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Articles

Legal Education in Africa in the Era of Globalization and Structural Adjustment

Muna Ndulo*

I. Introduction

This article discusses legal education in Africa, its development, its present organization, and the progress being made, if any, in internationalizing legal education to meet the challenges of the twenty-first century. The article focuses on the English-speaking African states. Worldwide, there has been a significant expansion in both the amount of knowledge and the number of new specialized fields of knowledge with which lawyers have to deal. Lawyers throughout the world are faced with a body of knowledge that is made more complex by interdisciplinary perspectives on law, and an increased importance of knowing foreign legal systems in an ever-increasingly interdependent world. The question that then arises is: how can law schools best prepare their graduates to practice law in this new world without borders?¹ There is need for concern with the kind of legal education any

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1. Mary Kay Anne, *Teaching and Scholarship in a World Without Borders*, ASS'N AM. L. SCH. Q. PUB., Nov. 2001, at 2.

country should foster, for as Lon Fuller observed, lawyers have a central role to play in the ordering of society.² In African countries, legal education and its relation to community goals have often been insufficiently appreciated. Attempts to meet the challenges of globalization in Africa are hampered by the prevailing economic conditions, which are exacerbated by structural adjustment programs that are in place in almost all African countries.³ Although globalization has helped increase growth and wealth in recent years, it has not done so for all continents and countries. In the least developed countries, and on the African continent in particular, a worsening of existing imbalances has impeded development and aggravated poverty.⁴ This in turn has affected funding for universities and legal education, especially with regard to the development of suitable curricula and the maintenance of quality.⁵ As a result, legal education in Africa has not made the strides that it should have made to adjust to the needs of the twenty-first century.⁶

In most of Africa, local institutions providing legal education are only forty years old. Until the early 1960's, Africa'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, African countries typically 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.⁷ Forty years later, these arrangements have produced a sufficient number of lawyers.⁸ The time

2. Robert S. Summers, *Fuller on Legal Education*, 34 J.L. EDUC. 8 (1984).

3. Mohamed Daouas, *Africa Faces Challenges of Globalization*, FIN. & DEV., Dec. 2001, at 4 (observing that "on one hand, globalization holds out to participants the promise of growth in trade and international investment, on the other hand, it heightens the risks of instability").

4. *See id.*

5. *Id.*

6. *Id.*

7. Shiv Dayal, *Dynamics of Development Legal Education and Developing Countries*, in LAW IN ZAMBIA 92 (Muna Ndulo, ed., 1984) (observing that "the system of legal education and research, the curriculum pattern, and pedagogy in the colonial period was almost a carbon copy of western models developed in entirely different social-economic cultural context.").

8. 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. Zambia Manpower Survey, Government of the Republic of Zambia, Government Printers, Lusaka, Zambia, 1969. For a discussion of an African Legal System, see VERNON PALMER & SEBASTIAN POULTER, THE LEGAL SYSTEM OF LESOTHO 99-167 (1977); Muna Ndulo, *Customary Law in the Zambian Legal System*, in PETER TAKIRAMBUDE 121-29 (1882); and OULUWOLE AGBEDE, LEGAL PLURALISM 57-96 (1991).

has come to reflect on the programs now offered in light of the long-term needs of African countries. These needs 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 in his or her many obligations both domestically and internationally, and take into account the challenges of practicing law in an increasingly globalized economy.

II. The Colonial Period

The most striking feature of legal education in African countries before independence was the absence of national educational facilities. The only 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.⁹

A number of reasons were advanced for this state of affairs. General perception held the training of engineers, doctors, and agriculturalists, as more important to economic development than the training of lawyers. Nonetheless, emphasis on these other fields was not apparent in the case of Zambia, for example. 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 for the evident disfavoring of legal education is that, during the colonial period, the British considered it politically unwise to train African lawyers, fearing that they would turn into agitators for political independence upon their return to the colonies.

In the colonial enterprise, 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. Although customary courts served as the exclusive venue for resolution of legal disputes between native Africans,¹⁰ lawyers had no

9. William L. Twining, *Legal Education Within East Africa*, BRITISH INST. INT'L & COMP. L. 5 (1966). A recent study of the Local Courts observes that "Legal representation is expressly excluded in all civil matters. Some feel that this provision is grossly unfair. . . . The local court justices perceive lawyers as individuals who have no knowledge of customary law. . . ." The Inter-African Network for Human Rights and Development, *Local Courts Study*, Lusaka, 9 (1998).

