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Legal Education in Developing Countries: "The Law of the Non-Transferability of Law" Revisited

BRUCE L. OTTLEY*

I. INTRODUCTION

It is now more than twenty years since Ghana became the first British territory in sub-Saharan Africa to achieve independence. Since then more than forty other countries have gained independence. One of the results of independence has been the attachment of a high level of importance to education by the new governments.¹ Legal education, particularly neglected at the local level during the colonial period, has received special attention both from these governments and from the rest of the common law world.

Upon independence, all the former British territories found themselves with formal legal systems outwardly based on the English common law, but with a critical shortage of local lawyers to administer these legal systems and few, if any, local facilities to train them. Consequently, there has been a drive to develop training centers for national legal professions. The newly formed schools have looked to the Western university law schools as a model.

This article will examine the type of legal education which has developed out of the introduction of Western style law schools in these new countries. The validity of using such models will be questioned in light of "the law of the non-transferability of law," a theory which holds that a legal institution may produce one effect in a certain socio-political-economic context while producing quite a different effect in another context.²

This article is not a comprehensive survey of legal education in all developing countries, a task undertaken by the International Legal Center in 1972, which resulted in its report *Legal Education in a Changing World*,³ nor is it an attempt to survey legal education

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1. For a brief discussion of education in Africa, both during the colonial period and immediately after independence, see L. GOWER, *INDEPENDENT AFRICA* 10-14, 47-54 (1967).

2. See note 13 *infra* and accompanying text.

3. INTERNATIONAL LEGAL CENTER, *COMM. ON LEGAL EDUCATION IN THE DEVELOPING COUNTRIES, LEGAL EDUCATION IN A CHANGING WORLD* (1975). For a critical review of this report see

in all of Africa, as John Bainbridge has done in his book *The Study and Teaching of Law in Africa*.⁴ Instead, this study will focus on two areas, the former British colonies in Africa,⁵ and Papua New Guinea, a former Australian territory in the South Pacific. Although geographically far apart, these two areas have much in common: similar colonial, social, and economic histories and "received" legal systems based on the English common law. In addition, the development of legal education in Papua New Guinea, which occurred later than in the former British colonies, was affected by legal academics who had previously served in Africa and who influenced the direction of legal education in Papua New Guinea based on their earlier African experiences.⁶

II. THE RECEPTION OF THE COMMON LAW

One of the most striking aspects of the colonial period, both in British Africa and Papua New Guinea, was the imposition of many of the external attributes of English and Australian culture upon the colonial peoples. The British and Australian economic and political systems and social structure readily became an outward part of the lives of many of the people, at least in the urban areas.

Most writers have agreed that the English common law became the "received" legal system of the colonies. Professor Gower has written that among England's "colonial legacies" is the "common law."⁷ Professor Allott has stated that in British Africa the English common law provided the "residual law of the territory."⁸ Similar comments have been made about the introduction of the common law into Papua New Guinea.⁹ These views are supported by the

Martin, *Lawyers for the Third World?*, 4 MELANESIAN L.J. 270 (1976). The reasons for Martin's critical reaction are partially explained in Martin, *Teaching Law in Kenya: A Personal Footnote*, 14 AFR. L. STUD. 63 (1977).

4. J. BAINBRIDGE, *THE STUDY AND TEACHING OF LAW IN AFRICA* (1972).

5. This article focuses on Ghana, Kenya, Malawi, Nigeria, Tanzania, Uganda and Zambia. Because their legal system and approach to legal education have been heavily influenced by South Africa with its civil law tradition, Botswana, Lesotho and Swaziland have not been included. For a discussion of legal education in those three countries, see Amoah, *Legal Education in Botswana, Lesotho and Swaziland*, 14 AFR. L. STUD. 96 (1977); J. Paul, Report on Legal Education and Training at U.B.L.S. (1972) (mimeograph available at Columbia University School of Law Library and University of Chicago School of Law Library).

6. The particular choice of countries has also been influenced by the five years the author spent as a member of the Faculty of Law at the University of Papua New Guinea and his contact with legal academics with African backgrounds.

7. L. GOWER, *supra* note 1, at 26-30.

8. A. ALLOTT, *ESSAYS IN AFRICAN LAW* 7 (1960).

9. See R. O'REGAN, *THE COMMON LAW IN PAPUA AND NEW GUINEA* (1971); O'Regan, *The*

reception statutes enacted in all of the colonies providing that "the common law, the doctrines of equity and the statutes of general application in force in England" on a particular cut-off date would be in force in the former colony.¹⁰

In recent years several writers have sought to analyze the content of the common law actually applied in the colonies. In his article *The Reception of English Law in Colonial Africa Revisited*,¹¹ Professor Robert Seidman argues that to understand how far the claimed characteristics of the English common law survived transplanting into Africa, it is necessary to consider the "interconnected institutions" which affected them. On the one hand, according to Seidman, was the Colonial Office, which insisted, for administrative convenience, that disputes between Englishmen in Africa be settled according to English law, and the judges, both in Africa and on the Privy Council, who construed the English law imported into the colonies by reference to English precedent.

At the same time that these institutions sought to apply to Africa the common law then existing in England, several factors worked against its literal application. For the civil service, the administrative requirements of governing a subject people meant that the so-called democratic freedoms associated with English law would not be applied to the colonial peoples. In addition, since the availability of African labor at low wages was an inducement to British settlements in the colonies, English welfare legislation was not applied to Africans.

As a result of this interaction, Professor Seidman concludes, "what was actually in force in the Colonies of Africa . . . was a 'sharply truncated version' of the English common law . . ."¹² This conclusion led Professor Seidman to propose an explanation based upon what he called "the law of the non-transferability of law." He defined this concept as "rules of law and their sanctions in different times and places, with different physical and institutional environments [which] will not induce the same behavior in role-occupants in different times and places."¹³

Reception of the Common Law and the Authority of Common Law Precedents in the Territory of Papua and New Guinea, 19 INT'L COMP. L.Q. 217 (1970).

10. See generally A. ALLOTT, *NEW ESSAYS IN AFRICAN LAW* 9-27 (1970). The reception statutes of Papua New Guinea are contained in *COURTS AND LAWS ADOPTING ORDINANCE* (1889) (Papua) and *LAWS REPEAL AND ADOPTING ORDINANCE* (1921-1922) (New Guinea).

11. Seidman, *The Reception of English Law in Colonial Africa Revisited*, 2 E. AFR. L. REV. 47 (1969).

12. *Id.* at 78.

