# LEGAL EDUCATION IN AFRICA: WITH SPECIAL REFERENCE TO ZAMBIA *

*Introduction*

This article aims to raise and follow some of the questions, difficulties, trends and goals connected with legal education in Zambia in 1970. Whilst aware of the dangers associated with the inductive conclusions it is felt that certain parallels can be drawn with other African countries based on the Zambian experience. The isolation and examination of the Law School of the University of Zambia has been undertaken in order to encourage a better understanding of the growth dilemmas which new legal educational institutions inevitably encounter. The selection of this particular institution for study is motivated by neither any peculiar deficiencies nor attributes it has, but rather because of the writer's familiarity with it.

African countries fall into the generic category of "underdeveloped," although Zambia is more fortunate than most because of its large deposits of copper. Nevertheless, it is thought that no poor nation on that continent can afford to be without an university. What is important is that the institution and its graduates be fully aware that their primary role is to help the country and its people become part and stay abreast of the twentieth century. It was natural enough in colonial and immediate post-colonial times that the new universities should be patterned on English institutions. Sir Eric Ashby had the following points to make about higher education in Ghana: [1]

> Policy . . . became hardened into dogma, resistant to criticism and change. People talked of the " Asquith doctrine " and referred to university colleges in Africa as " Asquith colleges." The doctrine was a vivid expression of British cultural parochialism: its basic assumption was that a university system appropriate for Europeans brought up in London and Manchester and Hull was also appropriate for Africans brought up in Lagos and Kumasi and Kampala . . . But the fundamental pattern of British civic universities—in constitution, in standards and curricula, in social purpose—was adopted without demur. Colonial universities were . . . from the outset . . . to be self-governing societies, demanding from their students the same entry standard as is demanded by London or Cambridge; following curricula which might vary in detail but must

* This article was prepared in 1970 when the writer was a W. Cook Research Fellow at the Law School, University of Michigan. The writer was aware of the desirability of keeping the title to a manageable length. In fact, for " Africa " read " anglophonic, sub-Sahara, independent, Black Africa."

1 *African Universities and Western Tradition* 1964 (Godkin Lectures, Harvard University), 19-20, 41.

> not vary in principle from the curricula of the University of London; tested by examinations approved by London and leading to London degrees awarded on the recommendation of London external examiners . . . The founders of these universities worked in the belief that the social function of a university in Africa was to create and sustain an intellectual elite.

As a result of such policies, of the 140 students who graduated in Arts subjects at the University of Ghana from 1957 to 1960, 95 studied single subjects and only 45 took a general degree. No African language could be studied at university level, not even Arabic, but in the session 1959 to 1960, 12 undergraduates were devoting their full time to Latin, Greek and ancient history.[2]

The production of such an "elite corps" is totally unacceptable in the modern, egalitarian, African society. President Kaunda recently expressed an opinion which sums up the contemporary attitudes towards the role and function of the lawyer in a developing, pluralistic nation.

> In the older countries the percentage of lawyers who participate in the political life of the country, or who interest themselves in civic matters or social problems, is comparatively small. I think this is a great pity, because I think the lawyer, through his training and experience, is perhaps better fitted than anyone else to work out solutions to the social and economic problems of society. But in a young developing country the failure of the lawyer to play a full part in national and local affairs is more than just a pity; in a society where so few have received any education at all, far less professional qualifications, it becomes the duty of all these who were more fortunate to use their knowledge and skills not just for the benefit of their clients, but for the advancement of the whole society.[3]

Such a statement is likely to raise many eyebrows in the United Kingdom but, at the very least, it does indicate an awareness among African leaders of the invaluable and fundamental role that lawyers trained in national universities will be expected to assume. The system of "bonding" to government, which is linked with the receipt of a State grant for educational purposes, is likely to ensure that the graduates are channelled into governmental service rather than private practice. The fact that all members of the first graduating class in Zambia intended to qualify professionally is significant when it is compared with the 65 per cent. of United Kingdom graduates who choose a career in the legal profession.[4] As a result of this total and heavily weighted commitment of the Zambian graduate it is inevitable that there should be some reflection of this peculiar emphasis during the undergraduate's formal legal education.

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[2] Bing, *Reap the Whirlwind* (1968), 361.
[3] At a dinner given by the Law Society of Zambia, 24th April 1970 (Press Section, Information Services, Background No. 39/70, Lusaka).
[4] Wilson, "Survey of Legal Education" (1966) 9 *J.S.P.T.L.* 1, 55.

The legal heritage of the nineteenth century which colonial Africa received on independence, coupled with its traditional customary laws, makes its legal framework somewhat suspect. The *laissez-faire,* conservative attitudes embodied in the received law necessitate that the students give careful attention not only to the *is* siutations in juridical relationships but also to the *ought* propositions. Swift and regulated change within the society requires lawyers trained and educated to handle the issues of transition to which the socialist States are committed.

Although a critical awarness of the benefits and dangers involved in wholesale transportation of structures, institutions, legislation and techniques from modern, developed nations to the emerging countries of Africa is imperative, it is also necessary that such countries as Zambia guard against an overreaction to the end of colonialism. These same attitudes should be adopted in regard to legal education. There is much that can be retained and received from the United Kingdom and the United States of America, for a controlled, eclectic approach has many benefits to bestow.

Throughout the article comparative reference is made to legal education and pedagogical techniques in the United Kingdom[5] and the United States of America. Once again this selection is made on the basis of personal experiences within both systems. It is to be emphasised that the choice in no way reflects the rejection of other systems but merely indicates the inadequacy of the writer to represent satisfactorily their methodology. The first Zambian graduates of the Law School of the University of Zambia are about to enter practice. So this is an opportune time to review the past and plan for the future.

## Part I: *Legal Education in Common Law Africa and the Relationship with the United Kingdom.*

The most striking feature of pre-Independence legal education in common law Africa was the absence of national educational facilities. The usual procedure required an African to journey to London, join an Inn of Court and acquire his professional qualification in the United Kingdom.[6] The fact of being called to the English bar was normally considered satisfactory for admittance to practice in Africa.

[5] The use of the title " United Kingdom " is a conscious misnomer as this paper purports to represent only England and Wales. However, the term is used for the sake of brevity.

[6] For a brief, but stimulating, account of the historical development of English legal education, see Gower (1950) 13 *M.L.R.* 137.

In 1959 the number of students who entered the Inns stood at 1,251. Of these, 842 were from overseas, 438 of whom came from common law Africa. The majority of these Africans were nationals of the more developed West African countries: Nigeria was represented by 271 students, while 90 were from Ghana. There were seven Northern Rhodesian students. In 1960 the total student population reading for the bar in the United Kingdom was 3,000. Of this number 67 were from Northern Rhodesia, although the majority of these comprised Asians and Europeans.[7]

It is the Inns that merit greatest consideration for it was to those institutions that the African students were attracted.[8] Whereas the training, when coupled with a strong and traditionally stable bar, might have been described as barely adequate[9] for the individual from the United Kingdom,[10] wishing to practise within the split profession

[7] *Report of the Committee on Legal Education for Students from Africa;* 1961 (Cmnd. 1255). In 1962-63, 75% of those called to the Bar had overseas domicile; by 1966-67, the percentage had dropped to 55: General Council of the Bar *Annual Statement* (1967).

[8] Professor A. Milner stated that before 1964 only one Nigerian had qualified as a solicitor: " Legal Education in Nigeria " (1964) *I.C.L.Q.* (Supp.), 110.

[9] See the comments of Lord Gardiner in *The Economist*, 28th March 1964; also *The Economist*, 26th June 1965, where it was suggested that the Inns mishandled their monopoly of bar training, and Professor Gower's comment in " English Legal Training " (1950) 13 *M.L.R.* 137, 150:

> " There is no compulsory theoretical training, practical apprenticeship or institutional attendance; the student is merely ' recommended ' to attend the Inns of Court School of Law and to read in Chambers. Only students resident in London have an opportunity of attending the school and as the teaching is by part-time visiting lecturers there is very little opportunity for personal contact between them and their audience. There is, it is true, a compulsory examination, but although this has been tightened up somewhat in recent years it is still surprisingly easy . . . "

And see Gardiner and Martin, " Legal Education " in *Law Reform Now* (1963), 283:

> " The training facilities now provided for intending solicitors and barristers are not concerned with either the social function of the law or with law as one of the social sciences."

In the recent past the Inns have undergone major educational and pre-examination reforms, but, unfortunately, these innovations arrived too late for a large number of African students.

[10] " Opinion of Barristers on Adequacy of Provisions for Legal Education.

| *Years standing* | | *Adequate* | *Inadequate* | *No opinion* |
|---|---|---|---|---|
| Under 5 years | ... | 9.5 | 82.5 | 8 |
| 5—10 years | ... | 14 | 71 | 15 |
| 10—20 years | ... | 22 | 65 | 13 |
| 20—30 years | ... | 28 | 44 | 28 |
| Over 30 years | ... | 46 | 21 | 33 |
| *Overall opinion* | ... | 22.5 | 61 | 16.5 " |

See Wilson, " A survey of Legal Education in the United Kingdom " (1966) 9 *J.S.P.T.L.* 1, 73. (N.B. The above statistics were given in percentages within each group.)

there, it left the foreign pupil inadequately prepared to handle the problems of practising in an underdeveloped country. The fused profession which prevailed in Northern Rhodesia, and the remainder of common law Africa, made no practical distinction between the barrister and solicitor, although in law in Northern Rhodesia, the practitioner was admitted to the Roll with the dual title of "Barrister and Solicitor."[11] This amalgamated approach prevails to the present day. Education at the Inns did not cater for the differing composition and function of the Bar abroad, as was recognised in the *Report on Legal Education for Students from Africa*:[12]

> The legal education given at the Inns of Court is not sufficient in itself to fit a man completely for practice in Africa. In every territory the profession is "fused". Every qualified man can practise both as barrister and solicitor and most do so. The training afforded by the Inns of Court can help towards proficiency as an advocate but it is not designed to enable a man to act as a solicitor. Yet the solicitor's side is often a most important part of his work. A progressive society needs not only advocates to prosecute and defend criminals, and to conduct civil cases in court. It requires draftsmen to prepare conveyances of land, commercial contracts, mortgages, wills and the like. It needs lawyers who can keep accounts and be trusted with clients' money. The Solicitor-General of one of the territories pointedly observes that "the importance of book-keeping and accounting in a fused profession cannot be overemphasised. Many of the young men coming back can make quite a good show as lawyers, but they have absolutely no knowledge of how to handle their accounts or of the desirability of keeping their clients' money separate from their own .... It must be remembered too that many of the clients are themselves ill-educated and consequently slow to draw any irregularities to the notice of the Law Society."[13]

Not only did the Inns fail to prepare Africans for their future roles within a fused system, they also failed to instruct in the nuances

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11 Legal Practitioners Ordinance, cap. 144, pt. 1, s. 2.

