LEGAL EDUCATION IN THE COMMONWEALTH CARIBBEAN 1975–85

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The first legal practitioners to be trained under our present system of legal education were admitted to the Law Faculty at Cave Hill in October 1970 and graduated in 1973. In the course of a message which was delivered at an ecumenical service in September 1973 at the University Chapel in Jamaica to mark the occasion of the commencement of the Norman Manley Law School, the Director of Legal Education expressed the hope that the intended trainees would not only be skilled, but also that they would have a sense of compassion and a searching awareness of the realities of conditions in the region, a deep sense of service to the law, their community and their clients, yet retain the vision and zeal of law reformers.

This was no doubt a tall order to expect from the 75 students who were just about to embark on their two-year practical training at the law schools of the Council of Legal Education; but the record of our graduates over this ten-year period has been creditable enough to show that this faith was quite justified, and had indeed been more than amply rewarded. The intention had always been that in the course of time the locally obtained qualification would have completely superseded all other prevailing qualifications, but as will be noted later this exclusivity was never fully realised.

Before the Faculty of Law and the Council of Legal Education were established, a person who wished to enter the legal profession in the Commonwealth Caribbean had in the main to acquire a British legal qualification in order to do so. The qualification would be either that of Barrister or Solicitor. The intended Barrister would join one of the four English Inns of Court, eat his 'dinners', and sit examinations, which by all accounts were comparatively easy. No university degree was required and no period of pupillage was necessary. If the applicant desired to enrol as a Solicitor he would be required to undergo a period of pupillage as an articled clerk — three years if he possessed a university degree in law, 5 years where he did not — and sit his examinations. It was possible in some territories to serve the five-year period of articleship locally, but the student was required to pass the examinations set by the Law Society of England. An interesting provision in the Jamaican law permitted a Solicitor of ten years standing to apply to be enrolled as a Barrister, and a Barrister after three years enrolment to apply to be enrolled as a Solicitor.

The two branches of the profession remained separate in the larger territories[1] and they were fused in the smaller states. But even where separation existed in law, there were substantial relaxations of the rules in practice, if only to cater for the special problems posed by small communities, and since there often were insufficient lawyers to satisfy local requirements, each territory adopted its own special ways of resolving the problem.[2]

In an article entitled "Legal Education for the West Indies", published in 1966,[3] Professor O.R. Marshall had analysed the forms of legal education which then existed for the region and stated:

> If then both local and external are at present inadequate to meet the needs of the area, what can be done to improve it? It would be unrealistic, even if it were desirable, to try to adapt external legal education to West Indian needs and aspirations. Other countries are fully occupied with their own problems: the West Indian territories — some of which have already achieved independence and others are moving towards that goal — must begin to assume their own burdens and try to find answers to their own problems in the institutional and educational as well as in the economic fields.

At the time these words were written the report of a committee which had been appointed in 1963 under the chairmanship of Sir Hugh Wooding, Chief Justice of Trinidad and Tobago, and which was published in 1964, had recommended that a system of legal education be introduced at the earliest possible time.

This Committee had received and considered several written memoranda, and interviewed many persons and organisations, but was unable to present a unanimous report. The ground of disagreement concerned the siting of the new Faculty, and no positive recommendation was made. However, the majority was convinced that no sites other than Jamaica and Trinidad ought to be considered. The two members from Barbados entered a note of dissent on the siting, but they were unequivocal in their recommendation that the Faculty of Law ought to be sited in Barbados. The Committee, however, unanimously agreed on the method and length of training. The first three years of study were to be spent in a university setting, the fourth on an attachment to the chambers of a lawyer of experience, and the fifth year was to be a year of intensive study under teachers recruited from the Law Faculty, practising lawyers and judges.

