in areas such as natural resources extraction and infrastructure development. The powerful potential of capitalism and market economies meanwhile remains largely untapped. Entrepreneurs cannot access the capital trapped in land without title; investors are unwilling to lend without contract enforcement; and small businesses face large, prohibitive costs for making their enterprises legal.

The deep-rooted economic problems of fledgling markets, however, extend beyond contract enforcement and property title to basic foundations of a market economy that allow entrepreneurs of all classes to strive for economic efficiency and to pursue innovative market approaches beyond their families and close associates. Furthermore, the economic opportunities that do exist, including access to collateral and contract enforcement, are accessible only to the wealthy. This disparity between poor and rich in access to the benefits of market economies furthers the socio-economic divide that has become the defining characteristic of many young democratic societies and market economies.

The importance of property – the legal expression of ownership of assets – in a market-based economy cannot be understated. Numerous rule-of-law theorists have identified property rights as the primary cause of market access failures for

²⁰ The "lost decade" refers to the stagnation of Latin American economies in the 1980s after steady and promising economic growth during the previous two decades. For more discussion on the "lost decade" see, M Daly Hayes, 'The U.S. and Latin America: A Lost Decade?' (1988/89) 68(1) *Foreign Affairs*.

²¹ The Washington Consensus is an original package of ten neo-liberal economic policy reforms that encourage market liberalization and privatization of state industries. The term was first coined and presented by J Williamson in *Latin American Adjustment: How Much Has Happened* (1990).

²² A number of important initiatives in reforming economic legal frameworks have been attempted in the past, but their efforts largely exist as paper tigers or have never been implemented due to entrenched influences. For more information on the work of groups such as the Center for Economic Analysis of Law, see, among others: H Fleisig, 'The Right to Borrow', *Public Policy for the Private Sector*, World Bank Private Sector Development Department, Note No. 44 (1993); H Fleisig, J C Aguilar and N de la Peña, 'Legal Restrictions on Security Interests Limit Access to Credit in Bolivia' (1997) 31(1) *The International Lawyer* 65; K Pistor, M Raiser and S Gelfer, 'Law and Finance in Transition Economies', *Centre for International Development*, Working Paper No. 49; H W. Fleisig and N de la Peña, 'Peru: How Problems in the Framework for Secured Transactions Limit Access to Credit' (1997) 33 *NAFTA Law and Business Review of the Americas*.

²³ R Posner, 'Creating a Legal Framework for Economic Development' (1998) 13(1) *The World Bank Observer* 1.

the poor in the developing world.²⁴ They have identified three important and overlapping ways that property rights premise the marketplace.²⁵ First, property rights identify and protect the set of tangible and intangible resources that can be transferred in the marketplace. Second, property rights secure benefits of and provide incentives for owners to seek improvement of their resources. Third, property rights create security for capital borrowing and investment, turning fixed resources like land into mutable and liquid form.²⁶

As Tom Bethall states in his highly regarded book, *The Noblest Triumph*, “all areas of law radiate from the broad concepts of the property system, including the narrow modern body of ‘property law.’”²⁷ But as fundamental as property is to law and the functioning of a marketplace, the organic growth of property systems that occurred in industrialized nations has not happened on a society-wide scale in the developing world; instead, indigenous, customary and informal property systems exist simultaneously and often in conflict with foreign, superimposed property laws – vestiges of colonial efforts to solidify elite access. Many scholars, including de Soto, see this as a failure of the rule of law and call for inclusion of the poor into the “formal” property system used by the elites.²⁸

Hernando de Soto’s signature work, *The Mystery of Capital*, is an innovative account of how capitalism has failed throughout the developing world and is the theoretical foundation for much of the Commission’s work.²⁹ In this book, de Soto details how lack of access to capital, extensive government restrictions and lack of contract enforcement combine to undermine the capitalist economies that developing countries have been striving to create for the past half-century.³⁰ Using his native Peru as a measuring stick, de Soto shows, through investigation and reproduction of small business scenarios, the barriers that prevent illegal or poor entrepreneurs from entering the legal sector of the market economy. He states that the problem is not that developing countries do not have formal property systems, but that most citizens cannot gain access to it.³¹ Developing countries have been trying to open up their property systems to the poor for the past 180 years, but have largely failed to realize that property is not a primary quality of assets, but the legal expression of an economically meaningful consensus about assets.³² Western nations built formal property systems by discovering the “people’s law” through the formation of social contracts based on the practices and norms of the extralegal sector.³³ Developing countries, in contrast (de Soto uses Peru as an example), have not geared their formal property systems to process extralegal proofs of ownership, which is the only kind of proof the poor have.³⁴ The poor and indigenous have never been given the legal mechanisms that would allow them to fix their economic rights over their assets, despite apparent legal rights.