10. The colonial enterprise comprised two court systems in African countries: common law courts were generally reserved for legal matters involving White colonialists, and local customary courts were limited to legal disputes between Black African natives. Report of Legal Education for Students from Africa 1961, CMND, Her

role in these courts.¹¹ At independence; the dual court system was reformed, and a single judicial hierarchy was introduced. All people in an African country were made subject to the same jurisdiction of the same courts.¹² Furthermore, the legal profession was fused in every territory; as a result, every qualified lawyer could practice as both a barrister and solicitor, and almost all did.

Under the colonial system, although a call to the English Bar was normally considered sufficient for admission to practice in most African countries, the legal education provided by the Inns of Court was — and is not today — in itself adequate training for practice in Africa.¹³ First, while the training afforded by the Inns of Court could help an advocate gain proficiency, the same training was not designed to prepare a solicitor for his or her job. Nonetheless, the solicitor's side was (and still is) often the most important part of African practice. The Bar training might be described as adequate in a country with a strong Bar; however, students from countries with a weak Bar, as is the case with most African countries, have little prospect of further training in practice. As a result, English training alone left African law graduates inadequately prepared. It also paid no attention to the problems of practicing in an underdeveloped country with multiple systems of law.

In the context of former British colonies, the 1961 Report of the Committee on Legal Education for Students from Africa first drew attention to the need for local education.¹⁴ 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. The Committee further recommended the establishment of local training facilities, and specifically recommended the establishment of a law school in Dar-es-Salaam to serve East Africa.¹⁵

III. Post-Independence Arrangements

The quantitative growth of education in Africa since independence

Majesty's Government, London, United Kingdom.

11. See Twining, *supra* note 9.

12. See Local Courts Act, ch. 54, §15 (Zambia). Lawyers are still forbidden to appear in local courts. Local Courts Act is Zambia legislation. It refers to article 15. Local Courts Act is Chapter 45 of the Laws of Zambia.

13. REPORT ON LEGAL EDUCATION FOR STUDENTS FROM AFRICA, 1961, Cmnd. 1255, at para. 27 [hereinafter REPORT ON STUDENTS FROM AFRICA]; see also R.Y. Hedger; *Legal Education in West Africa*, 6 J. SOC'Y PUB. TEACHERS L. 7 (1961).

14. See REPORT ON STUDENTS FROM AFRICA, *supra* note 13.

15. For an account of the early days at Dar-es-Salaam Law School, see Twining, *supra* note 9, at 122.

has been impressive. For example, until 1924, all education in Zambia was provided by missionaries.¹⁶ 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 Zambian government made an early 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.¹⁷ The first students matriculated in 1966. The program of legal education commenced at the beginning of the university's second academic year, in March 1967,¹⁸ and the School of Law received formal recognition as one of the university's schools on July 1, 1967.¹⁹ The objectives of the School of Law, as approved by the senate of the University, include: to join in the building and development of the legal system of Zambia, and to make generally available the school's staff and students 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.²⁰ The School of Law adopted a law degree program based on the United Kingdom pattern of a three-year undergraduate course.²¹ Almost all African countries, with the exceptions of Lesotho, Liberia and South Africa, have adopted this same educational practice. The program recognizes that there is 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 also recognizes that the deeper the educational and social awareness a student brings to the study of law, the greater the general value will be that he or she can derive from his or her legal training.²²

In Zambia, the present legal education program lasts four years. The students spend the first year in the school of Humanities and Social Sciences,²³ free to take any subjects they choose in the arts and social

16. Robert B. Kent, *One Zambia, One Nation: A Reprise*, 8 CORNELL L.F. 18, 19 (June 1981).

17. *See 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 N. IR. L.Q. 3 (1971).

