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Legal Education in Zambia: Pedagogical Issues

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I. Introduction

This article discusses legal education in Zambia, its development and its present organization. There is need for concern with the kind of legal education any country should foster, for as Lon Fuller observed, lawyers have a central role to play in the ordering of society.[1] Yet law and legal process are not as recognizable products as a potato or a chicken. In Zambia and other African countries, legal education and its relation to community goals have often been insufficiently appreciated.

In Zambia local institutions providing for legal education are only twenty years old. Until the early 1960s, Zambia's few lawyers were trained in Britain. Because of years of neglect, there existed a dearth of legally qualified Africans. When local institutions were established, the country faced an urgent need to train lawyers to run the courts and various government departments. The resulting pattern of education reflected this need; more scholarly and reflective subjects were excluded from the curriculum, and the English system of law as an undergraduate course was adopted.

Twenty years later these arrangements have produced a sufficient number of lawyers.[2] The time has come to reflect on the programs now offered in light of the long-term needs of the country. These needs of Zambia will not be met by routine training of a purely technical kind but only by imaginative programs that emphasize the skills and perspectives a lawyer needs to discharge his many obligations both domestically and internationally.

II. The Colonial Period

The most striking feature of legal education in Zambia before independence was the absence of national educational facilities. The only

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1. Robert S. Summers, Fuller on Legal Education, 34 J. Legal Educ. 8 (1984).
2. Zambia Manpower Survey 1969 stated that the creation of 379 lawyers by the University of Zambia, expected by 1980, was sufficient to satisfy the requirements deemed necessary to "Zambianise" the legal profession.

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way to train as a lawyer was to journey to London, join an Inn of Court, and acquire English professional qualifications. There was very little thinking and virtually no action toward establishing local training facilities for legal education, even at the lowest levels. As a matter of policy legal education was discouraged.[3] A number of reasons were advanced for this state of affairs. It was said that it was more important to train engineers, doctors, and agriculturalists than lawyers. Yet emphasis on these other fields was not apparent in the case of Zambia, for by 1964, at the end of British rule, Zambia had a mere one hundred university graduates, of whom only two were medical doctors and one an engineer. The rest were graduates in the field of education. A more likely reason is that the British considered it politically unwise to train lawyers, fearing they would turn into agitators on their return to the colonies. Moreover, in the colonial situation lawyers were assigned a relatively minor role. The organization of the legal system during the colonial period kept the judiciary, as well as the bar, away from regular official contact with the African population except in the case of serious criminal offenses. Lawyers had no role in the customary courts.[4] All this has changed. At independence the court system was reformed, and a single judicial hierarchy was introduced with all the people in the country subject to the same jurisdiction of the same courts.[5]

Being called to the English bar was normally considered sufficient for admission to practice in Zambia, yet the legal education provided at the Inns of Court was and is not in itself completely adequate for practice in Africa.[6] In every territory the profession was fused. Every qualified lawyer could practice as both a barrister and solicitor and almost all did. The training afforded by the Inns of Court could help toward proficiency as an advocate; it was not designed to prepare a solicitor for his job. Yet the solicitor's side was and is often the most important part of African practice. The training at the bar might, in a country with a strong bar, be described as adequate. But for a student from a country with a weak bar such as Northern Rhodesia who had little prospect of further training in practice, English training left him inadequately prepared. It also paid no attention to the problems of practising in an underdeveloped country with multiple systems of law.

The 1961 Report of the Committee on Legal Education for Students from Africa first drew attention to the need for local education.[7] Chaired by Lord Denning, the committee recommended that in the future the African countries should not admit lawyers to local practice merely on the basis of British qualifications but should require additional practical training in the local law and procedure. It further recommended the establishment of local

3. William L. Twining, Legal Education within East Africa, British Institute of International and Comparative Law, Commonweatlh Law Series, 5 (London, 1966).
4. *Id.*
5. Lawyers are still forbidden to appear in local courts. See Local Courts Act, chap. 54 of the Laws of Zambia s.15.
6. Report on Legal Education for Students from Africa, Cmnd. 1255 (1961) para. 27. This position was supported by R. Y. Hedger, Legal Education in West Africa, 6 J.S.P.T.L. 75 (1961).
7. *Id.*

training facilities and specifically the establishment of a law school in Dar-es-Salaam to serve East Africa.[8] Zambia sent students to this regional school until the founding of a local school and continued to send some to the Inns of Court in England.