²⁴ See generally, T Bethall, *The Noblest Triumph: Property and Prosperity through the Ages* (1998); H de Soto, *The Mystery of Capital: why capitalism triumphs in the West and fails everywhere else* (2003); O L Reed, ‘Law, The Rule of Law and Property: a foundation for the private market and business study’ (2001) 38(3) *American Business Law Journal* 441; B Atuahene, ‘Legal Title to Land as an Intervention Against Urban Poverty in Developing Nations’ (2004) 36 *George Washington International Law Review* 1109.

²⁵ O L Reed, ‘Law, The Rule of Law and Property: a foundation for the private market and business study’ (2001) 38(3) *American Business Law Journal* 441, 451.

²⁶ *Ibid.*

²⁷ T Bethall, *The Noblest Triumph: Property and Prosperity Through the Ages* (1998) 3.

²⁸ H de Soto, *The Mystery of Capital: why capitalism triumphs in the West and fails everywhere else* (2003).

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*, 157.

³³ *Ibid.*, 160.

³⁴ *Ibid.*, 167.

It is not entirely surprising then that the Commission's report focuses almost entirely on de Soto's area of expertise – reform of the informal economy – to brand its own version of legal empowerment based on “the livelihoods of the poor: property rights, labour rights, and business rights”³⁵, referred to in this article as livelihood-based legal empowerment. The report calls for reform along “four pillars of legal empowerment” directly linked to the informal status of the poor: access to justice and rule of law, property rights, labor rights and business rights.³⁶ Access to justice reform as defined by the report is more of an approach similar to institutional reform and seemingly embraces the classic form of rule of law orthodoxy. The “pillar” calls for increased functional reach of legal protection to the poor by improving state institutions and addressing issues of elite capture. Access to justice turns paper rights into functional rights, including addressing basic legal vacuums such as lack of legal identity – a precursor for access to government services and legal education efforts.³⁷ The pillar, however, is amorphous in focus and an artificial mix of structural interventions and thematic issues. More specifically, the pillar mentions all of the following as access to justice: classic justice sector institutional reform, provision of legal services to the poor through community-based organizations, and establishing clear legal identity through some combination of the above.

The remaining three pillars are more firmly based in important thematic topics: property, labor and business regulations. The property rights pillar emphasizes the legal security as well as psychological ramifications of not having recognized title to both physical and liquid assets. For example, as many as 90 per cent of laborers in some South Asian and African countries are informally employed.³⁸ The labor rights pillar calls for reform and greater enforcement of the legal protection for laborers provided by laws and international declarations.³⁹ The business rights pillar is based on the findings of the Commission that there are substantial barriers to business registration and entry into the formal economy, and that there is an impediment to the ability to contract, access financial services and other governing precursors for a robust economy.⁴⁰

To a good extent, the Commission's report sidesteps the crucially important issue of how to make the substantive rights that it describes a reality for the poor. It largely falls back on the good faith and intentions of governments that it acknowledges may be permeated or even controlled by corrupt or otherwise anti-reform interests. Similarly, it argues that such governments can be persuaded in their own self-interest to promote legal empowerment. But it conflates the self-interest of governments with that of the individuals who may constitute or control them, and whose power or profits may hinge on preserving the status quo.

Emphasis needs to be placed instead on the process by which legal empowerment is implemented in relation to the subject matter focus of the Commission's report. As detailed earlier, a defining aspect of the legal empowerment approach is working through local, non-lawyer actors. An overemphasis on having governments launch reforms without grassroots input and on legal technicians providing services such as formal judicial representation decreases the powerful dynamic of community empowerment.

³⁵ See, Commission of Legal Empowerment for the Poor, *Making the Law Work for Everyone*, Final Report (2008) 31, available at <http://www.undp.org/legalempowerment/reports/concept2action.html> at 22 July 2009.

³⁶ *Ibid*, 5.

³⁷ *Ibid*.

³⁸ *Ibid*, 6.

³⁹ *Ibid*, 7.

⁴⁰ *Ibid*, 8.

The Commission's report presents many of the same shortcomings of the rule of law orthodoxy and the same criticisms that de Soto's past work has elicited.⁴¹ While many top-down economic law reforms are necessary and have resulted in more efficient laws, they do not address the entire range of issues faced by the poor; instead, they rely on the effects of reforms trickling down to the poor, a dubious assumption in many contexts. Top-down approaches such as these fail to link formal law with the informal economic activities of the poor. Beneficiaries are mostly limited to established, wealthy economic actors who have the capacity or political capital to access the credit and contract enforcement systems, while the economically and politically disenfranchised are unaffected and only left further behind economically. This article recognizes the important contributions of these reform efforts, but calls for a paradigmatic shift in the approach to rule of law reform that places less emphasis on rewriting laws and increasing the efficiency of formal government institutions, and more emphasis on structural access issues and informal legal mechanisms.