This was not, however, the first attempt to introduce Law into the University of the West Indies. As far back as 1956 a proposal was made for the creation of a small institute of legal research which might in due course develop into a fully fledged faculty. Nothing happened. In 1963 the proposal was resuscitated and a Chair of Law was advertised for the Trinidad campus of the University, but this attempt also fell by the wayside. It could truly be said, however, that following the report of the Wooding Committee the momentum had gathered and every effort was made to sustain it despite these initial disappointments.

Accordingly, early in 1967 Sir Hugh Wooding was asked to take a further look at the 1964 recommendations in consultation with Professor Marshall. They met in May of that year and reaffirmed the conviction of the Wooding Committee that the responsibility for the system of legal education to be offered should be divided between a Faculty of Law and a Council of Legal Education, and continued:

> Our acceptance of the feasibility of a geographical separation between the Law Faculty and the Professional Law School makes it possible for

> us to reconsider the choice of site for the Law Faculty. We accept that in these circumstances Barbados becomes eligible for consideration. We are, however, unable to suggest any academic criteria which would enable us to prefer any one of the three campuses over the others. We have therefore come to the conclusion that the choice of site must be determined by relevant non-academic criteria.

Early in September 1967, a more broadly based Committee comprising the heads of the Judiciary, the Attorneys-General and the representatives of the profession from most of the territories met in Trinidad under the chairmanship of Sir Hugh Wooding to formulate the proposals for the practical professional training of law graduates. The political considerations having been settled, the final decision was taken to conduct a three-year course of studies leading to the LL.B. degree at the University and to entrust the Council of Legal Education with the task of establishing two law schools. The first year of the LL.B. programme was to be taught on all three campuses (and also at the University of Guyana),[4] and the second and third years in Barbados. The law schools were sited in Jamaica and Trinidad to conduct instruction leading to a Certificate which would entitle the holder to practise in any of the participating countries.

The curriculum of the Faculty has from its inception been geared to meet the wishes of the founding fathers, which was to provide as liberal an education as possible for the West Indian lawyer — a graduate with a legal mind and a keen awareness of social issues. To that end the first year syllabus contains an equal number of law and non-law subjects. In addition, a compulsory course on "Law in Society" provides a further opportunity for the undergraduate to apply his newly acquired skills to the prevailing social and political considerations of the region.

University policy with regard to staffing of, and student entry into, the Faculty has ensured that the highest quality of staff is employed by the Faculty and also that every Commonwealth Caribbean territory which wishes to do so will be continuously represented in the student population. Once the minimum entry qualifications are satisfied the applicant competes for a place in the Faculty with other students from his territory according to ability; thus the highest possible standards are always maintained. In addition, the graduate who has excelled in another discipline is permitted to pursue the LL.B. degree in two rather than three years, if his first degree contains a social science content.

It should not be surprising to expect that in a region as far flung and diversified as the Caribbean, the choice of candidates for admission could be problematical. Thanks to the political sagacity of the policy makers, however, this is not so, for armed with the guidelines set by them, the choice of about 110 students from a list of over 800 applicants is as smooth an exercise as could be expected. There is a territorial quota upon which is superimposed several entry qualifications. And when various tests are applied the Faculty is left with as equitable and as cosmopolitan a group of students as could be found anywhere in the world.

A growing awareness of the need for interdisciplinary studies has led the Faculty from 1977 into mounting joint degree courses in conjunction with the Faculty of Arts and General Studies and the Faculty of Social Sciences. The programmes currently offered are "History and Law", "Economics and Law", "Political Science and Law" and "Sociology and Law". A new programme "Accountancy and Law" is currently being considered by both Faculties.

Like its counterparts in the University, the Faculty has also been keenly aware of the cost of university education. The decision was therefore taken to offer to qualified students in the non-campus territories the opportunity to sit the examinations in the first year law subjects at home. The results of these Challenge examinations have so far been very encouraging, and our first 'Challenge' graduate is expected this academic year.