In 1960 a committee was appointed by the governor of Northern Rhodesia (as Zambia was then known) to inquire into the ways and means of promoting the entry of local persons into the legal profession. Its report, issued in 1962,[9] recommended increased local training and suggested that both the government and the profession encourage this end. It urged that overseas legal training be regarded as a subsidiary method. The report did not favor university education.

The Legal Practitioners Act was amended to provide for some local training.[10] This enabled students to obtain English qualifications in Northern Rhodesia without studying overseas. Under this scheme any person with the basic educational qualifications approximating those required by the Inns of Court could become an articled clerk. The apprenticeship lasted five years, during which time the clerk, under the supervision of the Northern Rhodesia Law Society, took the intermediate and final examinations of the incorported Law Society of England. The student was also obliged to take a local examination covering law and practice where these differed from English law. Thereafter the clerk was admitted as a barrister and solicitor and was also entitled to subsequent admission as a solicitor in England.[11] Persons already entitled to practice as a barrister or solicitor in England were for the first time required to take a local examination. This was in the form of papers set by the Law Society in areas of procedure which differed from English practices.[12] In 1963 a program was set up in Lusaka at the National Institute of Public Administration which prepared students for the first four papers of part one of the bar examinations in the United Kingdom. On successful completion the students attended the post final practical course conducted by the Council of Legal Education in England.

III. Post Independence Arrangements

The quantitative growth of education in Africa since independence has been impressive. Until 1924 all education in Zambia was provided by missionaries.[13] As late as 1958 there was only one secondary school in the whole country capable of taking Africans through the Cambridge School Certificate. At independence the new government made an early

8. For an account of the early days at Dar-es-Salaam Law School, see Twining, *supra* note 3, at 122.
9. Report on the Legal Profession (entry and training) Committee, Government Printer, 1962, Lusaka. See also Anthony M. Mitchley, Legal Education in Africa 17 (1963).
10. Legal Practitioners Ordinance, s.7(1) (a) 1965 edition of the Laws of Zambia.
11. Solicitors Act, 1957, s.4.
12. *Id.*
13. Robert B. Kent, One Zambia, One Nation: A Reprise, 8 Cornell Law Forum 18, 19 (June 1981).

commitment to public education and built several schools. The need for high level manpower led to the founding of the University of Zambia in 1965, one year after independence from Britain.[14] The first students matriculated in 1966. The program of legal education commenced at the beginning of the university's second academic year in March 1967.[15] Formal recognition as one of the schools of the university was accorded to the school of law on July 1, 1967.[16] The objectives of the school as approved by the senate of the university are to join in the building and development of the legal system of Zambia, and generally to make available the staff and students of the school for the welfare of the community; to produce lawyers in Zambia of a quality at least equal to the best from abroad and also better fitted to meet the needs of such developing countries as Zambia; and to be prepared to offer, where desirable and required, law teaching facilities for other disciplines in the university and in other institutions in Zambia.[17] The law degree program adopted was based on the United Kingdom pattern, that of a three-year undergraduate course, but it was indicated that the possession of a bachelor's degree in arts or science would be a prerequisite for entry into law study as soon as some one hundred Zambian lawyers had been produced.[18] It was recognized that there was a need to stress the importance of a broad education equipping the would-be law student with an awareness of human society, its history and workings. It was also recognized that the deeper the educational and social awareness a student brings to the study of law, the greater in general will be the value he can derive from his legal training.

The present program lasts four years. The students spend the first year in the school of Humanities and Social Sciences,[19] free to take any subjects they choose in the arts. They then spend three years in the law school. The first year is composed of five compulsory courses: legal process, law of contract, torts, criminal law, and constitutional law. The second year is also compulsory and offers land law, commercial law, family law, evidence, and administrative law. The third and final year is composed of jurisprudence and company law as compulsory courses. A student is required to select an additional three subjects from international law, labor law, international trade, and criminology. All third-year students are required to submit a satisfactory piece of written work on some aspect of law, prepared under the supervision of a member of the teaching faculty. Students in the second year of study participate in a moot court program based on appellate briefs and arguments.

14. Report on the Establishment of a University in Zambia, Government Printer, Lusaka, 1963. See also Philip A. Thomas, Legal Education in Africa with Special Reference to Zambia, 22 Northern Ireland Legal Q. 3 (1971).
15. Law School Handbook 1970, at 1.
16. *Id.*
17. *Id.*
18. *Id.*
19. Law School Handbook 1983-1984, at 19.