The economic access issues identified by the Commission and in de Soto's *The Mystery of Capital* have inherent empowerment implications for the poor. The lack of access to capital and the insecurity of property rights are problems with grassroots ramifications that require community-based initiatives on a society-wide scale to address. Despite this reasoning, there is a genuine disconnect between economic reform and legal empowerment approaches. Legal empowerment programs tend to concentrate on human rights and social causes involving, for example, the protection of workers and the environment. Economic reform, meanwhile, is left to microfinance and macro-level efforts. These economic initiatives rarely employ local input, organization or empowerment.

A legal empowerment approach to economic access issues is particularly effective in combating entrenched interests to economic reform, because it embraces the extra-legal approaches that make the informal sector vibrant, attempting to scale these approaches up to the point of legal recognition. This contrasts with the Commission and de Soto's more top-down approach that places reform in the hands of enlightened political leaders, instead of selecting issues and strategies that flow from the evolving economic needs and preferences of the poor. The nexus of legal empowerment and poverty alleviation in the approach advanced by this article, however, is directly associated with economic activities of the poor. Rather than focusing only on Western social ideals and social definitions of poverty, legal empowerment harnesses the changes identified by small entrepreneurs and farmers to improve their access to economic advancement and improved business climate. Lessons learned from legal empowerment activities in Bolivia support this approach yet also illustrate a more complex environment for reform.

3. Bolivia National Access to Justice Program

The Bolivia National Access to Justice Program (BNAJP) was initiated in 2004 as a collaboration between the Ministry of Justice and the U.S. Agency for International Development (USAID). The core element of the Program is the creation of 11 justice centers located in poor rural and urban communities throughout the country, each operated by individual center coordinators and supported by USAID project staff and Ministry of Justice BNAJP officials.⁴² BNAJP provides a useful case study for analyzing the effectiveness of legal

⁴¹ Golub, above n 11.

⁴² The BNAJP is implemented through a USAID contract with Checchi and Company Consulting.

empowerment in relation to both livelihood-based and broader legal empowerment approaches. The centers are the base of operations for provision of legal services and community legal education efforts performed by center staff and volunteers. Currently, each center is staffed by a coordinator, a lawyer, two mediators, and in six of the centers, a judge. The centers also support over 120 community volunteers and law student interns.

Since 2004, the centers have provided dispute resolution and legal counseling in over 150,000 cases.⁴³ The centers have also conducted a variety of legal education campaigns that have directly trained over 48,000 people and reached countless more through the distribution of legal information pamphlets and posters, and radio and television programs.⁴⁴ The number of cases brought to the centers has steadily increased each year, indicating an increasing consciousness of community members on where and how to address their legal issues. Community surveys also indicate a greater general awareness in targeted communities of their rights and the legal structures that allow for their protection.

The centers have developed a number of programs and campaigns in their communities to increase access to justice on a variety of issues ranging from intra-family violence to registration of land titles to property inheritance. The programs employ a combination of community leaders, volunteers and legal professionals to educate and suggest proactive solutions for citizens to resolve their own legal issues, including which local/national government offices can address specific problems. The programs also inform communities of the services offered by the centers for issues and disputes they are not able to resolve themselves.

Rural centers tend to conduct a greater degree of outreach through mobile clinics of mediators, volunteer counselors and lawyers visiting remote communities. As indicated by Figure 1, a high percentage of center clients tend to come from indigenous and marginalized populations.

Figure 1. Cross-section of Justice Center Users⁴⁵

Ethnicity	%
Aymara	58
Quechua	10
Other Ethnic Groups	5
No Specified Ethnicity	27

Gender	%
Female	71
Male	29

⁴³ Data from 2008–2009 project records combined with project publication, *Centros Integrados de Justicia reporte de Resultados 2005-2007*, Proyecto de Apoyo a la Administración de Justicia en Bolivia (PAAJB), USAID/Bolivia (2008). Report on file with author.

⁴⁴ Ibid.

⁴⁵ Data from *Centros Integrados de Justicia reporte de Resultados 2005-2007*, Proyecto de Apoyo a la Administración de Justicia en Bolivia (PAAJB), USAID/Bolivia, 2008.

Highest Level of Education	%
No Education	10
Primary Education	56
High School Level	28
University or Higher	6

Five years of BNAJP data suggest that the issues that constitute the subject matter emphasis of livelihood-oriented legal empowerment highlighted by the Commission (business, labor and property rights) are prevalent throughout Bolivia, but arguably to a lesser degree than other issues such as criminal and domestic disputes. This suggests the importance of the livelihood subset of issues, but also indicates the greater priority placed by the poor on other issues outside the Commission's foci that directly and indirectly effect general livelihood needs.