13. R. SEIDMAN, *THE STATE, LAW AND DEVELOPMENT* 36 (1978).

While Professor Seidman argues that the common law as applied in Africa was a modified version of that in England, Peter Bayne, in his analysis of the "place of the common law" in Papua New Guinea, argues that despite the reception statute in that country "an historical examination of the total legal system in Papua New Guinea . . . reveal[s] that until very recent times, the common law model [has] been insignificant, if not entirely absent from Papua New Guinea."¹⁴

Bayne bases this conclusion on an examination of what are considered the four fundamental characteristics of the English common law: the jury system, the writ of habeas corpus, the independence of the judiciary, and respect for personal integrity.¹⁵ Bayne argues that each characteristic was absent from the law as it was applied during the colonial period in Papua New Guinea.

Neither England nor Australia made a serious attempt to extend the common law (other than criminal law) to the vast majority of the indigenous inhabitants of their colonies. Instead, they created (or in the case of Papua New Guinea, permitted the existence of) a "dual" legal system¹⁶ in which the common law served as the "personal law of the expatriate community"¹⁷ and "customary law"¹⁸ continued to regulate the personal affairs of the governed people. Most of the colonial legislatures even enacted statutes recognizing the application of custom in certain situations involving colonial peoples in the common law courts.¹⁹ The common law extended to the governed peoples only when they were accused of crimes or were involved in litigation with an expatriate. For most of the people

14. Bayne, *Legal Development in Papua New Guinea: The Place of the Common Law*, 3 MELANESIAN L.J. 9, 12 (1975). See generally Paliwala, Zorn & Bayne, *Economic Development and the Changing Legal System of Papua New Guinea*, 16 AFR. L. STUD. 3 (1978) [hereinafter cited as Paliwala].

15. Bayne, *supra* note 14, at 12.

16. F. LUGARD, *THE DUAL MANDATE IN BRITISH TROPICAL AFRICA* 536-86 (1965).

17. Bayne, *supra* note 14, at 21.

18. The term "customary law" should not be taken to mean that there is one single "customary law" in any of the African countries or Papua New Guinea. In Papua New Guinea, for example, section 4 of the Native Customs (Recognition) Act no. 28 of 1963 defined customary law as a "reference to the custom and usage of the aboriginal inhabitants of the Territory obtaining in relating to the matter in question at the time when and the place in relation to which that custom arises, regardless of whether or not that custom or usage has obtained from time immemorial."

19. See, e.g., sections 6-7 of the Native Customs (Recognition) Act no. 28 of 1963 (Papua New Guinea). See generally Milner, *Legal Education and Training in Nigeria*, 17 J. LEGAL EDUC. 285, 290-91 (1965); M. Rheinstein, *Higher Education, Law and Training in the Law in British Africa* 13-18 (1961) (mimeograph available at Columbia University School of Law Library and University of Chicago School of Law Library).

of the colonies, contact with the common law and its courts occurred seldom and, when it did, was an alien experience because the social values underlying the common law were contrary to the values underlying customary beliefs and practices.

From this history we might have expected that the dual legal system would have created dual goals for legal education in Africa and Papua New Guinea: knowledge of the common law as applied and familiarity with customary practices. Yet, as will be shown, such an approach was neither part of the initial goals of the new law schools nor has it resulted from their operation. It will be argued that the explanation for this lies in applying Seidman's theory of "the law of the non-transferability of law." Although the relationship between the interconnected institutions applying the common law resulted in a "truncated" version of that law, the interconnected institutions concerned with legal education have, with few exceptions, prevented any significant change from the system that was introduced. The remainder of this article will examine the system of legal education introduced into Africa and Papua New Guinea, the interconnected institutions, and the reasons for the lack of change.

III. THE DEVELOPMENT OF LEGAL EDUCATION

A. *Brief History*

Both in British Africa and Papua New Guinea, government activity was limited during the colonial period. Once England and Australia acquired these colonies, much of their earlier enthusiasm waned and both governments saw their role limited to maintaining law and order. Despite the concept of the "white man's burden," the interest of England and Australia in their colonies was primarily economic: a market for goods produced at home and a cheap source of raw materials for English and Australian industry.²⁰

This policy in part reflected the then prevailing philosophy at home of limited government activity (supported by lower levels of taxation). The welfare state with its numerous public services was still unknown. Even state-supported public education was a recent development in both countries. Thus, in the colonies, education was left to the missions and economic activity to private enterprise.²¹

The policy both of England and Australia was that their colo-

20. L. GOWER, *supra* note 1, at 30-31.

21. *Id.* at 10-11.

nies should be self-supporting.²² But it was not until the economic boom of the 1920s that the internal revenue of the colonies showed modest surpluses so that significant social programs could be undertaken.

In 1925 the British government took its first step to develop education in Africa by providing a subsidy to those mission schools which agreed to meet certain standards.²³ However, until World War II the emphasis in these schools was on primary education designed to give children four years of schooling. Secondary education was largely unknown. By 1939, for example, Nigeria had only about a dozen secondary schools producing between 100 and 200 graduates a year.²⁴ In Papua New Guinea educational development was even slower: the first high school was not opened until after World War II.²⁵

In the post-World War II period, Britain increasingly recognized that self-government and eventual independence for its African colonies was only a matter of time. The biggest obstacle to independence was a lack of trained manpower. While Britain continued to place its first emphasis on expanding secondary schools, it also established a limited number of university colleges in Africa. Between 1945 and 1949 four such colleges were founded: Ibadan in Nigeria, Khartoum in The Sudan, Achimota in the Gold Coast (Ghana), and Makerere in Uganda. However, because of the limited number of secondary school graduates, enrollment in these colleges was small.

In general the new university colleges established in Africa were modeled after English institutions, a pattern which, from the outset, drew criticism from a number of sources who saw this as a

[v]ivid expression of British cultural parochialism: its basic assumption was that a university system appropriate for Europeans brought up in London and Manchester and Hull was also appropriate for Africans brought up in Lagos and Kumasi and Kampala. . . . But the fundamental pattern of British civil universities — its constitution, its standards and curricula, its social purpose — was adopted without demur. Colonial universities were

22. For a discussion of this policy in Africa, see R. OLIVER & A. ATMORE, *AFRICA SINCE 1800*, at 131 (1967) [hereinafter cited as R. OLIVER]. The policy in Papua, New Guinea is discussed in Zorn, *Co-Operation or Control: The Public Service in a Developing Country*, 3 *MELANESIAN L.J.* 40, 54-55 (1975).