The basic structure of legal education in Zambia is the English. The teaching methods are weighted heavily toward the English approach, with, however, more emphasis on formalism than in England.[20] Students are taught to memorize large numbers of rules organized into categorical systems (requisites for contract and rules about breach, for example). They learn issue spotting and to identify the ways in which the rules are ambiguous, conflicting or inadequate/incomplete when applied to particular factual situations. The students do not usually learn case analysis, as textbooks rather than casebooks or law reports are the basic tools for instruction. The students learn general broad holdings of cases. They do not learn policy arguments. Most of the rules learned are straight from English textbooks; it is easier to learn British rules than local rules in the African context because the difficulties of working with local materials are formidable. Until recently law reports containing cases decided by the courts in the country were not available. There are very few books and other local published materials. When they do exist, they are often out of print or very difficult to obtain. Lecturers pay lip service to the need for including local materials in their teaching, but few manage it. Teaching loads are heavy, therefore preparation is not adequate, and lecturers frequently lack the necessary orientation.

The heavy rule focus of Zambian legal education is troubling. As Whitehead warned, "Whatever be the detail with which you cram your student, the chance of his meeting in afterlife exactly that detail is almost infinitesimal and if he does meet it, he will probably have forgotten what you taught him about it."[21] He goes on to say, "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."[22] What is needed in Africa today is legal training using local materials, as far as possible, with emphasis on developing the ability to think clearly and critically rather than the memorization of rules of law. The need for legal education that stresses thinking as opposed to rote learning is even more necessary in Africa than in the United States or England.[23] While law graduates in the United States or England may upon entry into the profession be under the guidance of a more experienced lawyer and gradually be given increased responsibility when ready for it, the recent African graduate has little or no opportunity for further education or refinement of legal skills after the completion of formal training. Further, African societies are in the midst of radical social change on all fronts. This situation makes it all the more likely that the "right answer" (the British solution to a particular problem which the student was taught a relatively short time ago) is no longer right or relevant because the society in which the rule is to be applied has changed in the interim.[24]

20. Stephen K. Huber, Legal Education in Anglo-Phonic Africa: With Particular Attention to a Case Book and the Criminal Law, 1969 Wis. L. Rev. 1188.
21. F. E. Whitehead, The Aim of Education and Other Essays 4 (Boston, 1959).
22. Huber, *supra* note 20, at 1190.
23. *Id.*
24. *Id.*

There is so much to be done, with conditions changing so rapidly, that legal training will not produce the kind of lawyer adequate to meet the challenges of Africa unless African materials are used and the teaching methods change to emphasize creative thinking instead of rule learning.

The introduction of local training necessitated changes in rules relating to admission to the bar. While admission to the bar generally requires an undergraduate degree in law,[25] provision continues to be made for those who chose to obtain a legal education by studying in a law firm.[26] In order to qualify one must serve articles for five years with a practitioner of five-years standing and take prescribed examinations of the Council of Legal Education. It is unfortunate that this method of qualification continues. In most other countries entry to the legal profession is by way of a university law degree.[27] As the Ormrod Report on Legal Education recognized, "faith in apprenticeship seems to be waning."[28] The system of articles, even in the days when it was prevalent, served well enough to train men in the mechanics of the profession but did nothing to provide an education.

In Zambia possession of a law degree does not, of itself, enable the holder to practice as a lawyer. Further practical training is required. This rule also applies to a qualified lawyer who has a right of audience before the courts of a Commonwealth country. A Law Practice Institute provides a course of postgraduate study for law graduates wishing to enter the profession.[29] The institute is run by a Council of Legal Education, chaired by the Chief Justice. Its membership includes one representative of the university and a number of practitioners. The Law Practice Institute course requires full-time attendance. As originally envisaged the method of instruction was to be as practical as possible with few formal lectures.[30] The intention was to produce an atmosphere of a practitioner's office. Using a graded series of exercises in each subject, the students were to receive practical experience over a far wider field than is covered by most articled clerks.

Unfortunately the institute has not realized these objectives. As there is no full-time qualified practitioner on the staff, the plan to teach skills through graded series of exercises is not in place. The institute has become a poor version of the university law school. Students attend afternoon lectures in various subjects. The courses are taught more and more as academic subjects. The only practical experience students receive is through the work at Legal Aid and in connection with the Ministry of Legal Affairs and private firms. They are not, however, allowed to appear in court. The trouble with such arrangements is that the practical skills the students acquire depend on the enthusiasm and commitment of their supervisor within the firm or government department. Little responsibility is given to

25. Legal Practitioner Act, chap. 46, The Laws of Zambia, s.10.

26. *Id.*

27. Report of the Committee on Legal Education, Cmnd. 4595.

28. *Id.*

29. The Law Practice Institute was established July 5, 1968, by the Law Practice Institute (establishment) (Order, 1968, s.269/68).