As shown in Figure 2, the percentage of cases across all justice centers is highly skewed toward family disputes, including divorces, child support and domestic violence. The vast majority of family cases end up in mediation, sometimes referred by the center lawyer, but most often requested directly by the parties. Formal legal representation of aggrieved parties in family disputes is less common. Civil cases have the second highest frequency, at 24 per cent. Civil disputes cover a wide range of subject matters, including contract disputes, property and inheritance, and legal identity issues. A further breakdown of civil cases is detailed below. Criminal cases represent 12 per cent of the cases received by the centers and are most commonly brought by plaintiffs declaring a grievance for assault or theft. Most criminal cases are relatively minor and are handled within the center through the center lawyer and/or judge. More severe cases are referred to the state prosecutor's office. As indicated in Figure 2, subject matter areas related to livelihoods, such as labor disputes and land titling/disputes only represent a small portion, 2 and 3 per cent respectively, of the cases brought to the Centers.

Figure 2. Percentage of Cases by Subject Matter across all Justice Centers (2007)⁴⁶

Subject Matter Area	% of Cases
Family	54
Civil	24
Criminal	12
Land	3
Administrative Law	3
Labor	2
Other	2

A further analysis of cases indicates the importance of certain livelihood issues for the poor and disfranchised in Bolivia. Case logs and individual case details were analyzed for two centers from January to March 2009 – one urban, El Alto District 6, La Paz, and one rural, Yapacani in the rural Chapare region of the Department of Santa Cruz. In total, 2,119 cases were reviewed from this three-month period

⁴⁶ Ibid.

(see results in Figure 3). The analysis revealed a number of disputes within the Civil and Administrative law categories that pertain to the livelihoods subset, including 106 cases of contract enforcement in urban El Alto and 31 in Yapacani. Requests to modify erroneous identification documents such as birth certificates and ID cards were a major category of cases in both locations, which is directly related to the legal identity focus in the Commission's report. In Yapacani, the Center conducted an extensive campaign to ensure that all citizens had identification documents. As a result, over 31 per cent (248) of requests for cases handled over the course of the three months involved such identity issues. The figure for the El Alto Center was 17 per cent. The prevalence of these cases in Yapacani and, to a lesser extent, in El Alto is evidence of the importance of legal identity for both urban and rural citizens, but also an indication of the effect that directed campaigns have in reaching a larger number of people.

Figure 3. Cases by Subject Matter, Individual Justice Centers (January 2009 – March 2009)⁴⁷

Subject Matter Area	No. of Cases	% of Cases
El Alto District 6 (urban)		
Contract enforcement	106	8
Property-inheritance	54	4
Land/titling	58	4
Legal identity	225	17
Labor	12	1
Family	632	48
Other (criminal, administrative law, other civil, etc.)	243	18
TOTAL	1,330	
Yapacani (rural)		
Contract enforcement	31	4
Property-inheritance	3	<1
Land/titling	9	1
Legal identity	248	31
Labor	10	1
Family	217	28
Other (criminal, administrative law, other civil, etc.)	271	34
TOTAL	789	

Other results from the two centers covering the Commission's foci include: Property/Land Rights – 57 cases of property-inheritance and 67 cases of land/titling; Business Rights – 137 cases of contract enforcement; and Labor Rights – 22 cases of labor disputes. Over the three-month period in these two centers, there were no issues presented on business registration or government interference with business rights or expropriation of property. The greater amount of property and business rights cases in a major urban location such as El Alto is not entirely surprising considering that the economy is more robust. The

⁴⁷ Data from Individual Justice Centres Case Information Database, Support Project for the Administration of Justice in Bolivia, USAID/Bolivia. On file with author.

low incidence of land disputes or titling-related requests in rural Yapacani, however, is surprising given the importance of land and agriculture to rural subsistence.

In general, the numbers of livelihood-based cases are minor in comparison to other issues such as family and criminal disputes. Nonetheless, addressing livelihood represents a potentially significant step toward advancing legal and economic security for affected populations. Of particular note is the success the centers had when conducting a targeted campaign on one of the issues – legal identity. The ability to harness the community mobilization power of a network of volunteers and interns to address a specific issue, such as was done in Yapacani, is particularly important for future targeting of specific livelihood-based legal empowerment issues.

The analysis of the cases handled by these two centers indicates that the issues addressed by a legal empowerment approach are much broader than those proposed by the four pillars of the Commission. At the same time, it does not diminish the importance of targeted efforts on livelihood-based issues. As shown by the legal identity campaign in Yapacani, there are potentially a large number of unidentified livelihood issues, of which the poor may be unaware of in daily life, but that have severe ramifications for future economic activity. The challenge for legal empowerment approaches, as embodied by the centers in Bolivia, is to balance the immediate legal needs of the poor with proactive campaigns that address additional underlying issues affecting economic opportunity.

