

DEVELOPMENTS IN LEGAL EDUCATION
IN THE FACULTY OF LAW,
UNIVERSITY OF PAPUA NEW GUINEA*

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Introduction

This Paper highlights developments in the Law Faculty, in particular since 1970, when the so-called "reorientation" of legal education began, consequent upon the appointment of Professor A.B. Weston as Professor and Dean of the Faculty. Professor Weston (1970-73) succeeded Professor Nash, (1967-70) the foundation Professor and Dean of the Faculty. Underlying the post-1970 developments in the Faculty are a number of important assumptions stated in the 1975 Handbook of Courses as follows:

"Many of our graduates will not be professional lawyers. And the great majority of those who will be professional lawyers will go into government service and not into private practice."

"We no longer consider that the function of the LL.B. Course is to turn out a lawyer narrowly trained only for practice in the Western model" (p. 241).

The implementation of a new philosophy of legal education has evoked sharp reactions in many quarters in Papua New Guinea, in particular from one of the magistrates, Mr Tony Germain¹, the President of the Law Society² and a former Director of the Legal Training Institute who at the time of presentation of his Statutory Report to the Council of the Institute held the office of a judge of the Supreme Court of

* This Paper is substantially *the Dean's Report on Developments in the Faculty of Law*. The Report was presented to Council for discussion at its fortieth meeting held on June, 1975. The Editors of this Journal suggest that it might interest a wider audience.

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1 See *infra* at 208-9.

2 See *infra* at 208-9.

Papua New Guinea.³

The Paper focuses on the programmes of the Faculty which attempt to structure legal education to give effect to the stated aims in the handbook. It gives enough details for the reader to form a viewpoint on the goals of legal education in a developing country. Obstacles are described. Some remedies for these obstacles are within the power of the Faculty (staff and students), others within the domain of higher bodies in the University. Some are, however, beyond the purview of the university community.

A. Institutional Setting of Legal Education

The Faculty Board (hereinafter called the Board) is the initial decision-making body of the Law Faculty (referred to as the Faculty) on matters concerning the structure of legal education (e.g. curriculum, examinations and new courses). Like the other five Faculty Boards in the university,⁴ the Board's decisions are subject to ratification by the Academic Board and finally, Council. The Board comprises an elected Dean as Chairman, all full-time teaching members of the Faculty, including two teaching fellows, three student representatives, two graduate representatives, a representative of the Arts Faculty; three ex officio members, viz: the Chancellor, the Vice Chancellor and the Librarian; and the Minister for Justice, the Chief Justice, Associate Secretary for Law, representative of the Law Society, Director of the Legal Training Institute and the Research Officer of the Faculty who have been appointed by Council under section 4(h) of the Faculties Statute, 1967.

Unlike some other faculties in the university⁵ and some law faculties elsewhere,⁶ the Faculty is not departmentalised. The full time teaching members form a single department and elect a member as Chairman. It is the practice to elect the Dean as Chairman.

3 See *infra* at 208. Some members of the Bench have also expressed apprehension to me.

4 *Viz:* Agriculture, Education, Medicine, Arts and Science.

5 *Viz:* Medicine, Arts and Science.

6 *E.g.* Nairobi. In developing countries, departmentalisation is a device to persuade the decision making body in the University of the need to establish more than one professorship in the Law Faculty.

The Faculty is not the only institution entrusted with legal education in Papua New Guinea. The Administrative College runs training programmes for members of the magistracy, and the Legal Training Institute, established in 1973, provides a twelve months' practical training course for graduates-in-law to qualify them for admission as legal practitioners under the Admission Rules. The Faculty is, however, the only institution in Papua New Guinea which offers programmes for a degree in law. A law degree is a pre-requisite to admission as a trainee in the Legal Training Institute and to practise law in the Supreme Court. It is from the graduates of the Faculty that the future judges, legal officers in government and parastatal bodies, and the private bar will be drawn. There are, therefore, close relations between the Faculty, Legal Training Institute, the profession and government in shaping legal education. The following sections seek to define these relations and assess their impact on legal education.

Faculty and Legal Training Institute

The only formal link is that of interlocking membership of their governing bodies. The Dean of the Faculty is an ex officio member of the Council of the Legal Training Institute and about a half of the Council's members are on the Board: The Chief Justice (Chairman of Council), Director of the Institute, President of the Law Society and Associate Secretary for Law. Opportunities therefore arise for examining the complementary nature of the training in the two institutions.