30. Law Practice Institute Handbook 1971.

the students. Generally the experienced lawyers are too busy to assist in the development and training of the young lawyers. Moreover, in some cases, being apprenticed to members of the existing bar may merely perpetuate the relatively low standards of the old. The average African law firm is small and often poorly organized.

The Law Practice Institute would be more effective if it were converted into a legal clinic with an experienced full-time instructor. In such a clinic the law graduate could be taught practical subjects and be employed in handling actual legal problems under the watchful eye of the instructor. The students should appear in court with attorneys from the Law Practice Institute Clinic. The object of the training would, as was first announced when the institute was set up, be to train students not by telling them or showing them what to do, but by making them do it themselves under supervision and subject to correction. As the Ormrod report stressed, it must always be remembered that this stage of training has two main objectives. The first is to enable the student to adapt the knowledge of the law and the intellectual skills acquired in the academic stage to the problems that arise in legal practice; the second, to lay the foundation for the continuing development of professional skills and techniques throughout his career. From this it follows that the amount of substantive law to be studied in this stage of legal training should be kept to a minimum and the temptation to require candidates to cover additional law subjects should be resisted.[31]

IV. The Need to Restructure Legal Education

The lawyers produced by the present system of legal education in Zambia, as well as other African countries, are trained to become legal technicians. They are encouraged to have little or no interest or comprehension of the policy issues inherent in the law. They are generally reluctant to criticize current law. Even as technicians they have limits, for few are competent to represent national and commercial interests in international transactions, involving complexities of taxation and international finance. Africa needs lawyers with the technical competence to do a first-class job in negotiating a contract, to understand international banking, and to draft the papers for an international loan. At present the Zambian government must turn to outside lawyers. The take-over of the mining companies in Zambia and their recent merger were both handled by outside lawyers; the need for such lawyers will only increase. Public corporations are increasingly involved in industrial and agricultural development. The legal problems of financing huge enterprises are far more complex than the legal problems of borrowing from banks or traditional private sources. Good lawyers, properly trained in international concessions agreements, and good legislative draftsmen can move the wheels of progress, while narrow, pedantic, unimaginative, and ill-trained lawyers will hinder development.

Courageous and imaginative lawyers can help achieve political stability in a multicultural society by helping design viable political institutions.

31. Report on the Committee on Legal Education, Cmnd. 4595 (1971) at 57.

International and comparative lawyers can assist the country in moving toward regional cooperation as well as cooperation on the wider international scene. Lawyers in developing countries face challenging tasks which are unusual in some of the more economically advanced nations.[32] This is particularly true in comparison with the rather narrow role lawyers tend to play in the English system. African lawyers are expected to relate legal institutions, as well as social and political institutions, to the general and specific premises of expansion and development. To do this, a lawyer needs a broadly based education to enable him to adapt himself successfully to new and different situations as his career develops, an adequate knowledge of the more important branches of the law and its principles, and the ability to handle facts, both analytically and synthetically. He needs the capacity to work, not only with clients, but with experts in different disciplines. He must also acquire a critical approach to existing law, an appreciation of its social consequences, and an interest in, and positive attitude toward, appropriate development and change.

How then can the quality of lawyers be improved so that they can cope with these challenges? First, higher entry qualifications are required for the study of law. All law students should have a university degree. This would result in more mature and broader based students. Secondary education is inadequate for the study of law, especially in Africa today. As Gower observed, "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."[33] There is need for more imaginative degree programs. There is need, for instance, for more research oriented courses so that the graduates are able to conduct independent research on the tasks they face in practice and write meaningful and informative papers on them for use by those charged with the responsibility of making decisions. The law school must seek to teach not only law as it is but also its development. Courses that expose students to other legal systems are necessary. The colonial history of Zambia makes this imperative; no less than three of its neighbors operate a civil law system (Angola, Mozambique, and Zaire) and two others have legal systems strongly influenced by Roman and Dutch law. There is need in the foundation year for a course that exposes students to ideas in jurisprudence. There is also a general need for such perspective courses as the sociology of law and law and society.

Serious obstacles stand in the way of such changes. The present curriculum is quite rigid. Law schools lack the autonomy, and law teachers the flexibility, to establish such courses. Law schools will have to fight for

32. See L. C. B. Gower in foreword to Robert B. Seidman, Source Book of the Criminal Law of Africa vi (1966).

33. *Id.* Thomas, *supra* note 14, at 27, discusses this problem. Thomas actually suggests that case method would be better suited for Africa as it encourages the understanding of universals from particulars, reasoning by analogy, and the testing of generalities by placing them within hypothetical factual situations. Thomas at 26.

more power as African universities are often autocratic, overcentralized, and run by administrations insensitive to the changing needs of various academic disciplines.