4. Suggestions for fortifying legal empowerment of the poor programming

4.1 Flexibility to adapt to complex legal environments

The success of the project in Bolivia in addressing the legal needs of marginalized populations, tempered by a less than robust salience of livelihood-oriented work, provides important lessons on the need for flexible programming in legal empowerment work. There are a number of legal issues with immediate impact for the poor, such as criminal claims and family disputes, but the barrier to addressing subject matter areas related to the informal economy are greater than merely providing access to legal services. Targeted interventions, such as campaigns on specific issues, are required to improve community knowledge of formal vs. informal economy issues and the available legal options to empower individuals to effect change in their socio-economic status.

The BNAJP data indicate a more complex environment for legal empowerment initiatives than the Commission presented. In fact, there are a variety of other legal issues that confront and constrain poor Bolivians and other impoverished populations. In this context, the Commission's central concern of livelihood-oriented legal empowerment issues seems far too narrowly defined. A broader definition of poverty and development, such as that held by the United Nations Development Programme (UNDP) and many other international organizations, emphasizes the importance of human development and the many other ways in which disadvantaged populations achieve or lack control over their own lives, while also including the income and assets focus of the Commission. This definition of poverty is supported by the BNAJP data on issues that affect the poor on a daily basis. For example, women victimized by domestic violence or discrimination, a substantial source of cases in the centers, are likely to suffer income and assets deprivation.

A broad definition of poverty is necessary for a comprehensive approach to legal empowerment programs. Nevertheless, livelihood-oriented issues, including the thematic focus of the Commission, are an essential aspect of any programmatic definition of poverty. Legal empowerment program designs need to incorporate these issues with consideration of their often unseen, but fundamental effect on economic security. This article suggests that legal empowerment programs need to balance the immediate needs of the poor with more long-term, fundamental economic issues and to build in flexibility into programming that would allow for adaptation to the continually evolving issues and needs of the poor.

4.2 Increased focus on livelihood-based issues

Justice centers are community-level institutions that increase access to justice for poor rural and urban communities. They are ideally run by local civil society organizations insulated from political interference while providing links to the formal justice sector. Their unique approach of bringing together civil society, the local justice sector and community stakeholders to reach consensus on local problems is a powerful tool that can be harnessed to affect change on a range of economic issues. However, as already emphasized, there is a need to increase the attention paid by the centers to economic issues that extend beyond the most common community-level disputes. The provision of basic legal services is an important aspect for garnering greater community-level support and increasing the profile of the centers in the community, but the temptation to stop at that level must be resisted in the interest of addressing other fundamental issues related to the plight of the poor.

More specifically, centers need to play a highly proactive role in their communities to identify issues related to livelihood themes, conduct educational and legal service campaigns, and support advocacy around these themes, including aggressive outreach to more remote populations that might otherwise be unaware of their livelihood-oriented rights. Examples of such initiatives include land titling campaigns for rural, farming communities and legal education outreach on how to establish a business, while helping to identify, analyze and promote changes to policies that create obstacles for the poor. The centers can build sustainable solutions to problems encountered by the poor by not only assisting with immediate needs, but also fomenting critical consciousness of the root cause of these problems and the necessary advocacy efforts to combat them.

Livelihoods-oriented work should also be linked to rural/agricultural banks, microfinance projects and other institutions that provide credit or that affect the ability to turn assets into collateral.

4.3 Integrate community and informal justice systems

Justice centers and other community-based legal initiatives often operate in isolated, controlled programmatic environments that provide limited linkages to the formal system. Unfortunately, local and customary forms of justice and dispute resolution are often ignored or subsumed within the centers instead of complementing and increasing their standing as important mechanisms for access to justice vis-à-vis the formal system, despite wide community support for such local mechanisms. The author's own work in southern Sudan on customary law showed that both men and women prefer local tribal chiefs as the first arbiters of

disputes by nearly ten to one over the formal judiciary.⁴⁸ Countries such as South Africa have been largely successful in incorporating customary and tribal justice institutions into the larger justice sector, providing an avenue for the poor to address legal issues and disputes while providing formal recognition. In customary and tribal societies such as Sudan, South Africa and Bolivia, it is essential that national legal frameworks are pluralistic and flexible enough to incorporate customary legal traditions. Understanding local customs and giving local people the ability to articulate their rights and ensure recognition will create economic conditions and informal legal systems akin to the “people’s law” and social contracts formed by Western nations in their infancy.⁴⁹

Another example of community-level justice systems that exist in developed and developing countries alike are Justices of the Peace (JPs) – a system of small-town legal laypersons that originated in England in the 1700s. A number of countries including the United States of America, France and Peru have a tradition of appointing local residents as JPs. In the 19th century, Peru instituted a system of uncompensated JPs that has enjoyed public popularity due to their ability to understand the litigants’ cultural values as well as their social problems.⁵⁰ Seventy percent of the JPs are laymen, the rest attorneys. According to the Executive Council of the Judicial Branch, almost every population center in Peru has at least one JP.⁵¹ In contrast to the professional judiciary, JPs are praised as being honest and just. A majority of Peruvians (51 per cent) trust JPs more than other forums for resolving disputes, despite their lack of formal legal training.⁵²