23. R. OLIVER, *supra* note 22, at 164-65.

24. *Id.*

25. L. MAIR, *AUSTRALIA IN NEW GUINEA 195-97* (1948).

. . . from the outset . . . to be self-governing societies, demanding from their students the same entry standard as is demanded by London or Cambridge; following curricula which might vary in detail but must not vary in principle from the curricula of the University of London; tested by examinations approved by London and leading to London degrees awarded on the recommendation of London external examiners. . . . The founders of these universities worked in the belief that the social function of a university in Africa was to create and sustain an intellectual elite.²⁶

Despite the decision to establish university colleges in Africa, legal education was not included. Instead, legal education remained centralized in England where it took three forms:²⁷

*Barrister Training.*²⁸ The "call to the bar" consisted of joining one of the four Inns of Court, "keeping terms" by eating a certain number of dinners at the Inns, and passing the two parts of the Bar Examination administered by the Council of Legal Education. Although a student could attend lectures given by the Council and work in a solicitor's office or barrister's chambers, this was not compulsory and was rarely done.

*Solicitor Training.*²⁹ The requirements for admission as a solicitor were much more difficult. A solicitor was required to enroll as a student with the Law Society, attend an approved law school for one year, pass the Law Society's Intermediate and Final Examination, and complete a period of "articles" (ranging from two and one-half to five years) with a practicing solicitor. During the period of articles, the student received no pay and, in fact, paid the solicitor for the privilege of working under him.

*University Training.*³⁰ Although law degrees were offered by most English universities, those degrees were not recognized as a professional qualification. A graduate was still required to pass the professional examinations and serve a reduced period of articles.

During the absence of legal education facilities in colonial Africa, the usual procedure was for a student to go to London, join one

26. E. ASHBY, *AFRICAN UNIVERSITIES AND WESTERN TRADITION* 19-20 (1964).

27. See generally H. CECIL, *BRIEF TO COUNSEL* (1959); Gower, *English Legal Training*, 13 *MOD. L. REV.* 137 (1950).

28. See generally Gower, *supra* note 27, at 137, 150-52.

29. See generally Hall, *The Training of a Solicitor*, 7 *J. SOC'Y PUB. TCHRS. L.* 22 (1962).

30. For a highly critical look at English university legal education in the early 1960s, see B. ABEL-SMITH & R. STEVENS, *LAWYERS AND THE COURTS* 365-75 (1967). For a discussion of changes which were proposed to meet the criticisms, see Diplock, *Introduction to a Discussion of the Wilson Report*, 9 *J. SOC'Y PUB. TCHRS. L.* 200 (1966); Wilson, *A Survey of Legal Education in the United Kingdom*, 9 *J. SOC'Y PUB. TCHRS. L.* 1 (1966).

of the Inns of Court, and qualify as a barrister.³¹ In 1960, for example, of the 1251 students enrolled in the Inns of Court, 438 were from Africa, principally West Africa.³² It is estimated that, at that time, there were already 700 Nigerian barristers and one Nigerian solicitor.³³ The situation was much different in East Africa where the legal profession continued to be dominated by the British and the Indians. In Kenya there were only ten African lawyers out of a total of 300; in Uganda there were twenty out of 150; and in Tanganyika only one out of 100.³⁴

While the English system of legal education may have been adequate to prepare practitioners for the English professions, it was inadequate for persons intending to return to Africa for the following reasons:

1. *Expense.* Few Africans were able to obtain the funds from private sources to finance a lengthy overseas education. Those who could were usually under tight financial restrictions which made them opt for the profession with the shortest training period, that of a barrister. This, in turn, resulted in an oversupply of court-oriented lawyers with minimal formal training.

2. *Fused profession.* Although African law students in England almost universally became barristers, all of the colonies (and later new nations) adopted a "fused profession," a system in which all lawyers can perform the functions of both barrister and solicitor. The Denning Commission recognized that the Inns of Court did not adequately prepare African students for all of the functions they would be required to perform. The Commission wrote:

The legal education given at the Inns of Court is not in itself sufficient to fit a man completely for practice in Africa. In every territory the profession is "fused." Every qualified man can practice both as barrister and solicitor and must do so. The training afforded by the Inns of Court can help towards proficiency as an advocate but it is not designed to enable a man to act as a solicitor. Yet the solicitor's side is often a most important part of his work. A progressive society needs not only advocates to prosecute and defend criminals, and to conduct civil cases in court. It requires draftsmen to prepare conveyances of land, commercial contracts,

31. J. BAINBRIDGE, *supra* note 4, at 10-12.

32. COMM. ON LEGAL EDUCATION FOR STUDENTS FROM AFRICA, REPORT, CMND. NO. 1255, at 4 (1961).

33. Milner, *supra* note 19, at 285.

34. Paul, *Legal Education in English Speaking Africa*, 15 J. LEGAL EDUC. 189, 193 n.4 (1962).

mortgages, wills and the like. It needs lawyers who can keep accounts and be trusted with client's money. The Solicitor-General of one of the territories pointedly observed that "The importance of book-keeping and accounting in a fused profession cannot be over-emphasized. Many of the young men coming back can make quite a good show as lawyers, but they have absolutely no knowledge of how to handle their accounts or the desirability of keeping their clients' money separate from their own. . . . It must be remembered too that many of the clients are themselves ill-educated and consequently slow to draw any irregularities to the notice of the Law Society."³⁵

3. *The different nature of the common law as applied.* It has already been argued that despite the reception statutes, the common law as applied in the colonies differed significantly from that applied in England. English legal education, however, did not make this distinction, but taught the students the common law only as it was applied in England.

4. *Customary law.* Despite the reception of the English common law in the African territories, the vast majority of the inhabitants continued to regulate their personal affairs according to customary practices. English legal education did not prepare the African students for the problems they would encounter in relating the complexities of custom to a dual legal system.

With the approach of independence for their colonies, both England and Australia found that continued centralization of legal education in the home country would not produce sufficient lawyers for the new nations. However, it was not until two years after Ghana became independent that Britain helped establish the first law school in its former colony. Australia did not establish a law school in Papua New Guinea until 1967 when the first university opened.

In his article *Legal Education within East Africa*,³⁶ William Twining was very critical of "the low priority . . . given to law within the British colonial education framework."³⁷ Twining ascribed three reasons for this neglect:

1. *The official reason.* The argument of the British for assigning a low priority to legal education was that it was more important to train engineers, doctors, and agriculturalists than lawyers.³⁸ Al-

35. COMM. ON LEGAL EDUCATION FOR STUDENTS FROM AFRICA, *supra* note 32, at 27.

36. In EAST AFRICAN LAW TODAY 34 (British Institute of International and Comparative Law ed. 1966).

37. *Id.*

38. *Id.*

though Twining criticizes the emphasis on a liberal arts education as a preparation for leadership,³⁹ the "official reason" does have some merit. Throughout the late 1940s and 1950s the number of students qualified to enter the African universities was severely limited. Law was only one of the numerous needs competing for students. It is quite possible — although most lawyers would be reluctant to admit it — that other disciplines could make a greater contribution to development. African societies at that time were overwhelmingly rural and did not require the complicated legal structure that is common in developed countries. Unless lawyers skilled in customary practices could have been produced, they would have served a very limited section of the society.