There are informal working arrangements with the Institute. It is an expectation of the Council of the Institute that Faculty will make available to the Institute services of those Faculty members with experience in the practice of law in Papua New Guinea to lecture to the trainees. Owing to the transient nature of previous appointments of the Director of the Institute (the Director is the sole full-time member of the Institute) great reliance has come to be placed on the Faculty to teach much of the Institute's programme. The recent appointment of a Director on a two year contract but with no previous experience in this jurisdiction has meant reliance on Faculty members, at least in his first year, whilst he is "finding his feet".

The bifurcation of legal education between the university and a professional school is questioned in developing as well as developed common law countries. In Ghana responsibility for "academic" and "practical" training was assumed by the

university under a modified curriculum in 1964⁷. In Tanzania every aspect of legal education has been the responsibility of the Faculty of Law. In England and Wales the "Ormrod Report" augurs a revolution in legal education⁸. The majority view is that professional training should be given to the universities. The arguments for this change are convincing: (1) the need for professional training to develop in a teaching and intellectual environment, for the director and his staff to develop research activities and for innovations; (2) superior library facilities in the university; and (3) better chances of the university attracting staff of high calibre, for the university offers a more stimulating atmosphere and a wider career structure.

In the North American jurisdictions the separation of legal education (academic and practical) is unknown.

At the meeting of the Council of the Legal Training Institute of Papua New Guinea held on May 10, 1974, the former Minister of Justice⁹ indicated a desire to review the position of the Institute "so far as its structure apart from the university was concerned". A sub-committee made up of the Assistant Secretary for Law, the Director and myself, as Dean of the Law Faculty, was set up to examine the implications and advantages of the Minister's suggestion. The sub-committee met twice, the Minister attending the first meeting and his legal adviser, the second. It was unanimously agreed that (a) the Institute should continue to be separate from the Faculty and (b) there was need for closer relations between the Faculty and Institute. Opposing arguments were raised to the Minister's suggestion that the Institute should be sited on the University campus in the Faculty building. The Minister undertook to prepare submissions to Council and the Cabinet. With the subsequent removal of the Minister from office, discussions on this vital point lapsed.

The development of clinical programmes and the modular

7 See W.B. Harvey, *The Development of Legal Education in Ghana*, (mimeographed and undated).

8 Cmnd. 4595. Committee on Legal Education, *Report* (1971).

9 Mr. John Kaputin.

approach to education would raise a *prima facie* case for review of the initial decision to separate "practical" from "academic" training in legal education in Papua New Guinea.

Faculty and the Profession

Apart from the representation of the judiciary and Law Society on the Board and Council of the Institute, there is no formal link between Faculty and the profession. There are, however, informal links particularly with the judiciary whose members preside over moot, court competitions of the faculty and have an ongoing interest in curriculum development.

Whilst in theory the Faculty is autonomous of the judiciary, that body has tended to exert indirect pressure over important decisions such as curriculum. It is the judges who promulgate and amend admission rules, hence they have the final say on who will be admitted as a solicitor and barrister of the courts. They can therefore exert undue pressure on Faculty to offer certain courses and prepare its students in a particular manner. The "Ormrod Committee" expressed the view that such indirect control of legal education by the profession stultified imaginative programmes in the universities in England and Wales. In contrasting the "dominating role" of the medical faculties with the "historic isolation" of law faculties, it confronted this issue on principle and was firmly in favour of the need of the academic institutions to be the vital force in legal education.

The argument for greater university autonomy in legal education in Papua New Guinea is stronger, for here there is a political commitment to developing Melanesian-type-institutions. A conservative profession such as the legal profession can too easily socialise students into norms and behaviour patterns basic to the profession as presently organised.

Faculty And Government

As with the judiciary, the formal link of Faculty and Government is through membership on the governing bodies of the Faculty and Institute.

Informal relations have been constructive and fruitful. The Secretary for Law invariably supported extension activities of staff and students during the period I have been in office and gave financial support for some projects.¹⁰

¹⁰ See *infra* at 202.

International Links

The Faculty is a member of two international organisations of law school teachers: AULSA (Australasian Universities Law Schools Association) and The Society of Public Teachers of Law. The only change proposed to AULSA at its 19th Meeting was an amendment of its constitution to reflect the independent identity of Papua New Guinea at independence.