Community-level justice systems do not employ legal empowerment techniques per se, but represent an important source of conflict resolution that reflects the local legal environment, including the use of customary or indigenous law. The operators of these systems generally do not receive the amount of training or responsibility that could expand their adjudicating capacities to include more economic law issues such as contract enforcement, property disputes and collateral foreclosures. But their mere existence and success throughout many societies is worth studying further for their potential role in expanding legal empowerment initiatives. As with any institution, scaling up a volunteer or part-time institution such as the JPs jeopardizes its success and ability to provide continued, unbiased dispute resolution. A comprehensive and independent training and monitoring program linked to civil society groups, bar associations and formal judicial ethics bodies could potentially mitigate corrupting influences.

4.4 Law student interns and post-graduate legal service

The use of community volunteers and law student interns in the Bolivia justice centers has proven to be one of the most efficient and cost-effective initiatives developed over the course of the program. Interns have proven particularly adept at learning and implementing the skills necessary to extend community outreach and provision of basic legal counseling services to greater sectors of the local community. The Bolivia method, however, is largely ad hoc, with individual

⁴⁸ See United Nations Population Fund (UNFPA), ‘Adapting Restorative Justice Principles to Reform Customary Courts Dealing with Gender-Based Violence in Southern Sudan’ (May 2008). Report on file with author.

⁴⁹ S Golub, ‘Nonlawyers as Legal Resources for Their Communities’, in M McClymont and S Golub (eds.) *Many Roads to Justice: The Law Related Work of Ford Foundation Grantees Around the World* (2000) 297.

⁵⁰ T L Anenson, ‘For Whom the Bell Tolls: Judicial Selection by Election in Latin America’ (1997) 4 *Southwestern Journal of Law and Trade in the Americas* 261, 277.

⁵¹ HJ Brandt, ‘The Justice of the Peace as an Alternative: Experiences with Conciliation in Peru’ in M Rowat, W Malik and M Dakolias (eds.) *Judicial Reform in Latin America and the Caribbean: Proceedings from a World Bank Conference*, World Bank Technical Paper No. 280 (1995).

⁵² *Ibid*, 95.

interns choosing to dedicate a semester to providing legal services in communities as part of their educational requirements. Chile's system of Corporations for Judicial Assistance (Corporaciones de Asistencia Juridica), established in 1981, is a model for creating an obligatory post-graduate requirement for law students to serve the country by providing legal aid services to poor communities.⁵³ In the Corporaciones, recent law school graduates are required to perform six months of unpaid legal services before receiving their licenses as attorneys.⁵⁴ The Corporaciones are a unique institution in Latin America. In all, 13 Corporaciones, composed of recent law graduates and two or three staffed attorneys and social workers, work in conjunction with municipal and regional governments to provide legal services.⁵⁵ A typical student postulant can handle up to 110 cases over a six-month period.⁵⁶

Post-graduate and law student intern programs do not necessarily include livelihoods-based themes, but their contact with local communities represents an important resource for potential expansion into these issues, including community education and advocacy on land reform and other national issues that effect economic well-being. The Corporaciones illustrate a successful and sustainable model of collaboration between public service attorneys and law students, supported by government funding, which can expand the reach of legal services for the poor.

4.5 Paralegal networks

Networks of community paralegals⁵⁷ have proven to be a successful approach for advancing legal empowerment. Paralegals are most often laypersons drawn from local communities that are trained to provide legal education, advice and assistance to the poor and disadvantaged. Paralegal activities can range from providing basic information to representation in administrative processes and assisting litigation. Paralegal networks seek to improve access to justice by creating local bases of knowledge that facilitate community involvement in the legal/administrative processes that can resolve their problems. One of the most important aspects of the paralegal approach is the flexibility of paralegal groups to use informal, community-based legal systems to articulate rights that translate to the formal system. The empowerment aspect of paralegal work encourages advocacy and lobbying in areas outside the formal law and creates mechanisms for addressing problems throughout different sectors.

The community volunteers in the Bolivia Justice Centers work largely like groups of paralegals. Their insight into community issues combined with legal training at the centers allows them to be an effective force for disseminating legal information and extending the provision of legal services. However, they do not fully embody the concept of a paralegal network since they are largely restricted to working in the centers, rather than a more dynamic community presence stationed in isolated communities that promote advocacy efforts through regional interconnection. Specifically, the physical location of the Bolivian volunteers limits their ability to serve as extensions of the city/town-based lawyers and centers. The expansion of center-based legal empowerment programs to a more dispersed but better connected paralegal network has the potential to transform legal service provision into a truly community-driven empowerment process that

⁵³ M Samway, 'Access to Justice: A Study of Legal Assistance Programs for the Poor in Santiago, Chile' (1996) 6 *Duke Journal of Comparative and International Law* 347.