2. *The political reason.* Twining argues that since law is often a preparation for a political career, it would have been self-destructive of the colonial system for the British to have encouraged legal education.⁴⁰ Twining's thesis, however, fails to explain two factors. First, the purpose of establishing the university system in Africa was to prepare the people for eventual self-government and independence; thus it would have been no more destructive of the colonial system to train lawyers than to train persons in liberal arts. Second, even though the British did not provide legal education in Africa, over a thousand African students qualified as legal practitioners in England during the 1940s and 1950s. With the overwhelming majority of these lawyers centered in West Africa, the transition to independence was much smoother there than in East Africa which was almost completely lacking in local lawyers.

3. *The minor role of lawyers.*⁴¹ Unlike in the United States where a legal advisor is a part of every government agency and commercial transaction, the role of lawyers both in government and corporate affairs was (and is) much less important in Britain and Australia. Since the principal employment for lawyers both during the colonial period and in the early years of independence was in public service, the colonial governments were not eager to increase the population of persons viewed at best as "unproductive technician[s]" and at worst as "dangerous troublemaker[s]."⁴²

39. *Id.*

40. *Id.*

41. For an argument in favor of training lawyers for developing countries, see Paul, *supra* note 34, at 193.

42. Twining, *Legal Education within East Africa*, *supra* note 36, at 116.

B. *The Structure of Legal Education*

It was against this background that a number of commissions and committees were set up in Britain in the late 1950s and early 1960s to study and make recommendations on the future of legal education in Africa.⁴³ The result was the establishment of eight new law schools in Africa between 1959 and 1964, five in Nigeria, two in Ghana, and one in Tanganyika.⁴⁴

During the planning stage of one of these new law schools, its Dean and English law professor, Professor Milner, wrote of the task:

The challenge of starting entirely new law faculties has offered us the opportunity of reviewing the weaknesses and the benefits of our own legal education. . . . [W]e have therefore tried to remedy the defects and continue the benefits. . . . What is suitable to one culture may not be adequate to the needs of another. Something new may have to be developed.⁴⁵

An examination of the initial structure and operation of the system of legal education established in Africa and Papua New Guinea reveals that the "something new" predicted by Professor Milner was in fact a system built around university legal education modeled directly on the English and Australian university system. This system had the following characteristics:

1. *University centered legal education.*⁴⁶ Although in England a degree alone was not considered sufficient for professional qualification, and legal education was basically left to the governing bodies of the professional societies, legal training did exist in English universities. In Australia, university legal training was the major center for a lawyer's professional education. When England and Australia decided to begin legal education in Africa and Papua New Guinea, the university training system was considered the only practical means for two reasons. First, the shortage of trained lawyers and the needs of a fused profession meant that "articles" or apprenticeship could not produce a sufficient number of qualified lawyers. Al-

43. Among these committees were the Committee on the Future of the Legal Profession in Nigeria (1959) and the Committee on Legal Education from Africa (1961).

44. See generally Milner, *supra* note 19; Weston, *Legal Education in East Africa*, 15 U. TOR. L.J. 187 (1963).

45. Milner, *supra* note 19, at 288. See generally Ghai, *Goals of African Legal Education: A Comment*, in PROCEEDINGS OF THE CONFERENCE ON LEGAL EDUCATION IN AFRICA 25 (J. Vanderlinden ed. 1968); Paul, *The Goals of African Legal Education*, in PROCEEDINGS OF THE CONFERENCE ON LEGAL EDUCATION IN AFRICA 13 (J. Vanderlinden ed. 1968).

46. For a discussion of Ghana's philosophy of legal education within the university system, see W. HARVEY, *LAW AND SOCIAL CHANGE IN GHANA* 369-71, 378-82 (1966).

though the articles system existed both in Africa and Papua New Guinea and was not abolished, it could not supply the immediate demand for lawyers capable of practicing in a fused profession. Second, there was no institution in Africa or Papua New Guinea comparable to the Inns of Court to assume the burden of legal education. Thus, in default of other alternatives, the university became the primary means of training lawyers.

Although the university became the focal point of legal education, a university degree alone was not sufficient for professional qualification. "Post-final training courses" were set up, usually nine months to a year in duration and independent of the university, to train law graduates in the practical aspects of the profession which were not taught in law school.⁴⁷ Originally these institutes were meant to provide a transition period of instruction for students who had studied law in England. Later, when the University of East Africa was established as a regional law school to serve Uganda, Kenya, and Tanganyika, the institutes located in the separate countries provided specialized instruction in the local law.

The result of the post-final training courses — in effect an extra year of law school — was to relieve the university of teaching such subjects as pleading, procedure, accounting, office management, and professional responsibility. The stated reason for placing these subjects outside the degree program was that many of the early graduates went directly into government administrative positions rather than into practice and did not need subjects useful mainly to a practicing barrister or solicitor. This two-step system provided a university law degree in three or four years to those who needed it, and qualification to appear before the courts, if desired, was obtained after a further period.

2. *Law as an undergraduate discipline.* Unlike the situation in the United States and Canada, legal education in England and Australia is an undergraduate discipline. Students enter university directly from secondary school at age eighteen or nineteen and, if they have been accepted to "read" law, begin their law courses from the first day. Setting aside claims that an English secondary education is equivalent to the first two years of an American university,⁴⁸ the secondary education received by most students in Africa and Papua New Guinea did not prepare them to undertake legal studies immediately. These students came to law school lacking much of

47. See generally J. BAINBRIDGE, *supra* note 4, at 58-61.

48. L. GOWER, *supra* note 1, at 52.

the educational background taken for granted in England, Australia, and the United States.

Despite these problems, it was never seriously suggested that legal education should follow the North American model and become a post-graduate course.⁴⁹ Time and a shortage of money would not allow this. The solution that was initially proposed to remedy this deficiency was the introduction of a greater number of liberal arts courses into the law curriculum to provide students with the necessary background in history, economics, politics, sociology, and psychology.⁵⁰ However, even this proposal was hampered by the shortage of time and the pressures to include courses traditionally thought to be a necessary part of legal education.⁵¹

3. *A curriculum based on the English and Australian models.* Once the decision was made that law would form part of the undergraduate program within the university system, it was almost inevitable that, at least in the beginning, the curriculum would be based on the English and Australian models both in form and content.⁵² Three examples of the curricula are sufficient to indicate the extent to which this model was adopted:⁵³

49. Such a proposal is discussed, however, in M. Rheinstein, *supra* note 19.

50. Weston, *supra* note 44, at 188.

51. Paul, *supra* note 34, at 196.

52. *Id.* at 195. See generally *Report on Legal Education in Africa*, 12 J. AFR. L. 75 (1962).