18. UNIV. OF ZAMBIA, LAW SCHOOL HANDBOOK 1 (1970).

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. UNIV. OF ZAMBIA, LAW SCHOOL HANDBOOK 19 (1983).

sciences. Students then spend three years in the law school.²⁴ The first year is composed of five compulsory courses: legal process; law of contract; torts; criminal law; and constitutional law.²⁵ The second year is also compulsory and offers land law, commercial law, family law, evidence, and administrative law.²⁶ The third and final year is composed of jurisprudence and company law as compulsory courses.²⁷ A student is required to select an additional three subjects from international law, labor law, international trade, and criminology.²⁸ In almost all African countries, 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.

The basic structure of legal education in most former British colonies is English. The teaching methods are weighted heavily toward the English approach, with, however, more emphasis on formalism than in England.²⁹ 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 and incomplete when applied to particular factual situations. The students do not usually learn case analysis, as the basic tools for instruction are textbooks rather than casebooks or law reports; instead, students learn general broad holdings of cases. They do not learn policy arguments. Most of the rules come directly from English textbooks; it is easier to learn British rules than local rules in the African context because, despite over forty years of independence, the difficulties of working with local materials are formidable. Until recently, law reports containing cases decided by the African courts were often 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. In addition, teaching loads are heavy, and preparation is consequently inadequate as lecturers frequently lack the necessary orientation.

24. *Id.*

25. *Id.* See also L.C. B. GOWER, *INDEPENDENT AFRICA-THE CHALLENGE OF THE LEGAL PROFESSION* 1967. In this book, Gower discusses the legal profession in Africa in colonial times and post-colonial times.

26. *Id.* The Law Practice Institute was established on July 5, 1968 by the LAW Practice Institute (Establishment) Order, 1968, Statutory Instrument No. 269/68, Government of The Republic of Zambia, Lusaka, Zambia.

27. *Id.*

28. UNIV. OF ZAMBIA, *LAW SCHOOL HANDBOOK* 19 (Law Prac. Inst. 1983).

29. 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.

The heavy "rule focus" of African legal education is troubling. As Whitehead warned, "[w]hatever be the detail with which you cram your student, the chance of his or her meeting in life exactly that detail is almost infinitesimal and if he or she does meet it, he or she will probably have forgotten what you taught him or her about it."³⁰ Whitehead 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."³¹ What is needed today in Africa is legal training using local materials, to the extent 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.³² 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, however, 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 and economic change on all fronts. This situation makes it "more likely that the 'right answer,' probably 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."³³ In light of such rapidly changing conditions, legal training will not produce the kind of lawyer adequate to meet the challenges of Africa unless African materials are used and teaching methods change to emphasize creative thinking instead of rule learning. In early days many of the law teachers came from the United Kingdom. In the 1960s and 1970s American legal scholars contributed a great deal to knowledge and skills to the growth of legal education in Africa.³⁴ This source of law teachers has virtually ceased because of the economic difficulties that most African countries are experiencing and the lack of international support for funding for such law teachers.

In Africa, 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. In an African country, a Law

30. F.E. WHITEHEAD, *THE AIM OF EDUCATION AND OTHER ESSAYS* 4 (1959).

31. *Id.*

32. Huber, *supra* note 29, at 1190.

33. *Id.*

34. Robert Kent, *Reflections*, 24 *CORNELL L.F.* 9 (1997). See also L. C.B. GOWER, *INDEPENDENT AFRICA-THE CHALLENGE OF THE LEGAL PROFESSION* (1967).

Practice Institute or college of law typically provides a course of post-graduate study for law graduates wishing to enter the profession.³⁵ Typically a Council of Legal Education, chaired by the Chief Justice of the country, oversees the institute or college. The Council's 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.³⁶ 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 articulated clerks.

Unfortunately, in many countries these institutes and colleges have not realized their objectives. As there is no full-time qualified practitioner on the staff, the plan to teach skills through a graded series of exercises is usually not in place. The institute has become a poor version of the university law school. Students attend lectures in various subjects, and the courses are increasingly taught as academic subjects. The only practical experience that students receive is through work at the various law firms to which the institutes are attached. Students are not allowed to appear in court. The trouble with such arrangements is that the practical skills which a student acquires depends on the enthusiasm and commitment of his or her supervisor within his or her assigned firm or government department. The average African law firm is small and often poorly organized. Generally, the experienced lawyers are too busy to assist in the development and training of the young lawyers. Moreover, in some cases, apprenticeship to members of the existing Bar may merely perpetuate the relatively low standards of old.