12 Cmnd. 1255, para. 27.

13 This position was corroborated by Hedges, "Legal Education in West Africa" (1961) 6 *J.S.P.T.L.* 75:

> "At the same time he is ill-equipped in many respects for the task he has to perform, and this through no fault of his own. The profession is fused, and however much he may strive to be proficient as an advocate the fact remains that he has not been trained to act as a solicitor . . . The young lawyer is also handicapped because he is too ready to assume that English law, in which he has been trained, will apply in the particular case before him, yet there is a considerable body of Nigerian law which he has not been taught."

See also Diplock L.J., "Introduction to the Discussion of the Wilson Report" (1966) 9 *J.S.P.T.L.* 193, 195:

> "Overseas students were going out to practise in a fused profession in their own countries, and to be let loose on the public straight away, without the insulating effect of a Solicitor which was the great safeguard of the public against incompetent barristers when I was called to the Bar."

of change that the common law underwent during the process of reception.[14] Neither was the student taught to handle competently the numerous difficulties arising out of a two-tiered judicial system encompassing customary and received law. Although the lawyer is normally barred from representing a client in a customary court, called "Local Court" in Zambia,[15] the potential areas of conflict in appeal work are many.[16] The achievement of a harmonious inter-relationship between the two systems requires an understanding of local customs which transcends the community knowledge normally transmitted to the young lawyer who frequently received his education in urban, or centralised, settings, whose familiarity, if any, was with one particular locale and tribe, and, perhaps most important of all, might have been struggling to resolve a schizophrenic rejection process of his traditional, customary values. There was a danger that the product of the Inns of Court would be unable to relate to the problems of Zambia for he had been encouraged to believe that the common law was the perfection of human reason![17]

It is understandable that some juniors denounced their training in London as a "painful and pointless farce",[18] especially when some of the post-war students, through pressure for places, were allowed

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[14] In Zambia the reception Ordinance is entitled the English Law (Extent of Application) Ordinance, cap. 11, vol. 2, *Laws of Zambia* (1964 ed.). The reception date is 17th August 1911.

[15] Local Courts Act 1965.

[16] See, e.g., Thomas, "Grobber v. Lusambo" (1969) 18 *I.C.L.Q.* 471.

[17] That the common law is likely to lose some of its "perfection" during the transportation process is well illustrated by the following East African legislation :

> "Any person who is found . . . having his face . . . blackened or otherwise disguised with intent to commit felony . . . is guilty of a felony."

*Laws of Uganda*, cap. 106, s. 285 (*e*); *Laws of Kenya*, cap 63, s. 308 (*e*); *Laws of Tanganyika*, cap. 16, s. 298 (*e*). The origin of these sections is to be found in the Queensland (Australia) Criminal Code, 1899, which was used in Nigeria (Criminal Code, Nigeria, s. 147), and adopted in East Africa with some supplementation from the Indian Penal Code. Gower in his introduction to Seidman, *A Sourcebook of the Criminal Law of Africa* (1966) stated—"Certain it is that no one who studies the criminal law (of Africa) is likely to continue to believe that English criminal law makes complete sense when applied to African conditions." Expatriate judges also suffered from a lack of grounding in customary law and from a failure to appreciate the social values which, in part, regulated tribal society. Recent articles illustrating this are: Martin, "Sociology and Legal Change" (1969) 2 *E. Africa L.R.* 101; Seidman, "Mens Rea and the Reasonable African" (1966) 15 *I.C.L.Q.* 1135; Huber, "Legal Education in Anglophonic Africa: with particular attention to a casebook and the Criminal Law" (1969) *Wis.L.Rev.* 1188, which contains excellent case illustrations of the difficulties faced by the common lawyer when dealing with witchcraft raised as a defence to murder; Seidman, "The Reception of English Law in Colonial Africa Revisited" (1969), 2 *E. Africa L.R.* 47.

[18] Gower, *Independent Africa*, 109.

to keep terms at the Inns by merely signing a book. This inadequacy of formal education for Africans[19] simply hastened one of the inevitable consequences of independence—the establishment of training facilities for lawyers[20] within the boundaries, and under the control, of the new nations.[21]

1. *Pre-legal education in Zambia*

The growth of education in Africa with the development of independent States during the 1960's has been impressive. In some cases it has been numerically startling, as for instance in higher education, where a 150 per cent. increase in enrolment was recorded in Central Africa in the six years, 1960-61 to 1965-66. However, this per centage increase is somewhat misleading. Out of an estimated 34 million children of primary school age in 1965, only 44 per cent. were enrolled in classes. The enrolment curve drawn for the more senior students falls away sharply for, of the 26 million children of secondary school age, 5 per cent. were in class, while the 68,000 students in higher education represented only 5 in every 1,000 of that age bracket.[22]

An examination of Zambian educational facilities presents a similar pattern which can be accounted for by early colonial neglect, followed by rapid post-independence expansion. Until 1924 all education, with one exception, was provided by the missionaries, run on shoestring budgets, and concentrating, not unnaturally, on proficiency in the scriptures rather than on vocational skills.[23] It was not until 1938 that the government made bursaries available for Africans to attend secondary school, and from that time a pattern of national,

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19 Until 1968 there was no full time lecturer at the Council of Legal Education although its school had, in theory, 5,000 students, of whom perhaps only about 1,000 were active: see Abel-Smith and Stevens, *In Search of Justice* (1968), 329. The latest information from the Council for Legal Education indicates that a Dean of the Faculty has been appointed and a full time academic staff of 7: see *New Scheme of Education and Training for the Bar* (1970).

20 " Continent wide there are now forty African Law faculties, departments and institutions whose principal concern is instruction in law. Most of them are units within universities." See Johnstone, *Legal Education in Africa* (1968), 2.

21 " In the forefront of the development of a new State there should be a strong Law School, attached to an independent University which would be the focal point of the thought and learning in the country, and which would not only teach the law but would also develop the law by research and discourse amongst the leaders of society." See Mitchley, *Legal Education in Africa* (1963), 17.

22 *Scientific and Technical Training in Africa* (Nairobi, Kenya, 1968), 16-27.

23 *Annual Report of the Director of Native Education for the year* 1929, Northern Rhodesia (1931). However, in 1923 expenditure on European education was £7,800: see Gray, *The Two Nations* (1960), 133.

primary-level education for four years developed, pyramiding sharply, so that very few received secondary education. As late as 1958 there was but one secondary school in the whole territory capable of taking African students through the Cambridge School Certificate examination.[24] By 1960 there were places for a mere 15 out of 100 rural Africans in the eighth grade, and for 2 or 3 out of each 100 to reach secondary level.[25]

Apart from the considerable economic scars[26] which were apparent after the dissolution of the Federation of the Rhodesias and Nyasaland[27] perhaps the greatest indictment of colonialism was the way in which it left Zambia[28] so ill-prepared in terms of skilled manpower to meet the challenge of self-government. In 1964 there were 104 Zambian graduates, all of whom had received their higher education outside the country, and the annual general certificate of education output was 566 people.[29] The effect of the British failure to produce sufficient Zambians with secondary and university education is illustrated by the position of the civil service upon independence. Of 2,500 graduate posts only 200 were filled by Africans, many of whom were not Zambian; of 7,000 positions designated as requiring a general certificate of education, more than 6,000 were occupied by whites, of whom many hailed from, or sympathised with, areas south of the Zambezi.[30] This acute shortage of qualified Zambian personnel to staff the machinery of government and the concomitant restricting effect on development was considered worthy of comment by President Kaunda in the *First National Development Plan* 1966-70: [31]

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[24] Kitchen, *The Educated African* (1962), 223.

[25] *Triennial Survey*, 1958-60, Northern Rhodesia, Minister of African Education (Government Printer, Lusaka, 1961).

[26] " In the 10 years prior to Independence £260 million had been sent abroad by the copper mining industry alone in dividends, interests and royalties. This from a country of 4 million people." Hall, *The High Price of Principles: Kaunda and the White South* (1969), 92.

[27] Federation of Rhodesia and Nyasaland (Dissolution) Order in Council, 1963, S.I. 1963 No. 2085, made under the Rhodesia and Nyasaland Act 1963.

[28] Established under the Zambia Independence Act 1964.

[29] *Manpower Report* (Government Printer, Lusaka, 1966). The report identified about 150 employed graduates in late 1965. This inadequacy is highlighted when it is noted that, in 1964, there were 1200 Zambians with secondary school certificates whilst Ghana had an equivalent number in 1943, Uganda in 1955, Kenya in 1957 and Tanzania in 1960.

[30] Hall, *op. cit.*, p. 119.

[31] Government Printer, Lusaka, 1966.

> The most immediate and perhaps the most serious handicap facing Zambia since independence has been the lack of trained manpower due directly to the unprogressive and restricted educational policy followed under Federation and the colonial administration . . . the absence of trained manpower directly conditions the ability of Zambia to transfer home resources supplemented by foreign resources into social and economic growth. The absence of managerial and technical personnel in all fields necessitates a heavy reliance at least for some time on expatriate skills.