53. A study of the First Degree curricula at 19 English law schools in the years 1963-1965 revealed the following general pattern:

Compulsory Courses:

Contracts, Constitutional Law,
Criminal Law, Torts,
Jurisprudence, Land Law,
Equity or Trusts, and
Roman Law and Legal Systems.

Optional Courses:

Evidence, Conflicts,
Public International Law,
Personal Property,
Administrative Law,
Family Law, Succession,
Company Law, Taxation,
Legal History, Criminology,
Industrial Law,
and Conveyancing.

Optional courses comprised at most one-half of the curricula. Wilson, *supra* note 30, at 41-47.

For a discussion of the curricula in Australia in the mid-1950s, see Cowen & Derham, *Australian Legal Education: A Dissent*, 9 J. LEGAL EDUC. 53 (1956); Friedman, *Australian Legal Education: Further Observations*, 9 J. LEGAL EDUC. 495 (1956).

University of East Africa (1962)⁵⁴

First Year	Second Year	Third Year
Introduction to Law	Law of Torts	Family Law
Legal System of East Africa	Land Law	Conflict of Laws
Law of Contract	Public Law	Wills and Trusts
Criminal Law	Evidence	Two of the following:
		Jurisprudence
		Commercial Law
		Constitutional Law
		International Law

University of Nigeria (1962)⁵⁵

First Year	Second Year	Third Year
Nigerian Legal Systems	Criminal Law	Jurisprudence
English Legal Systems	Torts	Evidence
English Constitutional Law	Equity	Constitutional Law
Contract	Land Law	One out of:
		Islamic Law
		Domestic Relations
		Commercial Law
		Conflict of Laws

University of Papua New Guinea (1967)⁵⁶

First Year	Second Year
Introduction to Law	Torts
Constitutional History	Contracts
Sources of Law	Elementary Constitutional
Common Law Method	and Administrative Law
	Property I
Third Year	Fourth Year
Criminal Law	Anthropology
Civil and Criminal Procedure	Commercial Law
Evidence	Jurisprudence
	Property II
	Family Law
Fifth Year	
Conveyancing and Drafting	
Conflict of Laws	
Wills and Estate	
Administration	
Three out of:	
Associations	
Taxation	
Industrial Law	
International Law	
Advanced Constitutional	
Law	

54. Paul, *supra* note 34, at 195.

55. Hedges, *Legal Education in West Africa*, 6 J. Soc'y Pub. Tchrs. L. 75, 77 (1961).

56. Nash, *Problems of Legal Education in Papua New Guinea*, in *FASHION OF LAW IN NEW GUINEA* 217, 233 (B. Brown ed. 1969).

In addition to their course work, students in Papua New Guinea were required to spend one semester during their third year working in a solicitor's office in Australia. The purpose of this was to enable the student to see "how the law which he learnt is applied in practice in a developed community, and . . . [to] absorb something of the atmosphere, ideals and traditions of an independent and close knit profession."⁵⁷

Whether or not this heavy reliance on the English and Australian model was best suited to produce the type of lawyer required by the new nations, it is unreasonable to have expected the system to have been significantly different. Three reasons can be given to support this view. First, since it was accepted that the English common law had been received in Africa and Papua New Guinea, it was reasonable that the law schools would teach that body of law. Second, all the law schools were established and initially staffed by legal academics from other common law countries who, in looking for a guide to direct their work, looked to the system they knew best. Finally, even the advocates of a greater emphasis on customary law were at a loss as to how to teach it. Despite the efforts of the University of London School of Oriental and African Studies and such journals as the *Journal of African Law*, very few common law legal academics were knowledgeable enough either to teach separate courses in customary law or to integrate it in any depth into existing courses.

The introduction of local university training in the English common law marked an important point in colonial legal history. Under the older dual system, the English common law had been primarily the law of the "expatriate" community, while custom continued to govern the lives of the people of the colonies. With the introduction of law schools, a deliberate effort was made for the first time to train local persons to administer the English common law in a unified manner throughout the country.

What prompted this change in policy? Part of the answer is that with the coming of self-government and eventual independence, it was simply assumed that the English common law would form the basis of the "underlying" law of the countries. It was further assumed that an independent English style legal profession was a necessary adjunct to an underlying common law.

While there was general agreement that a legal profession trained in the English common law was necessary, little thought was

57. *Id.* at 230.

given to the exact role these new lawyers would perform. The curriculum was oriented towards the type of private practice of English and Australian barristers and solicitors, apparently based on an assumption that the African and Papua New Guinean law graduates would engage in the same type of profession. However, in many instances, this was not the case. All of the new governments, committed to programs of "localization," made demands for the services of the early graduates either as administrators in government agencies or as members of the Ministry of Justice.⁵⁸ In addition, many of the law graduates seeking to enter private practice found that the more lucrative commercial work was dominated by English, Australian, or Indian lawyers, a situation that continued even in the early years of independence. Yet, a fundamental question remained: if local lawyers were eventually to enter private practice, would a local population too poor to support a private profession mean that the role of the law school was to produce people to serve only the expatriate community?

IV. THE CONVERSION PROCESS

The system of legal education introduced into Africa and Papua New Guinea was based largely on the English and Australian university model. But no system of education is static and the fact that the English common law was a "foreign" legal system should have combined with rapidly changing political, social, and economic conditions to make legal education even more susceptible to change than usual.

Just as Professor Seidman viewed the common law as applied in Africa as the result of different demands by the various institutions concerned with the legal system, the system of legal education that has developed (or failed to develop) since the establishment of the new law schools is also the result of the demands of various groups, each with their own interests. To understand what has happened to the received system of legal education, it is necessary to look at the interests and demands of the groups involved with the system.

58. In Papua New Guinea, for example, of the first 75 graduates in law, only nine went into private practices. The others took positions with the Ministry of Justice, the Public Solicitors Office and other government agencies. See Paliwala, *supra* note 14, at 3, 43.

A. Faculty

In recruiting law professors, the universities in Africa and Papua New Guinea were confronted with two tasks: they had to train local graduates for eventual staff positions and, until sufficient local graduates became available, they had to recruit qualified foreign faculty.

In West Africa, the existence of a sizable local legal profession enabled the new law schools to employ a large minority of local staff members from the beginning.⁵⁹ In Central and East Africa and Papua New Guinea, the almost total lack of a local legal profession required faculties to depend on foreign staff for a much longer period.

Since the new law schools were located in English and Australian territories, it was natural that England and Australia would provide the majority of the initial staff.⁶⁰ During their first years, most of the African law schools had experienced professors under the sponsorship of various foundations.⁶¹ Most of the staff, however, were young and came either on "secondment"⁶² from their home universities or on funds provided by the Department of Technical Cooperation.