The Law Practice Institute and colleges of law would be more effective if they were converted into legal clinics 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 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 Committee 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 legal knowledge and the intellectual skills acquired in the academic stage to the problems

35. The Law Practice Institute was established July 5, 1968. See Order s. 269/68 (1968).

36. L. PRACTICE INST. LAW PRACTICE INSTITUTE HANDBOOK (1971).

that arise in legal practice; the second objective is to lay the foundation for the continuing development of professional skills and techniques throughout his or her career.³⁷ It follows that the amount of substantive law to be studied during 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.³⁸

IV. The Impact of Structural Adjustment Measures on Legal Education

Poverty continues to affect too many people in the world despite significant progress in economic growth and living standards over the past thirty years. Although poverty occurs in all counties, the situation is particularly severe in developing countries.³⁹ In an effort to promote economic development, the World Bank and the International Monetary Fund (IMF) have imposed on African countries Structural Adjustment Programs. The policies require African countries, irrespective of their levels of development and industrial bases, to liberalize their trade regimes in order to expand production and exports, particularly exports of non-manufactured goods. The goal is to integrate African countries into the world economy.⁴⁰

The process of globalization is unstoppable. In most basic terms, globalization is integration through world trade, financial flows, the exchange of technology and information, and the movement of people. There are definite benefits to globalization. For example, increased trade has given consumers and producers a wide range of choice for low-cost goods and leads to more efficient use of global resources. Greater access to world markets has also allowed countries to exploit their comparative advantages more intensively. However, the ability of investment capital to seek out the most efficient markets, and producers and consumers seeking the most competitive source, exposes and intensifies existing

37. REPORT ON THE COMMITTEE ON LEGAL EDUCATION, 1971, Cmnd. 4595 at 57.

38. *Id.*

39. A World Bank report has observed: At the start of the 19th century, Africa's income level stood at roughly one-third of Europe's. See Ernest Harsch, *Can Africa claim the 21st century?*, available at <http://www.un.org/ecosocdev/geninfo/afrec/vol14no3/21centur.htm> (last visited May 7, 2002); See also PROSPECTS FOR RECOVERY AND SUSTAINABLE DEVELOPMENT IN AFRICA (A.Y. Yansane ed. 1996); and THANDIKE MKANDAWIRE & CHARLES C. SOLUDO, AFRICAN PERSPECTIVE ON STRUCTURAL ADJUSTMENT: OUR CONTINENT OUR FUTURE 1-20 (1998).

40. Thandike Mkadawire and Charles C. Soludo examine the adjustment experience in AFRICAN PERSPECTIVE ON STRUCTURAL ADJUSTMENT: OUR CONTINENT OUR FUTURE 49-85 (1998). See also Adebayo Adedeji, The Leadership Challenge for Improving the Economic and Social Situation of Africa, Remarks at the Africa Leadership Forum, Ota, Nigeria (Oct. 24-Nov. 1, 1988); and *Africa Alternative Framework to Structural Adjustment Programs for Socio-Economic Recovery and Transformation*, U.N. Economic Commission for Africa, E/ECA/CM.15/6/Rev. 3 (1990).

structural weaknesses in individual economies.⁴¹ With the speedy flow of information, the margins of maneuvering for domestic policy is much reduced. Countries that fail to participate are marginalized. This is what has happened to African countries.

In many African countries, rapid expansion of exports requires, *inter alia*, the development of supply capacity and diversification of manufactured goods for export, which in turn requires increased investment. An export and industrial base requires a wide and modern production structure.⁴² In part due to the colonial legacy, the majority of African countries lack such structures, and production is based on simple processing and traditional industries. The result is that the structural reform programs have been less than successful in stimulating expansion, and instead have created untold hardships for the majority of the people. Consequently, cash-strapped economies and governments are not able to fund education and social services. Moreover, the effects on poor economies are compounded by the adverse impact of the debt burden.