In 1964, out of a population in excess of 4 million, a little over 1,000 people had been given the opportunity to complete a secondary education in the seventy-four years since the British South Africa Company had promised, in its first treaty, to provide "civilisation and schools". Education under colonialism meant that too little was done, too late and without sufficient adjustment to local conditions.

Since independence the country has achieved a high growth rate in educational facilities. The primary enrolment almost doubled between 1964 and 1968, while the secondary intake in 1968 was three times that of 1964.[32] The 1968 figures are well in line with the targets of the *First National Development Plan,* primary enrolments in 1968 representing 102 per cent. and secondary enrolments 95 per cent. of the Plan's goals.[33]

There are two consequences of these policies which deserve brief consideration. The first is the paradoxical position, shared by many emerging nations, that although significant efforts are being made to promote and expand educational facilities there remains a shortage of locally trained, skilled and professional manpower. The premium on intelligent students is high and they are channelled into educational disciplines in accordance with established national priorities. It follows that an extra lawyer results in one less teacher, doctor or engineer. The current shortfall of qualified students to satisfy the demands of all professional callings spotlights the question of where the production of lawyers should rate in terms of national priorities.

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| Year | Primary Total Enrolment | Percentage Increase over previous year | Secondary Total Enrolment | Percentage increase over previous year |
|---|---|---|---|---|
| 1964 | 378,417 | | 13,853 | |
| 1965 | 410,093 | 8.4 | 17,187 | 24.1 |
| 1966 | 473,432 | 15.4 | 23,989 | 39.6 |
| 1967 | 539,353 | 13.9 | 34,139 | 42.3 |
| 1968 | 608,893 | 12.9 | 42,388 | 24.2 " |

See *Zambian Manpower* (Government Printer, Lusaka, 1969).

[33] *Ibid.*

The second point, arising partly out of the former inadequate secondary facilities, is that the entrance qualification to the University of Zambia hinges on an "O" level scheme. Degree courses are of a four year duration, the first year being devoted to four broad survey courses. Despite this "crash" introductory year, the nature of the student intake severely restricts the programme which can be offered effectively within the Law School.

2. *Legal education and qualification in Zambia*

The Legal Practitioners Ordinance prescribes the methods by which an individual may qualify for practice in Zambia.[34] Prior to the Legal Practitioners (Amendment) Act,[35] the manner of admission can be described conveniently as falling into two categories. The first method enabled students to obtain their qualifications in Northern Rhodesia without the necessity of studying overseas.[36] Under this scheme, which was unique in Africa, although similar to those which operated in Hong Kong and the West Indies, any person with the basic educational qualifications, which approximated to those required by the Inns of Court, could become an articled clerk. This apprenticeship involved a period of five years, during which time the clerk took, under the supervision of the Northern Rhodesia Law Society, the intermediate and final examinations of the Incorporated Law Society of England. The student was also obliged to take a local examination covering territorial law and practice, where these differed from English law.[37] Thereafter, the clerk was admitted as a barrister and solicitor and was also entitled to subsequent admission as a solicitor in England.[38]

The second method for qualification was available to any person already entitled to practise as a barrister or solicitor in England, Northern Ireland or the Republic of Ireland.[39] Similarly, an advocate, writer to the signet, solicitor or law agent of Scotland, with the requisite practical experience,[40] and a pass in the local law examination, could be admitted as a practitioner.

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34 Cap. 144.

35 For an analysis of the Act, see Cotran (ed.), *Annual Survey of African Law* 1968 (1971) (Zambian section by P. A. Thomas).

36 Legal Practitioners Ordinance, s. 7 (1)(*a*).

37 S. 7(1)(*b*).

38 Solicitors' Act 1957, s. 4.

39 S. 7(1)(*b*),(*c*).

40 S. 7(1) provides a definition of " requisite practical experience ".

In 1960 a committee was appointed by the Governor of Northern Rhodesia under the chairmanship of the then Chief Justice, Sir Diarmaid Conroy, and among its terms of reference was "to enquire into the ways and means of promoting the entry of local persons into the legal profession." The *Report of the Legal Profession (Entry and Training) Committee* appeared in 1962.[41] It commended the approach of local training and suggested that encouragement be given by both government and the profession to further this end. It was felt that the entry of local persons into a legal career by obtaining their basic qualifications overseas should be regarded as a subsidiary method. Although the committee was somewhat sceptical of the value of an university education in legal studies,[42] it did consider the possibility of the development of a third method of qualification through the University College of the Rhodesias and Nyasaland, situated in Salisbury. As a practical matter it was decided that, as no law graduates could be expected from that institution until 1969, it could not provide a realistic solution to the legal manpower shortage within the immediate future.

The break-up of the Federation and the rapid deterioration of relations between Zambia and Southern Rhodesia ensured that no solutions would emerge from the University College. The profession was obliged to continue to rely on the traditional methods of qualification, supplemented by a few Zambian graduates from the then University College, Dar es Salaam, Tanzania, and the establishment of a programme at the Staff Training College, Lusaka, later renamed the National Institute of Public Administration. This programme, which commenced in 1963, prepared students for the first four papers of Part I of the bar examinations in the United Kingdom.[43] The main function of the N.I.P.A. was to provide legal training facilities, on

[41] Government Printer, Lusaka, 1962.

[42] "Too many young men pay an unnecessarily high regard to academic university qualifications. Experience over the centuries in England has shown that the best way to learn to be a solicitor is by way of articles in a good solicitor's office, at the end of which the lawyer should know every job in the office, from office-boy to partner." See the Report, p. 4.

[43] Students who passed the four papers were sent to London to read for the fifth paper in Part I of the bar examinations, and then Part II. On successful completion the students attended the post-final practical course conducted by the Council of Legal Education in London. After call to the Bar, they returned to Zambia to take up legal posts with the government. (This information is from the unpublished notes of a meeting held in the Chief Justice's Chambers in Lusaka, on 3rd July 1965. Those present were the Hon. Mr. Justice J. R. Blagden, O.B.E., T.D., Sir Thomas Williams, Chairman, U.P.C., A. R. W. Porter, Secretary to the Council of Legal Education, A. B. Munyama, Permanent Secretary, Ministry of Justice, T. F. Parker, Esq.)

behalf of the Zambian government, for two groups: a professional legal course and a non-professional magistrates course.[44] The latter course took students with a form IV (G.C.E.) standard of education although mature students, with lower qualifications, were accepted. The first six months of the course involved intensive instruction in the subjects set in the Civil Service law examination, which was a required qualification for magistrates. After the examination, the students were sent on attachment to magistrates' courts and local courts for two months' observation on the practical aspects of the court's work. Because of an acute shortage of trained magistrates at the non-professional level, the instruction time of the second intake was reduced to six months. The other institute for further education in Lusaka, the Evelyn Hone College of Commerce and Arts, also provided law courses by offering assistance for the LL.B. (London) external degree, and some non-degree courses.

However, these arrangements were unsatisfactory, stop-gap measures which were partly phased out on the establishment of the Law School,[45] within the University of Zambia, under the deanship of Professor K. Bentsi-Enchill. The university itself was founded in 1965 as a result of the Lockwood Commission Report. The initial intake of March 1966 was 300 students.[46] The LL.B. degree was based on the United Kingdom pattern, that of a three year undergraduate course, although, at the Law School's inception, Professor Bentsi-Enchill indicated that he hoped the possession of a bachelor's degree in arts or science would be a prerequisite for admission to the School of Law as soon as some one hundred Zambian lawyers had been produced, in approximately five to seven years time.[47] Thus, on completion of the general, preparatory year the first students entered the Law School in March 1967, and the class was graduated in December 1969.[48]

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[44] The following number of students took the courses:
First legal cadre, 1963 ... ... ... 7 students (3 dropped out).
Second legal cadre, 1964 ... ... ... 10 students (4 dropped out).
Third legal cadre, 1965 ... ... ... 10 students (3 dropped out).
Fourth legal cadre, 1966 ... ... ... 18 students.
First magistrates training course, 1964 ... 20 students.
Second magistrates training course, 1966 20 students.

[45] There was unanimous agreement that a School of Law should be one of the Schools to be established at the University in 1966.

[46] It is estimated that by 1979 the first year enrolment will be 2,000 with a total enrolment of 4,345: *Zambian Manpower*, 1969, table 16.

[47] An interim memorandum, The University School of Law, University of Zambia, 22nd September 1966. As of November 1970, I understand there is no reason to believe that these recommendations will not be implemented.

[48] The academic year at the University of Zambia runs from March to December.

The establishment of the Law School necessitated a restructuring of the methods by which a person is admitted to the Roll in Zambia. These developments required the amendment of the Legal Practitioners Ordinance and in 1968 the Legal Practitioners (Amendment) Act was passed to accommodate these changes.

As in the United Kingdom, the Zambian LL.B. provides a degree *simpliciter* for those persons wishing to acquire a basic qualification for entry into commerce, industry, administration, the civil service and related fields. It does not, of itself, constitute a qualification enabling the holder to practise as a lawyer. Further practical training is required before entry into the legal profession as a practitioner is possible.

As a result of the Conroy Report a Council of Legal Education was established in 1963. One of its charges was to "set and establish, under the control of the Law Practice Institute, such post-graduate courses of study as it deems necessary for persons seeking admission as practitioners." This charge was given force by section 7C of the Legal Practitioners Ordinance, as amended, which makes provision for the establishment, by the Minister of Legal Affairs, after consultation with the Council of Legal Education, of a Law Practice Institute for the purpose of providing a course or courses of post-graduate study for law graduates wishing to enter the legal profession. In pursuance of this section the L.P.I. was established on 5th July 1968, by the Law Practice Institute (Establishment) Order, 1968.[49]

The current methods allowing a person to become qualified as a legal practitioner are three-fold. The first category involves a post-graduate year of practical training within the L.P.I. The qualification for admission to this course is an LL.B. from the University of Zambia; or an equivalent degree from another university, approved by the Council of Legal Education, a university whose law degree is recognised by the University of Zambia as academically equivalent to its degree;[50] or alternatively, a "qualified lawyer", from a Commonwealth or ex-Commonwealth common law country, who need not necessarily have obtained a degree.[51]

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[49] S.I. 269/68.