Britain was unable to provide all of the required staff for the law schools in Africa. The opening of the African law schools coincided with the expansion of legal education in England, stretching available resources. Staff persons were therefore also recruited from other Commonwealth countries, the United States⁶³ and some civil law countries.

One of the principal problems facing faculty members of the new law schools was finding teaching material relevant to the legal problems of the particular country. Although English and Austra-

59. Milner, *supra* note 19, at 296.

60. For a discussion of teaching law in Africa by one English faculty member, see Twin- ing, *The English Law Teacher in Africa*, 7 J. Soc'y PUB. TCHRS. L. 80 (1962).

61. Among the professors who served in Africa during the early years of the new law schools were: Professor A. B. Weston (Tanzania), Professor William Harvey (Ghana), Professor James Paul (Ethiopia), Professors Gower, Hanbury and Milner (Nigeria), and Professor Gerald Nash (Papua New Guinea).

62. Under the system of secondment a faculty member of an English university was made available for a period of one to three years to an African university. Thereafter he could resume his prior position.

63. The two principal sources of American academics were the SAILER project and the Peace Corps. See J. BAINBRIDGE, *supra* note 4, at 69-86 (discussing the SAILER project). See generally Johnstone, *American Participation in East African Legal Education*, 16 J. LEGAL EDUC. 312 (1964).

lian casebooks and texts were used in the beginning, many faculty members became concerned that the problems and principles in these books did not adequately reflect the sometimes peculiar problems that arose in Africa and Papua New Guinea. To overcome this situation, many staff members developed their own teaching materials based upon local cases, statutes, and problems. In developing new materials, they made perhaps their greatest contribution to legal education in these developing countries.

Some areas of the law lent themselves better than others to these efforts because of the availability of local material. For example, criminal law, family law, land law, and succession were the subject of numerous articles and books.⁶⁴ In other areas, such as contracts, commercial law, and business organizations, the law taught remained mainly that of England and Australia. Thus, while the outward form of the curriculum remained traditional, some faculty members slowly began to alter the content by integrating local practice with the formal common law subjects. This was not without its effects on customary law.

As local material was integrated into traditional common law courses, customary practices were "translated" in terms of the common law. When an attempt was made in criminal law courses to define which acts would be considered criminal under customary law, the standards and concepts applied were that of the common law. However, in many customary situations, such acts frequently have both "civil" and "criminal" aspects and the sanctions applied often differ significantly from common law criminal sanctions.

For example, stealing from gardens, sorcery, and certain types of intentional killing were included because they fit the common law view of a "crime." However, unlike the common law which separates the act into its "criminal" aspect (a matter for the state) and its "civil" aspect (a matter between the parties), such acts prohibited by customary law do not make such a distinction. Instead, the act is viewed as a wrong only to the injured people or their group. It is not the state or community, but the injured party who selects the remedy — money, property compensation, or physical retaliation. Thus, while the content of the traditional courses sometimes

64. The articles and books written about African law over the past 20 years are too numerous to list. Of particular significance have been those published in Butterworth's "African Law" series and Law Book Company's "Law in Africa" collection. For a review of the first case book on criminal law in Africa, see Huber, *Legal Education in Anglo-Phonic Africa: With Particular Attention to a Casebook and the Criminal Law*, 41 WIS. L. REV. 1188 (1969).

was altered by the inclusion of local material, its inclusion often significantly altered the perception of customary law.

The "localization" of the law faculties by preparing the best graduates for eventual teaching positions was a slow process. It involved not only the time spent on the basic LL.B. course (three to five years) at home but, further, time spent in an LL.M. program, usually overseas. Added to the time factor was the competition for scarce legal resources from the government to staff the Ministry of Justice, the judiciary, and administrative positions. Despite these difficulties, however, by the mid-1970s most of the faculties had a majority of local staff members.

It is still too early to predict how the localization of the law faculties in Africa and Papua New Guinea will affect the direction of legal education. Nevertheless, if the West African law schools, which have been "localized" longer than the other law schools, are an indication, the probable result will be a continuation of the slow process of altering the content of the courses while retaining the basic structure of the received educational system. This slow internal change is understandable given that most of the faculty members received their training either in England or during the early years of the national law schools, when the faculties closely modeled the English schools. In addition, many of the new faculty have received advanced degrees in England, Canada, or the United States. Thus, it can be expected that they will continue to work within the framework of the system they know best.

B. Students

In its report on legal education in developing countries, the International Legal Center found that most legal educators in Asia and Latin America were faced with two problems: too many students for too few legal positions, and the formation of elitism.⁶⁵ In Africa and Papua New Guinea, only the second of these has been a problem.

Unlike some Asian and Latin American countries where the number of students enrolled in law exceeds any reasonable assessment of employment opportunities, the lack of sufficient secondary educational facilities in Africa and Papua New Guinea has resulted in only a small number of students qualifying for a university. This has resulted in competition among departments for available stu-

65. INTERNATIONAL LEGAL CENTER, *supra* note 3, at 19-20.

dents. In a number of universities this competition has resulted in government scholarship quotas among the various departments as a means of ensuring a proper distribution of students.⁶⁶ While the allocation of students among departments can be solved by quotas, the problem of legal education resulting in the formation of elites has been much more difficult.

One problem encountered by the International Legal Center was the tendency of law schools to draw students from the affluent sections of society and train them for urban oriented positions.⁶⁷ Although in both Africa and Papua New Guinea over 80 percent of the population continues to live in small village communities where there is little income difference, university education has produced a group of elites who are increasingly divorced from the mass of the people. With few exceptions, graduates have chosen to remain in the urban centers after graduation. Their choice has been influenced by several factors, including greater opportunity for employment in the cities, higher income, and the amenities of urban life. Yet this has meant that a substantial amount of money has been spent to train persons whose services will be available to only a small percentage of the total population. Although this has sown the seeds of an urban elite, some legal educators have considered this a proper function of the law schools:

[The lawyer] does not belong in a village society. His practice and his usefulness are necessarily in the towns and larger communities⁶⁸

. . . .

In many cases [the student's] home is in a village community and it will be the purpose of the law course in one respect to divorce him from that community. It is not an aim of education to isolate people, but when the differences between the educated and uneducated are so great as they are in New Guinea, it is an inevitable effect of education, if taken far enough, to isolate the educated members from the rest of his community.⁶⁹

66. At the University of Papua New Guinea, for example, entrance to the university is based upon graduation from high school with a sufficient overall average. Until 1976, once a student was admitted to the university, no restriction was placed on the area of study. Consequently, this *laissez-faire* approach resulted in about 10 percent of the student body enrolling in law. However, in 1976, students seeking to enroll in law for first-year courses jumped from the previous three-year average of 60, to 122. Pursuant to government manpower planning projections which envision a need for 250 lawyers for the country over the next 10 years, the government instituted a quota of 44 first-year students per year.