As a result, funding for education is threatened by the failure of government to maintain budget allocations in the face of economic decline and the need to switch domestic resources to meet debt-servicing requirements.⁴³ This constraint is particularly significant in Africa where almost all law schools are state-funded institutions. It has left the future of educational programs dependent on donor finance. However, the cause of most concern is the catastrophic decline in overall levels of funding of the social sectors in real terms. This problem has been exacerbated by the austerity measures demanded by the World Bank and IMF. The protection of relative social expenditure must be viewed in relation to the massive absolute reduction in public spending

41. A World Bank Report observes: "Africa's share of world trade has plummeted since the 1960s: it now accounts for less than 2 percent of world trade. Three decades ago, African countries were specialized in primary products and trade dependent. But Africa missed out on industrial expansion and now risks being excluded from the global information revolution." See Ernest Harsch, *Can Africa claim the 21st century?*, available at <http://www.un.org/ecosocdev/geninfo/afrec/vol14no3/21centur.htm> (last visited May 6, 2002).

42. See *id.*

43. The World Bank has acknowledged that: "Rapid enrollment growth in higher education, coupled with declining resources has significantly lowered quality." See Ernest Harsch, *Can Africa claim the 21st century?*, available at <http://www.un.org/ecosocdev/geninfo/afrec/vol14no3/21centur.htm> (last visited May 6, 2002). Thandika Mkandawire and Charles Soludo have observed: "The consequences of the debt overhand to the macro economy are monumental, and meaningful growth is unlikely to resume without a resolution to the debt crisis. First, the rising debt-service ratios reduce the availability of resources for initiating growth. Second, in the face of stagnant exports, rising debt-service payments have entailed either payment defaults or a drain on scarce foreign exchange needed to import production inputs. MKANDAWIRE & SOLUDO, *supra* note 39, at 121.

simultaneously insisted upon by the same institutions. Stabilization measures often required of governments include strict cash budgeting and placing limits on the amount of money the government borrows for public expenditure — public sector borrowing requirements.⁴⁴ Reduced expenditures on education have resulted in reduced support for law schools throughout Africa. This is compounded by increased pressure to take on much larger numbers of students into the existing limited facilities. In fact, many law schools have doubled their intake of students during the last decade while not making similar adjustment to numbers of faculty, libraries, etc. These changes have adversely affected the learning environment.

V. The Challenges in the Era of Globalization

There has always been a recognition that a lawyer must maintain and develop his or her professional skills. This is especially important in the current era of information explosion. Law schools in the developed countries have been responding to globalization trends with the introduction of new and advanced courses in the areas of international and comparative law. Schools invite foreign law faculty as visiting teachers, and sometimes establish more permanent relationships between law faculties. Law schools in developed countries have also responded with vigorous continuing legal education programs that seek to remedy shortcomings in current information and skills, and to keep current with developments in the law and practice. These responses all require financial resources.

One of the major challenges facing African countries is the establishment of viable continuing legal education programs. In the absence of organized continuing legal education programs, lawyers are left with reading books, articles, and current decisions. This is not sufficient to keep a person up-to-date and competent. Such a practice fails to consider how lawyers receive their primary training through, for example, the cut-throat method of questions and answers, the value of discussions, and the impact of a knowledgeable speaker on a topic. Furthermore, it is widely acknowledged that self-education is not

44. In the case of Zambia, for example, it is apparent that budget cuts have had a devastating impact on social spending as a component of overall government expenditure. Taking an average of expenditure in any one year, during the period 1981-1985, almost two and one-half times as much was spent on the social sectors in real terms, compared with the period 1991-1993. On average, during the period 1992-1998, the annual social expenditure was 25% less than that spent in 1991. See REFUGEE STUDIES CENTRE, QUEEN ELIZABETH HOUSE, OXFORD UNIV., ZAMBIA, DEREGULATION AND THE DENIAL OF HUMAN RIGHTS, SUBMISSION TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, Mar. (2000), available at <http://www.qeh.ox.ac.uk/rsp/TextWeb/rerep2.html> (last visited May 6, 2002).

sufficient. As the Organization of Commonwealth Caribbean Bar Associations Regional Seminar observed: “the legal profession individually and collectively has an obligation to meet the current needs and modern challenges by fostering schemes which provide a well-ordered system of continuing legal education.”⁴⁵