⁵⁴ *Ibid*, 350.

⁵⁵ *Ibid*.

⁵⁶ *Ibid*, 358.

⁵⁷ The term "paralegal" is rejected by some due to the existence of professional paralegal associations that differ widely from the definition used in this context of layperson community actors.

enhances the ability of remote communities to advocate for necessary change.

A number of legal advocacy NGOs have been very successful in using paralegals to affect a wide range of issues. NGO-sponsored or -supported paralegals have proven effective at promoting judicial access, and have helped to demystify the law and create self-reliant legal capabilities for the communities they serve.⁵⁸ Paralegal networks strengthen implementation of laws by applying informed pressure on government bodies and private offenders and heighten participatory development by bringing previously powerless voices into the decision-making process.⁵⁹

Paralegal networks in countries such as China, Ecuador, the Philippines, South Africa, Sierra Leone and Namibia are examples of projects that have used innovative approaches to increase “legal literacy” and affect change in a variety of environments and on topics directly and indirectly related to livelihood-based legal empowerment. Namibia’s Legal Assistance Centre is a professional paralegal network that worked on apartheid issues upon its inception, but now primarily helps victims of domestic violence to secure restraint orders, workers to regain jobs from which they have been unfairly dismissed, and the disadvantaged to secure government benefits. Paralegal programs in Sierra Leone have provided a compelling example of building the rule of law in post-conflict environments amidst conflicting or dualist legal structures.⁶⁰ The SUBIR Project in Ecuador developed a paralegal network in indigenous, Afro-Ecuadorian and peasant communities to promote legal rights among their communities, including securing land tenure to community land that had been classified as state land.⁶¹ Empowerment of the communities to claim legal title to the land corresponded with greater commitment and responsibility in conserving the protected areas than when administered by State Forestry agencies. Through SUBIR, the paralegal networks have also helped local producers of handcrafts access external markets and acquire environmentally friendly certifications for their products.

Paralegal networks are an important element to expanding current legal services programming to a more legal empowerment approach. A well-developed network has vast potential to provide a powerful combination of community-based legal literacy, training and advocacy, including on livelihood-based issues. Paralegal networks can also play an active role in increasing access to the legal services essential for building the confidence of poor entrepreneurs to expand and enter into contracts outside of informal networks. Paralegal networks can help provide security to these entrepreneurs through a gamut of legal services, beginning with advice on creating a contract up to legal action and dispute resolution using the legal resources of supporting NGOs. They can also provide legal advice for individual or groups of farmers to gain access to credit for purchasing seeds or construction irrigation, including perfecting security interests in future harvests, equipment or other movable property.

Paralegals do not just provide legal services, but also work with communities to organize and create collective solutions to common problems. This aspect of the

⁵⁸ D Manning, ‘The Role of Legal Services Organization in Attacking Poverty’ (paper presented at the World Bank Conference: *Empowerment, Security and Opportunity through Law and Justice* 8-12 July 2001, 21).

⁵⁹ Golub, above n 48.

⁶⁰ V Maru, ‘Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide’ (2006) 31 *Yale Journal of International Law* 427.

⁶¹ See S Baranyi, C D Deere and M Morales (eds.) ‘Perspectives from Research’ in *Land and Development in Latin America: Issues and Openings for Policy Research* (2004) available at <http://www.idrc.ca/fr/ev-67380-201-1-DO_TOPIC.html> at 22 July 2009. For more information on SUBIR, see the CARE website: <<http://www.careusa.org/vft/ecuador/day1.asp>> at 22 July 2009.

work of paralegals is particularly salient for livelihood issues. Paralegals have the potential to collaborate with a wide range of economic actors in the communities they serve to demand rights and services, and to take advantage of legal opportunities. Business associations such as farmer cooperatives, women's groups, trade unions and microfinance projects abound in many poor communities. The potential of these groups to further organize and empower themselves to effect change in economic regulations and legal reforms is limitless with the help of community paralegals. Paralegals have the capacity to work with both individuals and groups in the communities in which they live to help delineate and translate informal property systems into legally protected rights.

Paralegals are important agents, if trained and organized properly, for determining "where the dogs stop barking" and to consolidate informal systems into local, organic systems that form a bridge between the formal and informal.