67. INTERNATIONAL LEGAL CENTER, *supra* note 3, at 19.

68. Nash, *supra* note 56, at 221.

69. *Id.* at 226.

Against this background, it is not surprising that students have not been a force for altering the structure of legal education. Although Nigeria, Ghana, Kenya, Tanzania, and Papua New Guinea have all experienced serious student demonstrations,⁷⁰ the demonstrations have been directed against government policies or living conditions in the university. There has been no agitation by law students for a change in the orientation of their studies. Few students have seriously questioned the dichotomy between the law they are taught in the university and the life of the vast majority of the people. Their entrance into university has led many students to view that and "the ultimate issuance of a degree as state obligations."⁷¹ With careers in the government assured, there has been no reason for the students to press for change.

C. Governments

All the law schools in Africa and Papua New Guinea are part of universities financed and controlled by the governments. The governments recognize the need for universities in order to produce the required trained manpower for the countries, but in spite of their financial support of education, the universities have been a constant source of problems to the governments.⁷² The governments resent the criticism that has come from the universities, criticism which is partly the result of an education and generation gap between the older leaders and the younger students, and partly the result of genuine differences about government policy.

The form of legal education is intimately tied to the existing legal system; changes in one will affect changes in the other. But few of the governments have seriously questioned the common law as the underlying law for their legal system, and, therefore, the governments have had little incentive to alter the form of legal education.

D. Bench and Bar

In all the African countries and in Papua New Guinea, both the judiciary and the practicing profession were dominated by English and Australian lawyers during the colonial period and immediately after independence. Their practice involved mainly commercial

70. For a discussion of the demonstrations at the University of Nairobi, see generally Martin, *Teaching Law in Kenya: A Personal Footnote*, 14 *AFR. L. STUD.* 63 (1977).

71. J. BAINBRIDGE, *supra* note 4, at 51.

72. See generally *id.* at 33-37, 86-89; Martin, *supra* note 3.

work for foreign companies and thus differed little from that of a barrister or solicitor in England or Australia. As a result of their own ideals and predispositions, these practitioners had a great interest in maintaining the existing form of the legal profession.

Most of the law faculties have included members of the profession both as teachers and nonteaching members. They have thus been able to attend faculty meetings and to vote on matters affecting the direction of legal education.⁷³

In addition to the influence exercised through the university, the bench has had the power in most countries to approve law graduates for professional qualification. In Papua New Guinea, when important changes in legal education were proposed (over the objections of the profession), the Chief Justice, an Australian, informed the law faculty that if the changes were implemented, law graduates would not be allowed to appear before the courts. Since admission to practice is the ultimate goal of most law students, even if they do not actually intend to engage in practice, the explicit (or implicit) threat of withdrawing this right has been a means of exercising a judicial veto over changes in the law school program.

From the above examination of the faculties, students, governments, and bench and bar, it can be seen that there have been few pressures to alter significantly the received system of legal education. The course structure, the apathy of the students and the preoccupation of the governments with other matters have combined with the open opposition of the bench and bar. This has resulted in legal studies in Africa and Papua New Guinea adopting the English and Australian models without focusing on the actual needs of the particular countries.

V. THE PRESENT STRUCTURE OF LEGAL EDUCATION

In his article on the reception of the English common law in Africa,⁷⁴ Professor Seidman argues that the received legal system was subject to conflicting pressures from "interconnected institutions": the colonial office, the courts, the civil service, and settlers.⁷⁵ The result of this, according to Seidman, was that the common law

73. When it was proposed that Roman law be dropped from the curriculum at the law school in Tanzania, for example, the opposition came from the Law Society. See Dunning, *Some Thoughts on Existing Curricula of African Law Schools*, in PROCEEDINGS OF THE CONFERENCE ON LEGAL EDUCATION IN AFRICA 62, 64 (J. Vanderlinden ed. 1968).

74. Seidman, *supra* note 11, at 47.

75. *Id.* at 49.

as applied in Africa was a "very truncated version" of that applied in England.⁷⁶

In the case of legal education, the received system has not been subject to such conflicting pressures. With the exception of those faculty members who have sought to localize the content of their courses while retaining the overall form of Western university legal education, the interconnected institutions have, with one exception, made no attempt to alter the system. The reasons for this have already been explored. It now remains to examine its effect on legal education and the legal profession.

All the African countries have retained an English style designed to produce African lawyers with private practice skills.⁷⁷ Thus, the African lawyers' practice differs little from that of the foreign lawyer, being limited to commercial work for large foreign and domestic firms and work for individuals who have moved into the Western economic lifestyle. The result is that legal education has done little more than train a local elite to replace the foreign elite.

There are some variations on this general theme. Zambia⁷⁸ and Uganda,⁷⁹ for example, still follow a curriculum based on the English common law but impose a system of bonding on students after graduation. In Uganda the University Scholars (Undertaking for Public Service) Decree (1973) requires all university graduates to spend their first three years in government service.⁸⁰ However, since the expulsion of the Asians, private practice has become extremely lucrative, drawing most graduates to abandon public service as soon as the compulsory period ends.

Tanzania, on the other hand, has made changes not in the form of legal education, which remains based on the English model, but in the selection process for law school and in the nature of practice after graduation. Under a 1975 act, admission to a university in Tanzania is no longer directly from secondary school. Instead, it can come only after three years work and on the recommendation

76. *Id.* at 55-78.

77. See generally Ross, *A Comparative Study of the Legal Profession in East Africa*, 17 J. AFR. L. 279 (1973). For a discussion of the Kenyan bar, see Y. GHAI & J. MCAUSLAN, PUBLIC LAW AND POLITICAL CHANGE IN KENYA 381-95 (1970). For a discussion of the curricula in Ghana, Nigeria and Malawi, see J. BAINBRIDGE, *supra* note 4, at 221-27, 266-84, 256-59.