Continuing legal education comprises the training of lawyers in various areas of the law, procedure, and practice, and is available to lawyers after admission to practice. It should encompass both lawyers in practice and judges. The approaches, methods, formats, and scope of continuing legal education programs vary throughout the world. They range from informal seminars and in-house programs and conferences, to structured programs with detailed curriculum and courses leading to specialization. The main providers of continuing legal education include national, state, territory and regional professional associations, universities, law schools, government agencies, and private interest groups. In Africa, the responsibility of providing for this continuous process of legal education has fallen squarely on the shoulders of law societies and Bar associations. Far too often, this imposes a burden on “volunteers” who are busy practitioners meting out what precious time they can to organize, conduct, and encourage the process. African universities need to play a greater role in this field. Universities and law schools are established for these very purposes — teaching, training, and disseminating knowledge — and should be in the forefront of the continuing legal education process. Unfortunately, African countries are so severely constrained by budgetary cuts that almost all African law schools have experienced reduced funding under the structural adjustment programs.

Of course, technological change has also brought about an important new dimension to both the teaching and the practice of law. In the past, it was clear that legal education was really about preparing people for the legal profession; consequently, the mission of law teaching was certain. Today, however, law graduates go into all kinds of professions. It has become less obvious what needs to be taught in legal education — and how it should be taught. Unfortunately, imaginative courses are assumed to be more expensive or just more awkward for already hard-working educators bowing under the pressure of larger student numbers, less student certainty over careers, and relatively poor salaries for academic staff. Nonetheless, as Martin has observed; “the pace and contours of change vary from place to place, but nearly everywhere the impact of digital information and communication on law-

45. See Nancy Anderson, *Continuing Legal Education in the New Millennium*, COMMONWEALTH L. EDUC. (Commonwealth L. Educ. Ass'n), Mar. (2000).

related functions seems both breathtakingly rapid and inexorable."⁴⁶

The opportunities of technology appear limitless. Properly utilized, information technology can be of enormous benefit in both the teaching and practice of law. Large numbers of students can read case law and other legal materials more efficiently by use of a computer rather than having them queue up for access to a limited number of books in the library. The problem in Africa is the ability of universities to acquire the computers and software that is needed to make this possible. Technology also offers the possibility of global scholarly exchanges that may occur with relative ease. It offers the vision of more economic and accessible legal materials from around the world. Databases are being constructed to collect legal materials that were previously hard to find and extremely costly to acquire and thus often not available to most libraries in Africa. However, in order for Africa to take full advantage of the technological advances, it is necessary to develop indigenous capacity in this field. Only then can African law schools gain access to the legal information that is available. It can thus be stated that *funding* is the only limitation on these opportunities to advance legal education that cannot be overcome by changes in attitudes and by innovative programs.

One area in which there has been encouraging change in most African countries is the increasing attention paid to the teaching of international human rights subjects in law schools. This teaching is aimed at promoting a rights culture and a protective and responsive legal system that reflects the realization that good governance is a precondition to development.⁴⁷ The importance of human rights knowledge from an international and comparative perspective is emphasized in the Commonwealth Bangalore Principles: "It is essential to redress a situation where, by reason of traditional legal training [which has tended to ignore the international dimension], judges and practicing lawyers are often unaware of the remarkable and comprehensive developments of international human rights norms." For instance the Commonwealth of Nations, which has a majority African membership, recommended the development of human rights curricula. The objective of the project is to develop a curriculum which will provide a model for Commonwealth law schools and others interested in offering a course on human rights to

46. Peter Martin, *Reducing the Cost and Improving the Quality of Course Materials Through Technology*, AFRICA NOTES (Inst. Afr. Dev., Ithaca, N.Y.), May 1999.

47. For a discussion on this point, see Muna Ndulo & Robert Kent, *Constitutionalism in Zambia: Past, Present and Future*, 40 J. AFR. L. 256 (1996), and WORLD BANK, *ACCELERATED DEVELOPMENT IN SUB-SAHARAN AFRICA: AN AGENDA FOR ACTION* (1982).

their law students.⁴⁸ The teaching of such courses can undoubtedly help in the establishment of an awareness for the principles and functions of democracy, and foster justice and the protection of human rights in a democratic state.

The lawyers produced by the present system of legal education in Africa 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, most African governments turn to outside lawyers for complex international transactions. At the same time, 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 and women can move the wheels of progress, while narrow, pedantic, unimaginative, and ill-trained lawyers will hinder much needed development.