4.6 Prioritizing independent, non-governmental efforts

The legal empowerment approach proposed by this article emphasizes grassroots work carried out by independent entities rather than governmental agencies. Although the Commission does acknowledge a bottom-up facet of legal empowerment, it basically calls for an agenda of change and programmatic interventions from the policy level down, promoted and implemented by enlightened politicians. In contrast, this article advocates that interventions must be driven by the needs of the poor and developed both through stakeholder-led advocacy and careful analysis of local problems (including interventions regarding livelihood-based issues). Excessive reliance on the good will and effectiveness of governments' top-down initiatives or government-implemented programs can prove counterproductive.

The BNAJP experience illustrates this point. Throughout their five years of existence, the Bolivia justice centers have largely been operated directly by the USAID project contractor, with collaboration from the Bolivia Ministry of Justice more in name than in substance. In May 2009, however, the Ministry of Justice enacted a decree to take over the supervision of center staff and payment of their salaries. Within days of the Ministry's assumption of control, all center staff (lawyers, coordinators, mediators) were replaced by less experienced, and in some cases, completely unqualified professionals. Early analysis indicates a strong political allegiance by the new center staff to the controlling political party of Bolivia and political favoritism in the appointment process – a fact underscored by increased politicization throughout Bolivia since national elections will be held at the end of the year. This development is a stark example of the potential pitfall of having centers run by the government and subject to politics. Not only does political interference potentially affect the professionalism and efficiency of the centers, but it also virtually eliminates the ability of the centers to serve as a source for advocacy against ineffective government policies. On the contrary, the jobs offered by the centers serve as a tool for awarding political supporters, with little emphasis placed on performance or providing effective services to the poor.

The argument for such government take-over is that it promotes program sustainability by virtue of the state assuming costs. But sustainability is in doubt when a program becomes tainted by political control and ineffective service delivery. Such centers and other legal empowerment programs should largely operate outside the purview of the government. This and other lessons learned from the Bolivia program help support a basic framework for legal empowerment interventions. Programs should:

- emphasize civil society and community-based groups as opposed to government-run interventions;
- contain a mix of elements that prioritize the needs and concerns of the disadvantaged;
- work with local justice institutions, informal or customary, that the poor can best access;
- encourage a supportive rather than lead role for lawyers;
- cooperate with government wherever possible, but apply pressure to it where necessary;
- use community organizing and advocacy;
- integrate with mainstream socio-economic development work; and
- build on community-level operations to enable the poor to inform or influence systemic change in laws, policies and state institutions. ⁶²

Where adopted, this framework and the five previous suggestions offered in this section will enable access to justice programs to harness a more robust legal empowerment approach and stimulate a greater focus on livelihood issues.

Conclusion

Legal empowerment is a multi-faceted approach that benefits from the collaboration of a variety of actors in the legal, economic and political arenas, but its primary focus is on empowering the poor and disenfranchised. It is by nature an integrated, multi-disciplinary approach that tackles legal issues from various angles, but that is decidedly community-based. The current rule-of-law reform paradigm, focused primarily on formal institutions and operating in a top-down manner, has dominated funding and theoretical approaches for the past three decades. However, its failure to address issues facing the poor is increasingly evident. The legal empowerment approach is a promising alternative paradigm that focuses exclusively on giving the poor and legally marginalized the tools and knowledge to affect change as they see fit.

This article illustrates the benefits of the legal empowerment approach, in particular how it can be used by the poor to address prevalent economic problems that impede not only their socio-economic advancement, but also the economic growth of countries as a whole. By embracing and adapting leading economic law theories of de Soto, Posner and others, and taking cues from the thematic foci of the Commission on Legal Empowerment of the Poor, legal empowerment approaches can effectuate grassroots-driven change in complex areas of community economic development through both micro- and macro-level initiatives.

The suggestions of the article have important elements that should be incorporated into any comprehensive approach to legal empowerment. These suggestions expand collaboration with informal or quasi-formal institutions such as customary courts and Justices of the Peace while developing community-run legal service and advocacy networks composed of community paralegals and post-graduate law students, all working in conjunction with justice center-based lawyers, mediators and social workers. Justice centers and paralegals networks administered and supervised by a consortium of legal service NGOs represent the most effective way to realize livelihood-based legal empowerment on a broader scale.

⁶² Adopted from a legal empowerment approach presented by Golub, above n 11, 37.

As illustrated by the Bolivia case study, a more flexible and expansive approach to legal empowerment is needed than that articulated by the Commission. At the same time, justice centers can better serve the poor if they develop programming on the livelihood-based themes that comprise the thematic focus of the Commission. Legal empowerment programs must be proactive in developing education campaigns and legal service outreach around economic issues, including collaboration with microfinance groups, business associations, cooperatives and trade unions. Building bridges between informal economic legal systems and the formal state-sanctioned system through community-centered programs is also an important element for ensuring sustainability of reforms. Linking formal and informal systems is fundamental to creating an organic “people’s law” that incorporates all sectors of society and creates the preconditions for universal access to the economic tools of a thriving market.