[50] *Handbook* 1971, L.P.I., Lusaka.

[51] Legal Practitioners (Amendment) Act, s. 7D and B(*b*)(i)(II) and (ii)(II).

The L.P.I. basically undertakes the same function as the Accra Law School[52] and the Nigerian Law School at Lagos,[53] by preparing local and acceptable foreign students for the technicalities of practice within the country. The course, which runs for a full calendar year, is intended to be as practical as possible. There are few formal lectures and, instead, the time is allocated to client-lawyer situations, programmed exercises covering situations normally experienced by articled clerks, work within the Directorate of Legal Aid, visits to registries and courts and, finally, a period of preliminary pupillage in the offices of established practitioners.[54] The first group of students completed the one year course at the end of 1969.

The alternative methods of qualification are the traditional system of articles with the local practitioners, and also acceptance of certain foreign practising qualifications, coupled with appropriate experience, which were preserved in the 1968 Act.[55]

Three likely consequences of the establishment of the Law School and the L.P.I. are as follows. Firstly, it is expected that there will be a rapid expansion in the number of Zambian practitioners, both in government and private practice. In 1945 the number of lawyers in private practice was 9; in 1960 it had risen to 60 and by 1970 stood at 75. Another 10 lawyers held practising certificates although they did not normally practise in Zambia.[56] It has been projected that by 1980 the university will have graduated 379 lawyers at an annual average of 38 people.[57] This number, when coupled with those who study outside the country, is expected to satisfy the requirements that the Manpower Survey has deemed necessary to "Zambianise" the legal profession.[58]

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52 Established under the Legal Practitioners Act, 1958.

53 Legal Education Act, 1962.

54 The syllabus is as follows: Professional Conduct and Ethics; Bookkeeping and Accounts, with Office Method; Conveyancing and Legal Drafting; Probate and Succession, with Bankruptcy; Commercial Transactions, with Income Tax; Company Law and Procedure; Civil Procedure (double course); Domestic Relations; Criminal Law and Procedure.

55 Ss. 7E and 7D and B.

56 Figures taken from the *Annual Report of the Judiciary and the Magistracy*, 1968 (Government Printer, Lusaka, 1969) and the *Law Directory and Legal Calendar* (Government Printer, Lusaka, 1970).

57 *Zambian Manpower*, 1969.

58 The survey even considers there is a possibility of overproduction of lawyers after 1980, when Zambianisation is scheduled to be completed: *Zambian Manpower*, p. 55.

The existence of free education[59] for citizens enrolled in the Law School suggests that there will be a new pattern of qualification procedure. It is expected that the embryonic lawyer will read at the university rather than be channelled through either of the alternative methods. In 1968 there were 4 students who entered articles of clerkship and enrolled as students of the Law Society,[60] while 28 students entered the first year of the LL.B. course at the University of Zambia.

Thirdly, there is a close link between the Law School and the L.P.I., exemplified by the fact that Professor R. B. Kent is the academic head of both institutions, as Dean and Director, respectively. This connection should afford the university a stable platform to tackle the dichotomous problem of instilling the students with a minimum content of legal rules and techniques along with a simultaneous appreciation of this information as it interrelates with such associated disciplines as economics, sociology and political science.[61] Thus, the L.P.I.'s heavy emphasis upon the technical aspects of practice should allow the Law School additional time to develop within its courses a wider understanding of the law, its traditions, customary and colonial heritage, function and future within Zambia. However, the Law School's curriculum[62] shows that it remains concerned with

[59] Throughout the university citizens do not pay fees and may receive generous grants. On graduation they are bonded for a period of time to government service.

[60] See n. 55, p. 16, *ante*.

[61] This question is considered later, see pp. 23-4, *post*.

[62] LL.B. curriculum—

| | |
|---|---|
| First year : | Introduction to Law and Legal Institutions<br>Law of Contract<br>Law of Torts<br>Penal Law<br>Legal Method |
| Second year : | Constitutional and Administrative Law<br>Land Law<br>Commercial Law<br>Civil Remedies<br>Legal Method |
| Third year | Jurisprudence and any three of the following full courses:<br>Conflicts of Law<br>Public International Law<br>Company Law and Partnership<br>Principles of the Law of Evidence<br>Equity and Succession<br>Domestic Relations<br>Conveyancing<br>Sociology of Law. |

(*Footnote 62 continued overleaf*)

the provision of the fundamental technical skills expected of a competent lawyer. This is illustrated by the maintenance of a two year, non-credit, legal method course. It includes exercises in legal research, legal writing, digests of legislation and cases, appellate briefs and oral argument. It includes a course of reading regarding the legal profession, its ethics, organisation and history, while various aspects of procedure and practice are included to enhance the student's understanding of the principles learnt in the various substantive courses. As part of the course in legal method the first year students began a programme of moot court appellate arguments in 1967. This programme continues throughout the three years of law studies. The first group of 32 students was divided into four "law firms" of eight members each for the purposes of this programme. The first round of moot court competition was one of individual argument; each student was paired with another student from a different firm and assigned a factual situation raising certain legal issues to be argued at an appellate level before a moot court. With the assistance of his fellow firm members the student prepared a written brief setting out the legal arguments supporting his client's position. Subsequently, the two students assigned opposite sides of each problem appeared before one of the members of the teaching staff to present oral argument advancing their position and answering questions put by the staff member. In each year a "knock out" basis is employed culminating in a finals before a bench of judges drawn from within the School, from practitioners and the bench.[63]

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*62 continued*

Any approved course in any other school or any two of the following half courses may be selected in place of one of the selective full courses:

Criminology and Penology
Industrial Law
Legal Control of Natural Resources
Islamic Law
Roman Dutch Law
Civil Law Systems
Legal Aspects of International Trade and Investment
Legal Accounting and Revenue
Mineral Law
Comparative Law
Any approved half course in any other school.

This ambitious curriculum, which was greatly influenced by its counterpart at the University College, Dar es Salaam, must be read in the light of the new curriculum of the L.P.I. and also bearing in mind that the staffing situation makes it impossible, at the present time, to offer this attractive third year programme in its entirety.

63 This information is taken from the Law School *Handbook*.

Part II: *Legal Education and the Role of the Lawyer*

There may well be disagreement on the size and range of a lawyer's duties within society. For example, there is at least a case to be put suggesting that the American lawyer's role is more embracing than that of his English counterpart.[64] Nevertheless, there are a number of fundamental tasks which all lawyers should be competent to handle. The effective administration of justice is a *sine qua non* for any viable society. It is as important as the construction of roads and sewers, the

[64] Even in areas of " obvious legal concern " the American lawyer seems to have progressed further than his U.K. brother: see Wheatcroft, " The Education and Training of the Modern Lawyer " (1962) 7 *J.S.P.T.L.* 1, 3:

> " Much of the work performed by the ' house counsel ' in the United States is here performed by the solicitor in private practice, although the lawyer here, unlike his counterpart in the United States, has not fully recognized the important part the legally trained person can play in business ' decision taking '. The lawyers of this country have left the accountant to perform, in the business field, many tasks which the United States lawyer would regard himself as better qualified to deal with."

See also Johnstone and Hopson, *Lawyers and their Work: An analysis of the Legal Profession in the United States and England* (1967), 580 :

> " In comparing English and American lawyers, it is apparent that lawyers in the United States are relatively more important than those in England. American lawyers have a greater impact on the society; they are influential in a much wider spectrum of affairs, and, especially in business and government, are far more relied on as advisers, advocates, and top policy makers. Also, outside the field of conveyancing, in proportion to population, there are far more lawyers in the United States than lawyers and law clerks combined in England. In part this disparity in influence may be due to weaknesses in the English legal profession, particularly its poor educational preparation, outmoded organization, reluctance to expand sharply outside the fields of conveyancing and litigation, and its deep-set complacency. But we think the difference is due principally to other conditions that have resulted in more need for lawyers in the United States than in England.
> *Wealth and Economic Activity.* Because the work of lawyers is so often concerned with the generation, transfer, and regulation of wealth, the amount of wealth and degree of economic activity in a country are of great significance in determining the need and demand for lawyers. In the United States there is proportionately more wealth than in England and the economy of the United States is more dynamic, with more violent up and downs, conditions conducive to greater use of lawyers. Then too, lawyers in both countries are heavily involved in efforts to deal with crime, family instability, racial tensions, and most other serious kinds of social disorganization and friction. But the United States is a less homogeneous, less well integrated society than that of England, and it has more social disorganization, added reasons for its greater use of lawyers."