Courageous and imaginative lawyers can help achieve political stability in a multi-cultural society by helping design viable political institutions. International and comparative lawyers can likewise assist the country in moving toward both regional cooperation and cooperation on the wider international scene. As such, lawyers in developing countries face challenging tasks that are unusual in some of the more economically-advanced nations.⁴⁹ 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 or her to adapt himself or herself to new and different situations as his or her career develops, an adequate knowledge of the more important branches of the law and both its principles and its international dimensions, and the ability to handle facts both analytically

48. See *Draft Model Human Rights Curriculum for Commonwealth Law Schools*, COMMONWEALTH LEGAL EDUCATION (Commonwealth L. Educ. Ass'n), (1998).

49. See L.C.B. Gower, *Foreword* to ROBERT B. SEIDMAN, *SOURCE BOOK OF THE CRIMINAL LAW OF AFRICA* vi (1966).

and synthetically. He or she needs the capacity to work, not only with clients, but also with experts in different disciplines. He or she must likewise 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? Universities and law schools need more imaginative degree programs. For example, more international and comparative law courses and research-oriented courses would enable graduates to conduct independent research on the tasks they face in practice and write meaningful and informative papers for use by those charged with decision making. African law schools must seek to teach not only law as it is, but also its development. The foundation year should include a course that exposes students to ideas in jurisprudence. African law schools also need to develop and offer courses that expose students to other legal systems in the world, perspective courses such as the sociology of law and law and society, and courses in international law and international business law.

Serious obstacles stand in the way of such changes. The downturn in the continent's economic fortunes has taken a heavy toll on African universities and their law schools. Recruitment, and particularly retention, of able African law teachers by impoverished universities has become increasingly difficult, and that problem has affected the quality of some of today's legal education. Overall, the present law school curriculum is quite rigid. Law schools lack the autonomy, and law teachers the flexibility, to expand course offerings with imaginative courses. Law schools will have to fight for more power since African universities are often autocratic, over-centralized, 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. For example, there is a need to modernize commercial laws to meet the needs of the twenty-first century. In order to enrich the teaching of law in relevant fields, law professors should study the policies and operations of the many new agencies and dispute settlement mechanisms that have been created in the international field. In addition, 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."⁵⁰ What scholars will discover in their research will thrust

50. Gower, *supra* note 49, at vi.

them into the African reality and make them aware of the way the law they have learned is operating. One cannot overemphasize the important role that African law schools play in general research and legal research in particular. As Sidney Hook observed, "A university should serve society without being subservient to society, but it is 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."⁵¹ Through its teaching and scholarship, every African law school faculty should strive to make its law school such a center and should also 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 with respect to legal research in America: "[T]oo few professors are critical scholars, most of them are doing the housekeeping of the law, trying to keep track of decisions and make sense of them."⁵² More serious research in Africa 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 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.

51. SIDNEY HOOK, *EDUCATION AND THE TAMING OF POWER* 254, 255 (1973).

52. David Riesman, *The Law School: Critical Scholarship vs. Professional Education*, 32 J.L. EDUC. 110, 115 (1982).

VI. 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 or she is taught and conditioned to perceive himself, and the way in which he or she is perceived by the non-legal professionals among and for whom he works.⁵³ Curriculum changes alone will not expand the role of lawyers in Africa. There must be an opening and a realization on the part of African governments that the role of lawyers and law in decision making is important.⁵⁴ Presently, African governmental processes attach very little significance to lawyer participation. Lawyers are not given important roles in most African countries. At the same time, constitutions are easy to amend, the people's rights are full of exceptions, and there is no significant separation of powers between the executive and legislative branches of government. In fact, governments of genuinely limited powers are uncommon 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 governmental powers *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.⁵⁵

As 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.

53. Issa G. Shiviji, *From the Analysis of Forms to the Exposition of Substance: The Tasks of a Lawyer Intellectual*, 5 E. AFR. L. REV. 1 (1972).

54. Kenneth Kaunda, *The Functions of a Lawyer in Zambia Today*, ZAMBIA L.J. 1 (1971-1972). The President stated that "I consider law to be perhaps the most important of all instruments of social order because without it the whole structure of society can but inevitably collapse."

55. A. N. E. Amisshah, *The Role of the Government Process: Ghana's Experience*, 13 AFR. L. STUD. 4 (1976).