78. See Thomas, *Legal Education in Africa: With Special Reference to Zambia*, 22 N. I.R. L.Q. 3, 16 n.59 (1971).

79. Ross, *supra* note 77, at 283.

80. *Id.*

of fellow workers and supervisors. It is too early to assess the effect this will have on legal education.⁸¹

In addition to changing its attitude towards who should be admitted to law school, Tanzania has also changed its view about private practice. The reasons for this lie in Tanzania's commitment to "African Socialism."⁸² Because its population is largely poor and rural based, like that of all other African countries, Tanzania is committed to sharing equally what wealth there is, a policy which resulted in the large-scale nationalizations during the 1960s. In order to meet the heavy demand that this created for legal advisors of the state corporations and to channel the nation's limited legal resources into areas contributing to national development, the government realized that it could not allow law graduates freely to enter private practice where they would only replace the existing English and Indian bar. Thus, the Tanzania Legal Corporation (Establishment) Order of 1970⁸³ was issued in 1971 establishing the National Legal Corporation. The purpose of the Corporation is:

(1) (a) to provide legal services to parastatal organizations on such terms and conditions as may be agreed upon between the Corporation and the parastatal organizations;

(b) to provide such legal services to the Government as the Attorney-General may direct;

(c) to do any act or thing which, in the opinion of the Board, is calculated to facilitate the proper and efficient carrying on of its activities and the proper performance of its functions.⁸⁴

In addition to providing legal services to government corporations, the National Legal Corporation has also provided representation to individuals in criminal cases.⁸⁵ Although Tanzania has nationalized legal services by creating a "national" law firm, it still views the members of this firm as performing the traditional barrister and solicitor functions of advising on commercial matters and providing criminal representation. Since lawyers are viewed as performing limited, specialized work involving the common law, there has been no need for change in the type of legal education traditionally afforded Tanzanian lawyers.

81. One reaction expressed to this author in conversations with Professors Robert Seidman and R.W. James is that the new system is producing "more mature" law students.

82. For a discussion of African Socialism, see generally J. NYERERE, *UJAMAA ESSAYS ON SOCIALISM* (1971).

83. Order of Feb. 5, 1971, Gov't Notice No. 32.

84. *Id.* § 4.

85. Ross, *supra* note 77, at 285.

The most far-reaching changes in legal education and the legal profession have been proposed in Papua New Guinea. Although efforts were made in the early 1970s to make the curriculum and its contents more sensitive to the legal problems of the country,⁸⁶ the form that remained was still essentially that of an Australian law school. This system was seriously challenged by a government sponsored report issued in late 1974 by the "Working Party on the Future of the University."⁸⁷ This Report recognized that the legal profession would continue to play its traditional role of providing practitioners and administrators, although most Papua New Guineans would be unable to afford the services of private practitioners and would turn to the Public Solicitors Office for assistance. At the same time, the Report stressed a need for graduates to work at the "grass roots" level as catalysts for rural development.

To meet the educational needs of the country, the Report recommended a "modular approach" to university education, combining university study with field work in two-year modules. The Report argued that different needs within the country required different levels of education; some jobs would require only two years at the university, while others would require further university training after a few years of field work.

The Faculty of Law at the University of Papua New Guinea held a series of meetings between 1974 and 1976 to consider the implications of this proposal. A questionnaire was sent to all government departments, private companies and private practitioners to determine what types of jobs persons with two and four years of legal education could perform. The Faculty finally concluded, after much debate and opposition, that the required legal skills could be developed through the modular system.

First, the Faculty proposed a self-contained two-year diploma program designed to give a general understanding of technical skills and of major areas of substantive law. Coupled with this was practical legal training through a clinical program. Such a two-year program, it was hoped, would prepare persons to deal with most — but

86. In 1972 and 1973, a number of major changes were made in the curriculum. The length of the law course was reduced from five to four years and the compulsory semester in Australia was eliminated. In addition, a required course in "Customary Law and Land Tenure" was added for first-year students, and optional courses in "Law and Development" and "Legal Aspects of International Trade, Finance and Investment" were offered for final-year students.

87. COMM. OF ENQUIRY INTO UNIVERSITY DEVELOPMENT, REPORT (Papua New Guinea Gov't Printer 1974).

certainly not all — of the legal problems faced by the people of Papua New Guinea.

The Faculty also recognized the need to develop expertise in several specific areas of the law: mining law, international commercial transactions, taxation, and local government law. Since these skills would not be needed by every lawyer in the country, it was proposed that such specializations be developed within the framework of a second module leading to an LL.B. degree. In the degree program, students would be encouraged to select one of five areas of specialization and, in addition, take related courses from other faculties. The proposed areas were Advanced Civil and Criminal Law, Commercial and Property Law, International Law, Public Law, and Community and Social Welfare Law.

The Faculty of Law originally hoped to introduce the modular approach beginning in the first semester (February) 1977. However, difficulties in establishing the contents of the diploma course and a lack of support from the Ministries of Education and Justice have delayed implementation. The success of the modular approach will depend upon overcoming the following three major problems.

First, since law is an undergraduate discipline in Papua New Guinea, students come to the university lacking the educational background taken for granted elsewhere. It will thus be extremely difficult to impart the basics of legal education in only two years. In Papua New Guinea, as in Africa, university instruction is in English, which for all students is, at best, a second language. In addition, the university is instructing its first generation of students. Administrative procedures and teaching methods are still being developed and refined. Thus, the amount of material that can be covered in any course is considerably less than in an Australian or English university.

Second, the modular approach assumes that many university students will leave school after the initial two-year module for permanent careers. The survey conducted by the Faculty of Law found that potential employers were less than enthusiastic about employing persons with only two years of legal education. As a result, it has been proposed that the government create a national service to provide employment (a proposal that is now delaying the implementation of the modular system). This proposal raises fundamental questions about the modular program. In order for the initial module to prepare persons for careers, there must be meaningful jobs they can perform. Employment in the type of national service envisioned is not a career and at best can provide employment for one or two

years. Without further employment opportunities, most students would pressure the government (the major source of university scholarships) to return to the university to complete the degree program. The government would then be in a difficult position. To acquiesce would result in an LL.B. program with a compulsory one or two-year break in the middle. While this in itself may be a worthwhile educational goal, it is far removed from the initial concept of the modular system. If the government did not permit the students to return, it would risk creating an unemployed and alienated semi-educated class.

Finally, even if the modular program is able to find employment for persons completing only the two-year course, the added status (and income) afforded by the four-year degree could add to the problem of elitism and create continuing pressures on the government to allow persons to return to the university. Thus, the problems of unemployment and elitism threaten to turn the modular system into one differing only in form from the present system.

VI. CONCLUSION

This article has examined the type of legal education that has developed in Africa and Papua New Guinea. The survey indicates that, with the exception of the proposed changes in Papua New Guinea, the form of legal education has not substantially changed in the past twenty years. The reason for this continued use of Western models was explained by the lack of pressures for change among the "interconnected institutions" concerned with legal practice and education.

The result is that the adopted system of legal education, oriented towards private practice, is shaping the direction of legal development in Africa and Papua New Guinea. With the phasing out of the private bar in Africa, local law graduates are stepping into a world of practice that differs little from that of their predecessors in form, substance, or clients. The question for all of these countries is whether these adopted roles are appropriate for a lawyer in a developing country. Two countries have concluded that such a legal profession does not meet their developmental needs, and one, Papua New Guinea, has proposed changing the form of legal education as a way of producing a new type of lawyer. The majority of countries, however, seem content with the adopted system of legal education which continues to produce law and lawyers modeled along traditional English lines.