Gower presented a numerical comparison of lawyers in " The Profession and Practice of Law in England and America " (1957) 20 *M.L.R.* 317, 324. The latest available figures indicate that in the U.S.A. in 1966 there were 313,462 lawyers with a population per lawyer of 625 (*Statistical Abstract of the United States* 1969, 90th annual edition, Department of Commerce). The figures for this country in 1966 were more difficult to ascertain but they are arrived at by the following procedure: population, England and Wales, 48,075,300 (*Annual Estimates of the Population of England and Wales*, 1966, Registrar General, H.M.S.O., 1967); there were 31,930 judges, barristers, solicitors and advocates (*Sample Census*, 1966, Economic Activity Tables, Part I, H.M.S.O., 1968); remove 200 as an estimate of the full time judges in that list (*Law List*, 1966), giving a population ratio of one lawyer per 1515 in England and Wales.

development of educational and recreational facilities, and the building of hospitals and bridges. The results are less easily recognised and more diffused than those stemming from the aforementioned but the need for impartial and efficient administration of law and its expeditious enforcement is nowhere greater than in a new and politically inexperienced nation. This is one aspect of nationhood which cannot be ignored, for social harmony, individual freedom, personal and property protection, which together contribute to a truly united country, are partly dependent upon the existence of a competent and sympathetic nucleus of lawyers capable of processing the problems and case load created by the daily interreaction of such a community.[65]

The Zambian Law School, in its current reflection of staff attitudes, indicates that it is placing itself in a position whereby its contribution to the building of the nation reaches the optimum and most effective level. Despite its relative inexperience there is the awareness that a careful assessment of its role, goals and techniques of achievement is necessary. This caution is reinforced by the experiences of other schools in developing countries which indicate that adoption *in toto* of other legal systems and their methods of education may well result in unnecessary wastage of skilled manpower and the creation of an educational structure which proves burdensome, if not detrimental, to national advancement. For example, India underwent the reception of the English system of legal training which has contributed to an overproduction of law graduates for whom there is insufficient work; the status of the law degree is, by Western standards, surprisingly low; the faculties tend to be poorly paid which encourages the able scholar to consider more lucrative positions rather than looking to teaching as a career; the courses are frequently unresponsive to the needs of society and the lawyer is geared to cater for the litigious, rich minority.

Zambia must be aware of the possibility of the non-fulfilment of the lawyer's potential if his role is merely visualised as that of a skilled technician. If such an occupational function is accepted lawyers are inevitably removed from many of the arenas involving economic

[65] President K. D. Kaunda, *op. cit.*:
"... without the law the whole structure of society must collapse, but equally, without the respect of the people for the law, society is doomed ... when society and its instruments of social order have reached that position of mutual understanding and respect, then I think we can truly say that we have passed another vital milestone along the road towards the Zambia for which we all strive."

development and social change.[66] It is legitimate to ask why the Zambian lawyer should consider his role to be any different from that which is occupied by his counterpart in the United Kingdom. The legal structure is predominantly patterned after the image of the English system and the reception of the common law means that the ground rules for social regulation in many fields are similar. The earlier methods of qualification revolved around the English system of apprenticeship as a clerk and there was provision for a qualified person from the United Kingdom to be admitted into practice in Zambia with the minimum difficulty. Even today the influence of common law expatriates is significant while the official language remains, and is likely to remain, English. Is it not possible that certain Zambians (and possibly malcontented academics) are attempting to denigrate all colonial legacies, the law being a prime example, in their efforts to create a separate and truly independent nation?

The answer is that in the experience of other African countries the performance of some West African and Indian lawyers trained in England has been disappointing,[67] for it becomes increasingly apparent that the less developed countries require their lawyers to undertake tasks which are uncommon in the more economically advanced nations. Lawyers are expected to relate the legal institutions, as well as social and political institutions, to the general and specific premises of expansion.[68] If these African theories articulated in the principles of humanism, regional autonomy, participatory democracy, increasing State involvement with, and ownership in, industrial production and distribution,[69] customary and community responsibility,

[66] Nyhart, " Law, Lawyers and Private Investment in Africa " in Hausman (ed.), *Managing Economic Development in Africa*, at p. 175; Nyhart, " The Role of Law in Economic Development and Economic Growth in Africa " in *Changing Law in Developing Countries* (1963); Twining, " The Role of Lawyers in a Developing Country " (paper read to the East African Academy, Dar es Salaam, March 1965).

[67] See Abel-Smith and Stevens, *In Search of Justice* (1968), 329:
". . . Those who have had the misfortune to deal with some of the less skilled West Indian or West African ' Barristers-at-Law ' will no doubt continue to feel that port, elegant gardens and subsidized chambers for English barristers are not a substitute for legal education.

[68] Such sentiments were expressed by the former Ghanaian President, Dr. K. Nkrumah in " Law in Africa " (1962) 6 *J. African L.* 103, 104:
". . . our law must embody our traditional social attitudes of communal endeavour, of a classless society and of mutual self help so as to avoid the narrow interpretation of man's duties to the community and the State, found so often in Western law . . . There is a ringing challenge to African lawyers today."

[69] In the past three years a number of nationalisation decrees has radically altered the structure of company ownership within the nation's economy: 19th April 1968; January 1970; 10th November 1970.

preservation of traditional values and co-operative enterprise are to succeed, the young lawyers must possess not only adequate technical skills but also such qualities as an appreciation and understanding of the founding principles, a creative ability to identify and administer the potential methods of implementation, a capacity to recognise problems requiring specialist assistance from other disciplines and a dynamic legal vision to provide the solutions to these new challenges.

In a pluralistic society, such as exists in Zambia today, a large supply of men and women with a thorough legal training is essential. Although they will be expected to provide the traditional legal services connected with the staffing of courts, private and public practice and the general administration of justice, it is anticipated that there will be a restructuring of this demand. There will probably be a greater immediate need for the lawyer trained to enter public service rather than private practice.[70] The demand by central and local government for legal advisers will be large while the mushrooming State corporations and nationalised industries will be making similar requests for legal assistance. Similarly, the farmers' co-operatives and rural developers may seek guidance regarding questions arising out of land tenure and agricultural reform which are being considered on a nation-wide basis. Further governmental involvement will arise out of such issues as compensation for nationalisation, law revision, legal representation of the poor, tax reform, mining and mineral rights, harmonisation of customary, religious and received law, utilisation and conservation of natural resources, banking and investment, urban and rural development by such means as housing, sewerage, electricity, slum clearance and roads, increased foreign investment, both of a

[70] President K. D. Kaunda, *op. cit.*:

> " There are two aspects of the lawyer's activity which I think deserve special emphasis. I refer to the fields of administration and education. Everywhere in the world the business of government becomes more and more complex and the number of government departments increases steadily. The resulting problems are doubly acute in a developing country because the pace of increase in volume and complexity is so much greater while the number of available administrators is so much smaller. The problem is not confined to Central Government, local government and parastatal organisations. I think it is fair to say that one of Zambia's most serious needs, in the private as well as the public sector, is trained administrators.
>
> " Administrators are required to exercise discretion and make decisions, which frequently call for a judicial approach. Needless to say, the lawyer is better equipped than a person without legal training to make decisions of this kind: the developing country—and Zambia is no exception—has a tremendous need for increasing numbers of lawyers to work as administrators in all sectors."

Within a " market economy " the poor society is unlikely to be able to support many private lawyers. This gives rise to the question of whether the public would be better served if the legal profession were to be " nationalised."

public and private nature, investment guarantee provisions and negotiation of foreign loans. These, and many more, make up the facets of centrally planned development which demand the services of skilled lawyers capable of appreciating, contributing and effecting the legal formulas associated with their implementation.

Zambia needs delicate,[71] informed and responsible guidance from its new lawyers, who in turn can justifiably expect exposure to the fundamental principles of social order, regulation and orderly change during their undergraduate days. There is an obvious inadequacy if the education merely involves the provision of a body of normative information, often inherited from colonial days and of questionable relevance to the new nation. Encouragement to absorb the mass of rules, characteristic of any given legal system, inhibits the creativity and flexibility of the mind and by the sanctification of rule memorisation makes the existing legal order, as manipulated by lawyers, less capable of the desired social and economic change. The individual must be shown that legal norms cannot be understood independently of their purpose, impact and effect, and the process must prove a challenge to the student's understanding of human nature and to his, and his fellow man's, function in that particular society.[72] Professor Max Rheinstein, in a paper evaluating possible developments in African legal education, indicated the need of the African lawyer to "be more than a legal mechanic" and to be able to "understand the society in which he works and in the remoulding of which he can do as much harm as good."[73]

Hopefully, the combined educational techniques of the Law School and the L.P.I. will provide the students with both the awareness and skills which should be expected of them on entering practice. The passage between the Scylla of legal formalism and the Charybdis

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71 " Zambia today labours under many legacies of the colonial era. One of these is a very unfortunate attitude of many people towards the police and the courts and indeed to the law itself. The long and bitter struggle for independence and the way in which it was waged by the colonial government (I refer to the use of the police and the courts as weapons in the political struggle), and the courts and to a lesser extent the law itself, came to be regarded as the enemies of the people. This is very sad, and particularly so because attitudes of this kind take a long time to eradicate." *Ibid.*

72 See Commission of Post-School Certificate and Higher Education in Nigeria *Report on Investment in Education* (1960), The Ashby Report, 26-7.

73 " Higher Education, Law and Training for the Lawyer in British Africa " (1961) (private circulation), reported by Milner in " Legal Education and Training in Nigeria ": see n.8, p. 6, *ante*.

of "sociological nonsense"[74] is perilous. Nevertheless, there is a route which produces a lawyer capable of dealing with society's problems.[75] Judging by the experiences of other African countries the period of grace for experimentation is short. For example, by 1962 in the Sudan, of the first seven locally educated law graduates one was Chief Justice, three were judges of the High Court, one was the Attorney General, one was the Minister of Commerce and the seventh was Foreign Secretary.[76] In Tanzania, eight of the 1968 graduates of the University College, Dar es Salaam, were upon graduation immediately appointed as Resident Magistrates, a national legal office surpassed only by the High Court.[77] Whether the first graduating class of the Law School in Zambia aspires to such heights, and over what period of time, remains to be seen, but that it will be required to play an important role in the nation's development is beyond question.

1. *Teaching methods*

Although there is truth in the statement that students learn rather than teachers teach, it does not absolve the educators from reviewing the methods by which information is imparted.

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[74] See Stallybrass (1948) 1 *J.S.P.T.L.* 157, 164; also Wedderburn, "Law as a Social Science" (1967) 9 *J.S.T.P.L.* 337. Diplock L.J. in his "Introduction to a Discussion of the Wilson Report" (1966) 9 *J.S.T.P.L.* 193 stated:

> "I am not as a customer particularly interested in those who study law as a liberal education. I must confess, in provoking parenthesis, that I do not regard law as a fit medium of liberal education for those who are destined to practise it. I do not doubt that it can be taught conceptually, philosophically, sociologically so as to give it a liberal flavour but I challenge the claim that to do so results in teaching a student to 'think as a lawyer'."