In the final analysis effective law teaching can develop only with the development of the research capacities of the African law schools. In Zambia, for instance, there is a great need for research on the legal aspects of Zambia's development and for the adaptation of civil, commercial, and company law codes to independent Zambia. The company law in operation in Zambia, for instance, is the 1898 English Company Act. The code is in dire need of adaptation to the present-day needs of the country. Many agencies have been created in agriculture, housing, and credit whose policies and operations ought to be studied by law professors in order to enrich the teaching of law in relevant fields. The examination of local conditions will enable lawyers to move away, as Gower observed, from the belief that "English law is the embodiment of everything that is excellent even when applied to totally different social and economic conditions."[34] What they will discover in their research will thrust them into the African reality and make them aware of the way the law they have learned is operating. That African law schools have an important role to play in research in general and law research in particular cannot be overemphasized. As Sidney Hook observed, "A university should serve society without being subservient to society but that it was not its function to remake society by reform, revolution or counter revolution. Its task is to become a center of intellectual adventures and discovery, a birthplace of fresh insight and vision, an arena where fundamental ideas are pronounced, challenged, and clarified, and where students of a subject are prepared by competent teachers to become its masters."[35] By its teaching and scholarship every African law school faculty should strive to make its law school such a center and also should undertake the more specific task of showing how fresh insight and vision can be translated into practical measures that bring about development, lessening of suffering among a great many people, and the democratization of the otherwise underdeveloped and autocratic nations of Africa. Too few African legal scholars are engaged in research, and among those very few can escape the criticism Riesman raised against legal research in America, when he argued that "too few professors are criticial scholars, most of them are doing the housekeeping of the law, trying to keep track of decisions and make sense of them."[36] More serious research is also hampered by limited libraries, lack of publishing facilities, and inadequate secretarial and office support services.

Finally, in most African law schools one gets the distinct impression that the aims of legal education have not been given serious attention. Part of the reason is the high turnover of law teachers. Bright young people with good commercial prospects are unlikely to remain in teaching unless they have a

34. Gower, *supra* note 32, at vi.

35. Sidney Hook, Education and the Taming of Power 254, 255 (La Salle, Ill., 1973).

36. David Riesman, The Law School: Critical Scholarship vs. Professional Education, 32 J. Legal Educ. 110, 115 (1982).

high perception of their worth through their work and from the way they are seen by others. Few really able people want to work for long in situations that offer no rewards in either money or prestige. And such is the case with law teaching in Africa today. The problems encountered in maintaining continuity and retaining experienced law teachers in turn hinders the faculty's continuing efforts to give the law school a sense of direction and purpose. Without a driving core, key faculty initiators, for example, who are best able to formulate a meaningful educational response to social and economic challenges and change, a faculty tends to drift and be flavorless.

V. Conclusion

This article has made connections between legal education and the role of lawyers in African society. The lawyer's role is culture-bound, determined by the way in which he is taught and conditioned to perceive himself and also is perceived by the nonlegal professionals among and for whom he works.[37] Curriculum changes alone will not expand the role of lawyers in Africa. There has to be an openness and a realization on the part of African governments that lawyers and law in decision making are important. At present African governmental processes attach very little significance to lawyer participation. Ministries do not have their own legal departments, and all legal manpower is organized in one ministry under the Attorney General. In most developing countries lawyers are not given important roles. Constitutions are easy to amend; the people's rights are full of exceptions. There is no significant separation of powers between the executive and legislative branches of government. In fact, governments of genuinely limited powers are not common in Africa. Even when intolerably oppressive governments are resented and despised, the opposition tends to think more about substituting its own dominance than about limitations of power of governments *per se*. An African jurist has observed, "It would seem that on the whole governments in the newly independent countries hanker after the simplicity of the colonial arrangement, with the primary aim of the courts being to uphold the power of the state, enforce its laws and provide stability. The court's function of protection of the individual from the abuse of power is relatively new and less well appreciated."[38] So long as this remains the case, changes in methods of legal education can have but limited effect on the role that law and lawyers play in African nations.

37. Issa G. Shiviji, From the Analysis of Forms to the Exposition of Substance: The Tasks of a Lawyer Intellectual, 5 East African Law Review 1 (1972).

38. A. N. E. Amissah, The Role of the Government Process, Ghana's Experience, 13 African Law Studies 4 (1976).