In October 1979 the Faculty introduced, in addition to its normal postgraduate programmes, an LL.M. course in Legislative Drafting. The success of this course, which is specifically geared to meet the continuous shortage of legal draftsmen in the area, has exceeded our expectations; and arrangements are currently in hand to expand this programme. With the assistance of the Commonwealth Secretariat it is hoped that UWI will become the hemispheric centre of these programmes for lawyers from the wider Commonwealth.

Although no serious complaints had been made about the system of legal education, it was decided in 1977 to evaluate the programme by means of a workshop, in order to review the progress and achievements of the two institutions in the provision of legal education and training for the region.[5] At that workshop three main points were emphasised in relation to the Faculty:

(a) it ought to prepare graduates for a wide range of career opportunities;

(b) while it should consider itself first and foremost an organisation which is in pursuit of research, it should not be unmindful of its responsibilities to the profession of which it is a vital part; and

(c) although it ought to make provision for the candidate who would like to combine law with some other discipline, it should also accommodate the individual who merely wishes to study the Law for its own sake.

As a result of the several views expressed at the workshop, a team of consultants was appointed in 1977 to review the state of legal education in the region. After travelling throughout the region, the consultants confirmed the utility of the prevailing system; but one of their reasons betrayed an unnecessary pessimism. At page 10 of their report, with reference to the fact that legal education is spread over four territories in the region, they stated:

> Another advantage is that the system gives several countries a "piece of the action" and this generates a sense of involvement which should help to maintain the Caribbean nature of the enterprise. At the same time it must be recognised that it provides a foundation on which each of those countries can build its own complete system of legal education if

the movement towards Caribbean integration fails and fragmentation continues its historic role in the region.

Realistic though this statement may be, it is still unfortunate that there is to be found in any document the least excuse which some future leader may use to continue the "historic role" hinted at by the consultants. There have been so many examples of failed efforts at co-operation in the region that it could be considered a disservice to the cause of Caribbean integration to spell out an invitation to fragment legal education in the area so plainly. In fact, but for lack of foreign exchange resources to provide the required library facilities, Guyana was prepared to play the 'role' in 1983.

The consultants made 30 recommendations, six of which were directed only at the Faculty of Law. To date, however, it has been possible to implement only one of them; of those aimed at the Law Schools of the Council the proposal to reduce the number of subjects taught from 15 to 10 has been speedily implemented.

The present programme is therefore still of five years duration, the first three of which are spent at the Faculty of Law. The first year is composed of five compulsory subjects: Criminal Law, Constitutional Law, Law and Legal Systems of the Caribbean, History of the Caribbean and a Social Science subject — Politics, Economics or Sociology — being among those most frequently chosen. In addition, every non-graduate must monitor and pass an examination in the Use of English. The subjects for the second year are also compulsory. They are the Law of Contract, Torts, Real Property, Equity I — which is largely the basic principles of Equity and an introduction to the Law of Trusts — and Legal Writing and Research.

Two points may be made here by way of explanation. The first is that the consultants were concerned about the limited number of law subjects taught in the first year and recommended that History and the Social Science option should be combined, thus permitting an extra law subject to be added to the first-year syllabus. This has met with strong resistance from the two Faculties concerned. The second point is by way of an explanation of the fact that Legal Writing and Research is taught in the second year in the Caribbean whereas in most North American law schools it is taught in the first year. This, of course, is as a result of teaching the first-year course on four campuses with limited resources. For while the library facilities in Barbados can bear comparison with those available in most other Faculties of Law, only the basic texts and reports are available in Jamaica, Trinidad and Guyana.

In the third and final year the student has a real but limited choice in making up his five courses. He must choose either Public International Law or Comparative Law; Law in Society I which is a basic course in jurisprudence; and one of the following: Labour Law, Family Law, the Law of Human Rights and Law in Society II — which is an extended essay of between 5,000 and 10,000 words on a legal topic of the student's choice — an interdisciplinary approach may be adopted where appropriate to the subject and when within the competence of the candidate. The two other courses may be chosen

from any of those offered in Part III of the programme. At the moment the Faculty offers eight such courses, in addition to the seven already mentioned.