[75] "... a law student must go through the process of rigid deductive argument from the premises set by statute or by precedent. He must not be allowed to go around it by escaping into talk about policies, he must go through it." Kahn-Freund, "Reflections on Legal Education" (1966) 29 *M.L.R.* 121, 129; "It is appropriate for a university law school to have regard to philosophical, sociological and comparative aspects of law as well as to analysis of authorities demonstrating the current rules of the law of the land ... It is not appropriate for a university law school to hanker after philosophy, sociology or foreign law to the extent of neglecting analysis of authorities demonstrating current rules of law." Sheridan, "Legal Education in the Seventies" (1967), p. 10, New Lecture Series No. 35, Queen's University, Belfast.

[76] Twining, "The English Law Teacher in Africa" (1962), 7 *J.S.P.T.L.* 80, 81.

[77] Huber, "Legal Education in Anglophonic Africa: with particular attention to a casebook and the Criminal Law" (1969) *Wis.L.Rev.* 1188.

The shift of emphasis in Zambia from articles to university education is to be applauded, for, as Blackstone said:

> . . . making due allowance for one or two shining exceptions, experience may teach us to foretell that a lawyer educated . . . in subservience to attorneys and solicitors, will find that he has begun at the wrong end. If practice be the whole he is taught, practice must also be the whole he will ever know.[78]

Nevertheless, there is reason to believe that even the usual English teaching technique of the lecture is less effective in the production of the lawyer required in Zambia today.[79] Little is to be gained from describing in detail this method which is commonly employed in educational institutions of common law Africa. However, those unfamiliar with teaching in such faculties should be made aware of the tenacious manner in which the commencing students attempt to establish a position which indicates that their previous achievements were noteworthy. Unfortunately, their undoubted capacity for sustained hard work frequently involved merely feats of memory, followed by regurgitation of details at the appropriate moment.[80] Their very selection for university, usually achieved by the means of rote memory work, is evidence of their primacy and it is understandable that they should wish to continue the success story by receiving the

[78] Taken from Blackstone's inaugural lecture in 1758. A comparable American statement was made by Judge Joseph Story, later appointed Dane Professor of law at Harvard in 1829, who stated:

> "A lawyer, above all men, should seek to have various knowledge, for there is no department of human learning or human art which will not aid his powers of illustration and reasoning, and be useful in the discharge of his professional duties. It has been the reproach of our profession in former ages, and is, perhaps, true to a great extent in our own times, that lawyers know little or nothing but the law, and that, not in its philosophy, but merely and exclusively in its details. There have been striking exceptions, such as Lord Hardwicke, Lord Mansfield, Lord Stowell, Lord Brougham and Mr. Justice Blackstone. But these are rare examples; and too few to do more than establish the general principle."

Letter to W. W. Story, 27th Jan., 1839: W. W. Storey (ed.), *Life and Letters of Joseph Story* (1851), vol. 2, 311-12. However, even in 1970 a university law degree is not a prerequisite for admittance as a solicitor or barrister. It has been estimated that about 50% of newly qualified solicitors and about 20% of barristers intending to practise have no law degree: *Legal Education* (1969) (Fabian Research Series), 4.

[79] Gower in his introduction to Seidman's *Sourcebook of the Criminal Law of Africa* (1966) stated:

> "The besetting sin of secondary education in Africa is that too few students are taught the need for original thought. They are conditioned to being told and to accept uncritically what they are told; one of the greatest problems at the universities is to jolt students out of this attitude . . . Lecturing does not do that; the Socratic method does."

[80] Gower, *Independent Africa*, 50, states:

> "On the whole teaching standards are low and teaching methods unimaginative, with too much emphasis on learning by rote and too little on understanding and original thought."

"rules"[81] of the law from the teacher and then proceed with the cycle of memorisation and regurgitation[82] through to graduation, training and practice.[83] As in all methods the ultimate quality of the product varies in relation to the competence of the instructor. Yet the inflexibility, narrowness, reliance on secondary sources, teacher monopolisation of classroom time often accompanied by an *ex cathedra*, expository attitude towards the law, and a general lack of challenging, productive dialogue place serious limitations on the benefits to be gained through this method.

An alternative teaching method, believed to be better suited to African law schools, is the Socratic, case study technique which is used extensively, though not uniformly throughout the United States of America. It was Dean Christopher Columbus Langdell of the Harvard Law School who from 1870 modified these methods and introduced them into university legal education.[84] The case method,[85] which inductively encourages the understanding of universals from particulars, reasoning by analogy, and the testing of generalities by placing them within hypothetical factual situations, is as old as the ancient Greek civilisations. The case method's partner, the Socratic technique, which emphasises the role of the students in problem solving by the development of dialogue between the teacher and his students is, as the name suggests, of similar origin. This combination approach requires intense student preparation for class if he intends

[81] Whitehead, *The Aim of Education and Other Essays* (1959), 41-42:
" Whatever be the detail with which you cram your student, the chance of his meeting in after life exactly that detail is almost infinitesimal; and if he does meet it, he will probably have forgotten what you taught him about it. The really useful training yields a comprehension of a few general principles with a thorough grounding in the way they apply to a variety of concrete details. In subsequent practice the men will have forgotten your particular details; but they will remember by an unconscious common sense how to apply principles to immediate circumstances."
Grodecki, *Legal Education: Dilemmas and Opportunities* (1967), 5 states:
" Law is not an unco-ordinated collection of technical rules which can be learnt by rote but an intellectual discipline concerned with the adjustment of manifold human problems."

[82] " Law lectures, we are sometimes told, consist of the reading out of cases, statutes and regulations and all the student has to do is to memorize the rules or the cases." Grodecki, *op. cit.*, p. 4.

[83] It would appear that they are, unknowingly, followers of the opinion of Sir Edward Coke, when he said:
" The knowne certainte of the law, is the saftie of all."
The first part of the *Institutes of the Laws of England*, or a *Commentary on Littleton* (4th ed. 1639), 395.

[84] Sutherland, *The Law at Harvard* (1967), 174.

[85] For an early appraisal of this method, see Redlich, *The Common Law and the Case Method in American Law Schools* (1914); Patterson, " The Case Method in American Legal Education " (1951), 4 *J. Legal Ed.* 1.

to gain maximum benefit from the contact. Attainment of this worthy, but not always satisfied, goal is assisted by the possibility of the teacher acknowledging the student's presence and commencing a dialogue concerning the assigned materials. As class participation is generally recognised as an evaluation criterion for satisfactory course completion, there is a strong incentive to prepare the materials prior to the class meeting. The materials do not normally contain answers but instead provide sufficient information which, if coupled with prior reading of cases and a general familiarity with the principles of law involved, will enable the student to make certain conclusions which can later be strengthened, modified or rejected, according to further evidence placed in front of him.

The beneficial effects of this system are numerous for it encourages detailed analysis of the judicial process and terminology is learned from context rather than from formal definition. The dynamics of the administration of justice are highlighted and the student is guided to examine the living law through the actual reports, and legislation, rather than relying upon authoritative text books and the *ex cathedra* words of the lecturer, as is common in the English system.[86] The reported cases, which reflect practical problems in their social setting, are not only pragmatically advantageous but more dramatic than text books for the student. Problems associated with dicta, ratio decidendi, semantics, economic and social change are all introduced through careful selection and the reading of the decisions of the courts. The constant class dialogue, and vicarious interrogations which the immediate non-participants experience, coupled with moot court competitions, build up the speaking confidence and oral presentation necessary for successful trial work, and other inter-personal relations.

This American method[87] is, as one would expect, not without its

[86] The Wilson survey published in (1966), 9 *J.S.T.P.L.* 50 indicated that the majority of teachers were critical of the case method and only 23% favoured its extension.

[87] The literature on American legal education is compiled in the N.Y.U. *Bibliography on Legal Education* (1965); see also Note, "Modern Trends in Legal Education" (1964) 64 *Col.L.R.* 710.

local critics[88] and reformers.[89] It has variously been described as time-consuming; confusing rather than clarifying; aimless self-solving chatter; mechanical in the methodology of case preparation for classes; optimistic in the belief that the preparation takes place; unreal in the sense that the law which is commonly examined is from the appeal level which handles but a small proportion of litigation;[90] an "autopsy" system;[91] failing to tutor in ethical matters and providing no skill in the ability to deal with clients and the public; concerned with the cure rather than the prevention of disputes; inadequate for the study of legislation which has not been judicially construed; a "corner game"[92] the purpose of which is to place the student, through stringent and searching questioning, in the ultimate untenable position of ludicrous-

[88] In 1941 at Yale, Jerome N. Frank said:

> "Practicing law is an art and a fairly difficult one. Training lawyers is no cinch at best. The Langdell method has increased the difficulties, has made the task of the teacher as complicated as possible.
>
> "I suggest that at least half of the ordinary first year class comes into the second year unable to read cases, unable to think about cases, unable to build with cases, unable to argue with cases accurately."

Among the most respected critics are the names of Holmes, 14 *Am.L.Rev.* 233; Frank, "Why not a Clinical Lawyer School?" (1933) *U.Pa.L.Rev.* 907 and "A Plea for Lawyer-Schools" (1947) 56 *Y.L.J.* 1303, 1313; Llewellyn, *The Common Law Tradition* (1960), 38 *et seq.*, and "Proceedings of the Annual Meeting of the Association of American Law Schools" (1947) *A.A.L.S. Handbook* 69; Pound, (1910) 44 *Am.L.Rev.* 12; Lasswell and McDougal, "Legal Education and Public Policy" (1943) 52 *Y.L.J.* 203. While the Chief Justice of the United States, Warren E. Burger, in "The Future of Legal Education" 15 *Student L.T.* 18 (1970) said recently:

> "The modern law school is not fulfilling its basic duty to provide society with people-oriented and problem-oriented counsellors and advocates to meet the broad social needs of our changing world. This failure is represented to a large extent by treating Langdell's case method of study as the ultimate teaching technique."

[89] Cardozo, "Law and the University" (1931) 47 *L.Q.R.* 19 said:

> "At first, law was taught even at the colleges unimaginatively. It was a thing to be learnt by rote from text books whose pronouncements were to be accepted as an act of faith. Then it was taught scientifically, but still unimaginatively. That was the era of the case books, an era of undivided hegemony now drawing to a close. We are looking beyond that now, to something higher and finer. We are trying to teach law and to study it scientifically, and yet imaginatively too—feeling our way to a new sense of significance, of the forces that have brought it into being, of the processes that are keeping it alive, and of the end that it must serve and foster if its high potencies are not to fail."

[90] Frank, "Why not a clinical law school?" *op. cit.*, 912, stated:

> "To study these eviscerated judicial expositions as the principal basis of forecast of future judicial action is to delude oneself. The lawyer will go wrong who believes that (in advising a client, drafting an instrument, trying a case, or arguing before court), he can rely on the so called reasons found in or spelled out of opinions to guide him in guessing what courts hereby decide. To do so is far more unwise than it would be for a botanist to assume that plants are merely what appears above the ground or for an anatomist to content himself with scrutinizing the outside of the body."

[91] Chief Justice Burger, *op. cit.*

[92] Berne, *Games People Play* (1964), 92-4.

ness; inadequate in that the lawyer's skills as a negotiator, draftsman, planner, adviser and arbitrator are neglected;[93] incapable of being reduced to a "scientific" approach, as Langdell believed; and, finally, bastardised, for what instructor does not summarise or at least allude to conclusions that can be drawn from the class experiences? Yet despite this healthy attack and the further introduction of such techniques as clinical law teaching, credit seminars, inter-disciplinary courses, non-lawyers as instructors, individual research and community action projects supervised by faculty, the Langdell method continues to underpin legal education in the United States of America.[94]

There remains some trans-Atlantic misunderstanding (or is it perspicacity?) of the techniques and goals of the differing systems of legal education in the United Kingdom and the United States. English comments regarding the American counterpart include such statements as: "The greatest law schools in the world";[95] "no doubt that those who have passed through the better American law schools have a better training than we give our students";[96] "frankly professional".[97] Similarly, American commentators have uttered opinions such as: "The worst system of legal education in the English speaking world";[98] "We cannot help thinking that legal education is the weakest and most unsatisfactory feature of the English legal profession and that serious deficiencies exist in every kind of institution that provides formal instruction for law students";[99] "A system surpassing anything found in the U.S."[1] The most amusing, and possibly penetrating, description belongs to Professor Erwin N. Griswold, former dean of the Harvard Law School : "Some day I hope to understand English legal education. I have worked hard at it for a long time, but so far it has often seemed to be rather inadequate in plan and execution, and to produce generally very excellent results."[2]

[93] Patterson, "The Case Method in American Legal Education: Its Origins and Objectives" (1951) 4 *J.Legal Ed.*, 1.

[94] It is in the all important first year that the student is given his baptism by fire through the Langdell method. Thereafter, its declining efficacy is well recognised by the educators, as is illustrated by their adage: "In the first year we frighten them to death; in the second year we work them to death and in the third year we bore them to death."

[95] Brogan, "Law and Social Change in a Democratic Society" (1956) *U.Ill.L.F.* 242.

[96] Gower, "Legal Training in the U.S.A." (1956) 3 *J.S.P.T.L.* 153.

[97] Hamson, "The Teaching of Law" (1952) 2 *J.S.T.P.L.* 19, 26.

[98] Vanderbilt, *The New York University Self Study Final Report* (1956) part II, app. B, 68.

[99] Johnstone and Hopson, *Lawyers and their Work* (1967), 569.

[1] Callison, *Courts of Injustice* (1956), 161.

[2] "Graduate Study of Law" (1950) 2 *J.Legal Ed*, 272.

On the assumption that it is possible to identify two such pedagogical techniques, how successful has their adoption been in African law schools?[3] Unfortunately, there is no satisfactory empirical evidence available on this question but the following conclusions, based on personal experience, are offered. The American method, which is commonly employed in classes exceeding one hundred students, can be transposed favourably, in terms of numbers, to the smaller African law school. The individual is subjected to greater personal involvement and class participation. Indeed, the numbers approximate more closely to those found in the original Greek classes.

The technique can dispel what many African students believe is a connection between law and verbosity, for nothing can be more ruthless, but effective, than the Socratic system in the hands of a competent teacher. The undoubted capacity for work, eagerness for education and consuming passion for legal studies of the African when correctly harnessed removes pitfalls which American teachers believe reduce the effectiveness of the method with their own students. There can be little doubt in the American mind, and those who have come under its influence, that a technique which favours *ex cathedra* lectures[4] encourages both passivity and the development of common opinion which may originate from the views of a short term expatriate,

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[3] The majority of African law schools were originally patterned and staffed after the English structure. However, there are now many American teachers, and English and Africans with American experience, who do not follow the English technique. The teaching methods would vary from such institutions as the Law School of the Haile Sellassie I University, Addis Ababa, which is predominately staffed and run by Americans, and supported by the International Legal Center of New York, to the Law School of the University of Zambia where Professor Bentsi-Enchill has encouraged the use of American methods and the Law Faculty at Dar es Salaam, where there was no overt policy, which resulted in a mixed bag of teaching methods. No doubt those institutions staffed by English trained lawyers likewise favoured methods familiar to them.

[4] Savoy, "Toward a New Politics of Legal Education" (1970) 79 *Y.L.J.* 444, 480 begins a section of his article thus :

> "IV. *Structure, Process and Space: The Politics of the Classroom*
>
> Mr. T.—, how do you reconcile your teaching of democracy with the way you conduct this class?—An anonymous student."

inadequately orientated and from an alien culture.[5] It encourages the belief in immutable rules and leads to self-satisfaction which fails to prepare the individual for the challenges of practice in a changing society. On the other hand, the previously mentioned problems associated with the American system give reason to question the wisdom of outright acceptance. Local factors are also significant for there is a serious shortage of national materials in published or even accessible form. The students are less mature[6] and less sophisticated[7] and sometimes handicapped by language difficulties.

Could it be that the solution to the problem associated with the new African legal educational processes is, as Professor Kahn Freund once stated, somewhere in the mid-Atlantic? It is possible that a judicious blending of the two systems will provide the vehicle for legal education required by such a country as Zambia.[8] The lecture format could be used to introduce the students to the general areas of study, to stimulate the class by "integrated telling," to sum up at the conclusion of the enquiry, to assist in the organisation of the subject matter and to impart additional information to the students. It is in the area of general theory of the principles and doctrines of law that the lecture can be valuable while the case-Socratic method can be the testing and proving ground for these principles. At the same time, it will be possible to take cognisance of the newer American pedagogical additions to the Langdell method, for their nature is complementary rather than contradictory.

[5] Although the need for junior teaching staff is diminishing with the increasing availability of qualified African personnel, the expansion of educational and research facilities suggests that it is unlikely that the expatriate will be phased out in the near future. Instead, it is thought probable that there will be a changing pattern of recruitment reflecting the need for senior teaching and research staff. However, no matter what role the foreigner adopts he is generally unwilling to take out a contract for more than two or three years. As older expatriates usually have continuing commitments within their own faculties they may only be able to obtain leave of absence for one year. To combat the potential performance deficiencies that may arise from short term stays organised orientation courses could be made available. The majority of expatriates are in receipt of some financial supplementation from one organisation or other. These institutions, which exist in the United Kingdom and the United States of America, whether they be public or private, might give periodic orientation seminars to the newly hired teachers in order that the African schools might receive greater benefit from their comparatively short stay.

[6] The first law degree is a postgraduate degree in the United States.

[7] Even of English students, normally eighteen years of age, who are more sophisticated than the average African freshman, Professor Kahn Freund had the following to say: "They don't know anything about anything at all . . ." (1955) 3 *J.S.P.T.L.* 106.

[8] No mention is made of the question of writing skills. However, African students probably need special emphasis on this aspect as they frequently appear to be less happy on paper than in oral presentation.

2. *Research in the Law School*

As basic as the function to produce competent graduates is the task of guiding and developing the rapidly growing and changing body of law. The enormous responsibility associated with undertaking such a commitment cannot be lightly assumed nor easily executed. The research potential and writing opportunity in both traditional and non-traditional fields is limitless. It is only necessary to list some of the areas in the first category to establish the value of such work for the nation: aspects of economic federation with the East African Economic Community; legal implementation and effects of a one party State; existing court structures, their staffing and efficiency; economic development and central planning in a socialist State; the government's relationship with private enterprise and foreign investment; methods to stimulate citizen entrepreneurial advancement; trade relations with South Africa and Southern Rhodesia; the legal implications of U.D.I. as they affect Zambia; establishment and management of foreign grants and loans; population resettlement; Kafue Basin project; land tenure; mineral law; tax reform; role of the co-operative movement and government retail and wholesale units; independence of the judiciary and the concept of the separation of powers in a developing nation; the effectiveness of legal aid, etc. These are some of the projects which might be mounted if there were sufficient manpower, for it is in the first few years after independence, during the transition from pseudo to actual independence,[9] that there

[9] Bruce Page, "Messiah and Mug" *Sunday Times* 5th March 1967:

"Neo-colonialism of course . . . certainly exists. It dates from the discovery, made just after the war by the Western powers, that there was a much better way of making money out of Africa than running colonies and dependencies there. This was to pull out and put the black man in charge. You were then absolved from the cost of actually running the place, with administrators, policemen, troops and what not, and your commercial enterprises were in fact rather more free to exploit the locals than before.

"As far as possible, you kept all the lucrative business in your hands, and as the new black governments were likely to be a good deal more naive and inexperienced than the white civil servants who had preceded them, some impressive business killings were made. For that matter, they are still being made."