The members of the Faculty's staff, in addition to producing numerous publications on points of interest on the laws of the Commonwealth Caribbean, have also been called upon from time to time to serve in various capacities either on committees, or in the legal and judicial services of the region, and also as consultants to governments. Our past students occupy the highest positions in the judiciary, the magistracy, the general legal service, the diplomatic service and in the general public service. Regrettably, however, the exclusivity of the local qualification still eludes us.

The Wooding Committee had recommended that the locally obtained qualification should in time be the only one which entitled a national to practise, and also that the legislation should be enacted denying to non-nationals who had not already been admitted to practise, the right to be so admitted unless reciprocal arrangements were made between their countries and Caribbean countries for the mutual acceptance of the respective qualifications according the right to practise. At least one government however, while endorsing the proposals, stated quite clearly that it did not intend to pass legislation to prevent students from obtaining legal training in England. Many territories followed that lead; and one particular country, after passing the necessary legislation and enforcing the rule of exclusivity for a brief period, actually passed legislation in breach of the Agreement which set up the Council of Legal Education, in order to permit practitioners who had qualified in England to be admitted to practise.

There was little consistency in the laws of the territories, therefore, when the case of Baron Gifford came up for decision in Grenada early in 1984.[6] Lord Gifford had been called to the English Bar in 1962 and intended to represent certain clients in Grenada. He claimed to be entitled, according to the laws in force in Grenada, to practise law before the courts in that country, either on an ordinary interpretation of the existing law, or on the ground that reciprocal arrangements had been made between England and Grenada which permitted legal practitioners who had qualified in one country to practise in the other.

The Agreement which established the Council of Legal Education had been drawn up in 1970, and Article 10.1 provides that the Agreement was to come into force upon signature, or deposit of letters of ratification, or acceptance on behalf of the University of the West Indies, the University of Guyana, Barbados, Guyana, Jamaica and Trinidad and Tobago. Other Commonwealth Caribbean territories could become parties to the Agreement at a time, and in accordance with terms, to be determined by the Council. It came into force on 17 March 1971 when Barbados, the last of the six named parties, signed the Agreement.

Article 5.1 had made it quite clear that subject to certain transitional provisions and any reciprocal arrangements which could be made, every person who obtained the new qualfication would be recognised as having fulfilled the requirement to practise and that no

person was to be admitted to practise in any territory which was a party to that Agreement if he did not hold such a certificate. Grenada had signed the Agreement in 1970 but had made no reciprocal arrangements with England. The court had no difficulty therefore in finding that the Baron was not qualified to practise in that territory. The court could not help observing, however, that the applicant could have been admitted to practise in Dominica and Trinidad and Tobago.

After several months of negotiations it was agreed to amend the principal Agreement. This amendment had three main aims in view:

(a) to alter the administrative arrangements for running the Law Schools;

(b) to re-adjust the cut-off date for obtaining overseas qualifications; and

(c) to provide for a shorter period of training for nationals who hold a university degree in law, and also a professional qualification in a common law jurisdiction.

Although the agreement is binding between the territories in international law, local legislation is required to give it the force of law.

Despite the fairly bright picture which I have painted, there is much more to be done; and conditions are changing so rapidly in the Caribbean that it is imperative that our lawmakers should continue to recognise the peculiar facts of Caribbean life by enacting suitable laws, that our judges should interpret those laws in the spirit of our traditions, and that those of us who have taken on the responsibility of framing the minds of future generations of lawyers should teach them to think creatively about legal problems, rather than memorising a group of rules.