Bing, *Reap the Whirlwind* (1968), 24:

"Colonialism has never consisted merely in rule by alien power. It brings in its train a series of commercial, financial, military and social relationships which do not disappear at the ending of imperial rule and have often, from long usage, come to be regarded as part of the natural order of things. Thus the old colonial system cannot be set aside by some broad sweep of policy, The bonds which bind down a poor colonial territory come to independence, are not of solid weave. They are composed of a thousand separate strands often not even inter-twined. Indeed, many, at first sight, appear to be individual strings pulling the new state forward, rather than holding it back."

is the need and enthusiasm to question traditional legal institutions and create new ones, if necessary, capable of providing a structure on which sustained economic and social growth of the new order can be built.[10]

Of equal importance are the non-traditional research areas.[11] For instance, within Zambia there is a need to document the customs of the various peoples before any attempt to preserve tribal "grundnorms" in future legislation can be considered. This prerequisite to viable legislation will involve tedious field research which has normally been the preserve of the social anthropologist. However, the Law School has the opportunity of making a valuable contribution through its final year students' research paper, which earns them credit. These young men are, in many ways, well qualified to investigate the customary procedures. The senior legal scholars, all of whom are expatriate, non-black and on contract, are faced by the barriers raised through unfamiliarity with the local languages, their own skin pigmentation, and frequently the inability to appreciate fully, despite considerable effort, the motivations and values of the study groups. The undergraduates possess a social and natural introduction which few expatriate teachers can ever hope to match. With careful supervision this programme should provide a valuable addition to the research facilities within the country.

Many governmental ministries and local authorities require background work in the preparation of new policies and legislation but are unable, through shortage or absence of qualified personnel, to under-

[10] Professor K. Bentsi-Enchill, " Civitas Dei Africana " (1969) *Zambian L.J.* 65 : "... so far as concerns problems in many related fields such as public health, education and economic development, important work is being done by various organizations and some financial support has been provided for scientific study aimed at the discovery of rational solutions. But the social transformation that is called for today depends on many other intangible factors as well. Not least among these is the working of legal and political institutions in the societies that make up our new nations. For this kind of problem too little systematic study has been made, and hardly any support given. Somehow massive attention must be brought to bear on the study and solution of problems of law development, of government and institution-building in Africa if a generally successful response to the challenge of the twentieth century is to be achieved. These are fields in which the different African states share many common problems, and which therefore challenge combined thinking and action. Yet it remains true today that insofar as any serious work is being done in this area, it proceeds in isolation, does not measure up to the need, and has depended too much on the whims of individual successful politicians and *ad hoc* consultants."

[11] By this is meant problems not found in the English or American society or those which existed but have since been tackled, solved and incorporated into the legal framework.

take adequate programmes. The dangers associated with this situation are considerable for the promotion of "phantom" legislation, with little chance of successful promulgation, distribution and enforcement, or legislation unsuitable for the purposes for which it was drafted, is not to be encouraged. It was Dr. J. Vanderlinden[12] who presented the following dramatic promulgation issue which arose in the Democratic Republic of the Congo (Kinshasa). In September 1968 the most recent issue of the Moniteur Congolaise, the equivalent of the Official Gazette, was dated 15th August 1967! Although it is understood that this has since been remedied it illustrates, somewhat frighteningly, the likely consequences of a communication breakdown and the malfunctioning of the legislative and judicial administration. It is not suggested that the Zambian situation is of the same critical nature but there is scope for the university to expand its image, which would reflect a known willingness to embark upon individual and auxiliary research on problems identified to it by government.

A legal system requires certain basic tools which are essential for competent practice and scholarship. These exist in Western societies but there remain gaps in the legal framework of countries such as Zambia. For example, the break up of the Federation also meant the cessation of the Rhodesia and Nyasaland Law Reports in 1964. Thereafter, Zambia has relied upon the roneo-printed, soft covered, selected judgements prepared by the High Court, which are of limited circulation. The interest and assistance of the Law School and the International Legal Center has remedied this situation with the recent production of the Zambian Law Reports. In 1969 the Juristic Studies Association of Zambia[13] was established with academics taking a leading part in its inauguration and programme, while, in the same year, the first issue of the Zambian Law Journal, published by the University of Zambia, was produced. The importance of this journal cannot be overemphasised for it provides the sole method of public communication between members of the legal profession in the country. Much remains to be done and one of the preliminary tasks should be the assembly of suitable teaching materials and the production of adequate text books, for the present lack of such writing has a considerable impact on the choice of teaching methods. Further effort, involving many man hours, will be required to index, annotate and consolidate the statutory and customary materials of Zambia.

[12] "Trends and Priorities in African Legal Research and Writing" in *Legal Education in Africa* (1968), 78.

[13] The first annual report of the Association, prepared by Mr. W. Capstick, is published in (1969) *Zambian L.J.* 130.

Despite the fact that there is normally but one university library in each African country, there remains a paucity of African legal and associated materials located on the continent. Indeed, the better African collections are often situated abroad. Thus, the Zambian scholar commonly finds it simpler to establish the state of a particular legal development in the United Kingdom or the United States of America than to discover, for example, how Uganda, Mali or Somalia treat an illegitimate child for the purposes of succession. If common law Africa is to stop the automatic reflex of first looking to the United Kingdom for solutions to black community problems and, instead, turn to neighbouring States which are tackling the very same problems, and if the comparative benefits of studies in similar areas are to be exploited, the scholars and reformers must be able to resort to readily accessible vehicles of information which will carry the theory, practicalities, legislation and results of the reformatory and research programme of other African nations.

This task could be performed by a research registry located, for instance, at the Organisation of African Unity headquarters. It could act as a depository of documents and reports of both a public and private nature. Regular publications directed to governments, institutions and individuals could keep them abreast of pan-African legal developments, while an accessibility hierarchical structure could maintain the sanctity of privileged documents. Photo-copying facilities could enable the relevant materials to be dispatched to members on the register.

The need for specialised facilities of research and publication has already been realised in many communities. In particular, such institutions as the Centre de Recherches et de Documentation sur la Législation Africaine, CREDILA, at Dakar University, the Legal Research Centre at the University of Tanzania, Dar es Salaam,[14] and the Centre

[14] Professor A. B. Weston, University College, Dar es Salaam, has stated:
"The functions the centre will serve are:—(a) documentation centre for all East African law, especially that which is presently lacking adequate documentation, e.g. customary law; (b) comparative legislative research for the East African governments, in the immense task of replacing the laws of each of the countries which are undergoing rapid economic development and social change in a new political setting. (This research would be not only in the law of other African common law states, but in all relevant law, including especially the law of other commonwealth countries); (c) collection and publication of relevant East African court reports which are as yet unpublished; (d) production of the digests and books of reference at present practically non-existent which are essential for any practitioner's research into local judicial and legislative sources; (e) providing a centre for the scholarly work necessary before there can be any unification of the customary law and the imported English-type law, upon which unification the government place so much importance; (f) providing a centre for the study and encouragement of unification of information research in French type law of neighbouring countries. In short, providing the materials and facilities necessary for any kind of research into East African law or other law relevant for East Africa." (1962, unpublished.)

for African Legal Development which is working on an African Law Bibliography, 1947-66,[15] need commendation. In England, the School of Oriental and African Studies, London University, is producing an Annual Survey of African Law, commencing in 1967; another legal bibliography covering former British Africa, excluding South Africa, with emphasis on customary law, is being compiled, while the Restatement of African Law which began in 1959 has already produced two volumes dealing with Kenyan customary law, while two more on the law of Malawi are completed. The African Law Reports, edited by Professor A. Milner and the African Law Digest, produced at Columbia University, provide further valuable research material.

It is believed that the Law School will become even further involved in sociological and empirical research. The doctrinal approach, through examination of judicial opinions, legislation and scholarly writing, though valuable, must be prepared to augment the empirical methodology that should emerge on an inter-disciplinary basis within the university. The "armchair scholar" has a limited role to play within a developing society.

Finally, selection methods for research topics should also be subjected to scrutiny. The concept of research is traditionally an area of individual choice which falls within protective principles of academic freedom. Yet, can a poor nation afford the luxury of supporting the aesthetic scholar who is tempted to investigate the abstruse, irrelevant, flamboyant, unimportant or historical topic which does nothing to tackle the pressing difficulties of a struggling people? It might be more effective to establish a panel of research selectors. Such a Law School Research Board, which could be a sub-unit of a similar University Board, might include representatives from associated disciplines, the Law Society, students and government. It would be committed to reviewing and directing the school's research programme. It is even feasible to think in terms of a national co-ordinator preparing a list of topic priorities and encouraging inter-disciplinary teamwork on the projects.

*Conclusion*

Legal education is facing the dichotomous challenge of producing graduates capable of handling the law as it is now, and also being able, and willing, to reform it. This is an impressive and worthy task which requires recurring consideration and clarification of the objec-

[15] Dr. J. Vanderlinden is preparing a volume covering the period, 1897-1946.

tives and techniques of the Law School. The students must illustrate competence not only in commercial, company and property matters but also ability and eagerness to preserve the rule of law from over-zealous politicians. A sophisticated comprehension of constitutional law will be expected of them in order to commence restructuring the Westminster model of government which, time after time in Africa, has proved incapable of containing the pressures of social protest and dissatisfaction. They must be taught to comprehend the demands and boundaries of the adversary system in order to assume a constructive social role instead of becoming a mere "mouthpiece" for the client. The honour of justice must be upheld without impeding social and economic progress, for the lawyers' role must be that of a bulwark rather than an obstacle. Communication and interpretation of the language of the law to the people will be expected of them. Perhaps, most important of all, the students must be given the opportunity to develop a sensitivity to the need for, and methods of, change, for their legal qualifications will allow them to assume positions of community leadership and influence. Even at this early stage in the school's growth it is predicted that never again will the need and challenge facing the undergraduates and research programmes be greater.

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