Although it is too soon to assess the impact of the changes which are being effected in legal education as a result of the report of the consultants, it is nonetheless true to say that the curricula of both the Faculty and the Council's schools have been strengthened. In the case of the Faculty, this was achieved by including one more pure law subject in the curriculum with the possibility of adding another, while the reduction in the number of subjects taught at the Law Schools will tend to permit that institution to concentrate mainly on practical subjects, leaving the academic pursuit of law to be followed only by the Faculty.

The issue that remains to be considered is whether the kind of lawyer currently being produced is equipped to meet the present and future needs of the region, and if not, what changes are necessary to improve the quality of legal education in the Caribbean.[7]

The lawyers produced so far generally remain oriented towards becoming legal technicians, and within that framework many are quite bright and have proved their worth; but there is still the need to take greater interest in the policy issues inherent in the law. There is also a lack of lawyers who are competent to effectively represent national and commercial interest in international transactions. Such transactions involve infinite complexities of taxation and international finance. Presently, many governments turn to foreign lawyers. The

Faculty has already set its sights on attempting to fill the gap.

The need for such lawyers will increase as the character of the work to be performed increases in complexity. Governments and public corporations are becoming increasingly involved in industrial and agricultural development. The legal problems of financing such enterprises are far more complex than those involved in borrowing from banks or traditional private sources. Clearly, therefore, those trained in international concessions agreements, or good legislative draftsmen, can play a meaningful role in servicing the wheels of development.

There is also a great need for courageous and imaginative lawyers to help achieve political stability in the multi-cultural societies of the region, to help maintain viable political institutions and to assist in the preservation of the rule of law. International and comparative lawyers are needed to enable our countries to continue to move closer towards regional co-operation.

To be able to do this, the lawyer's education must be sufficiently general and broad-based to enable him to adapt himself successfully to new and different situations as they develop. He needs the capacity to work not only with clients, but also with experts in diferent disciplines. He must also acquire, in addition to the professional skills and techniques which are essential in practise, a grasp of the ethics of the profession, a critical approach to existing law and proposed legal changes, and an appreciation of the social consequences of the law in action.

These therefore are the problems which face the Faculty of Law and the Law Schools as we attempt to produce the quality of lawyer who will be able to cope with the many challenges ahead.

NOTES

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1. At the time of writing only Trinidad and Tobago still maintains the separate branches of the profession. For articles on fusion see *The Lawyer*, Vol. 1 No. 2 (1978), 4–6; *Jamaica Law Journal*, (June 1972), 9–10; *West Indian Law Journal* (October 1978) 62–64.
2. N.J.O. Liverpool and K.W. Patchett, "The Legal Professions in the West Indies" in *Law in the West Indies — Some Recent Trends*, British Institute of International and Comparative Law, Commonwealth Law Series No. 6, 117–136.
3. "Legal Education for the West Indies" in *Law in the West Indies — Some Recent Trends*, British Institute of International and Comparative Law, Commonwealth Law Series No. 6, pp. 137–52 at p. 138.
4. The UWI came into being in 1949 as a University College which, by

special arrangement with the University of London, taught for degrees of the University using syllabuses modified to meet local needs. It was granted University status under a Royal Charter of Incorporation in 1962. Teaching was originally confined to the Mona Campus in Jamaica, but was extended to Trinidad (St. Augustine) in 1960 and Barbados (Cave Hill) in 1963. Guyana started its own University in 1963.

5. Papers on Workshop on Legal Education in the Caribbean held at St. Kitts, April 10–12, 1977. See N.J.O. Liverpool, "Curriculum for Legal Education — Academic Aspects"; and A.R. Carnegie, "Legal Education in the West Indies, Origins and Present Status".
6. Civil appeal No. 1 of 1984 (Grenada).
7. The following conclusion which was culled from an article on Legal Education in Zambia by Muna Ndulo, Professor of Law of the University of Zambia, and published in the Commonwealth Legal Education Association Newsletter NO. 42, July 1985, illustrates how very similar are the problems faced by developing countries.