In addition some members of the Faculty belong to LAWASIA (The Law Association for Asia and the Western Pacific). LAWASIA is not an organisation of law schools but is composed of individual members. Faculty members have been active in this association, attending and presenting papers to the 1973 and 1975 Conferences.

B. Faculty: Staff And Students

Academic Staff

The established teaching positions in the Faculty are, two professors and fourteen non-professorial positions. There are in addition two teaching fellows both of whom are 1974 graduates of the University of Papua New Guinea. A position of Research Officer has been funded by the Research Committee from August to December 1973 and annually since 1974. The Research Officer is responsible inter alia for digesting for publication reportable judgments of the superior courts of Papua New Guinea. Faculty members will ultimately take over these functions.

Consequent upon the O'Shea Report¹¹, the post of law librarian has been created as an established library position. This position has been advertised and hopefully an appointment will be made shortly.

The composition of the Faculty has changed tremendously. Prior to 1970, the staff comprised almost entirely Australian academics with experience limited to Australian jurisdictions. There are now British and American academics on the staff, and academics from other Commonwealth countries, including in particular, a significant number from developing countries.

11 Rhoda O'Shea, *Report on The Law Collection At The University of Papua New Guinea* (1972) (mimeographed).

One of the strengths of a Faculty with a cosmopolitan nature is a remarkable variation of ideas and techniques in legal education which are brought to bear in discussing issues raised in the Faculty. Faculty members are collectively uniquely informed of the process of legal education and development in a number of common law countries, developed and developing, and some civil law countries. Again this cosmopolitanism may operate as a brake against academic neo-colonialism, an important issue in universities in developing countries.

The Faculty is conscious of the need to localise the academic staff. Endeavours are now made to retain the best graduates as Teaching Fellows and send them abroad for graduate programmes. Upon completion of higher degrees they are guaranteed appointments to established positions.

The present picture which is far from satisfactory is as follows: Lecturer 1, Teaching Fellows 2.

The only indigenous lecturer referred to above is the first and only Papua New Guinean to have a graduate degree in law. He is presently in Canada having just completed his degree and will take up his appointment in July this year. Both Teaching Fellows are proceeding overseas this year for their masters degree (one has already started his programme at Monash University). There is one other graduate studying at the University of Toronto for his LL.M. degree. He obtained a Commonwealth Scholarship under the sponsorship of the university and might therefore come back to the Faculty.

The objective remains to localise the teaching staff as quickly as possible, for localisation is a prerequisite to the stability and development of the Faculty. In the meantime the leadership endeavours to involve senior local students in decision making and preference is given to them whenever there is an opportunity to attend seminars abroad which are concerned with curricula and/or teaching methods.

Undergraduate Students

LL.B. students

The primary concern of the Faculty is the LL.B. programme. Some service courses are offered to students in other disciplines and a few students are registered in the Faculty for graduate degrees. The present number of LL.B. students is one hundred and sixty four. One hundred and fifty of these are Papua New Guineans, three are from other Pacific Islands (viz: the Solomon Islands, Gilbert and Ellice and Nauru) and eleven other expatriates. Out of a total of eight female students only four are Papua New Guineans.

The following tables indicate the increase in student numbers and graduates over the years:

(1) Number of LL.B. Students as of 31 March.

1967	1968	1969	1970	1971	1972	1973	1974	1975
18	35	55	60	85	127	153	164	164

(2) Number of intakes per year

1967	1968	1969	1970	1971	1972	1973	1974	1975
18	19	29	22	36	46	52	47	58

(3) Number of LL.B. Graduates.

1971	1972	1973	1974
6	11	17	18

Six and ten of the registered first-year students in 1974 and 1975 respectively were magistrates released by the Department of Law to undertake the first year of the LL.B. programme.¹² They are then recalled to service and given greater responsibilities in the administration of justice. Those who are posted in Port Moresby continue legal education on a part-time basis.

In future years, in-take in the first year for the LL.B. degree will be limited in conformity with manpower planning to which the university subscribes, i.e. fifty-five students per year.¹³

12 They had completed the two year programme at the Administrative College and were for some years exercising their duties as magistrates in the local and district courts.

13 The Committee on University Trained Manpower has adopted the figures of the Working Party on the Future of the University - *Report to the Vice Chancellor* (1973). It is estimated that Papua New Guinea requires an annual output of 30 lawyers. There is therefore built into the plan an attrition figure of about forty per cent. This attrition rate appears to be correct under existing conditions e.g. easy transfer from law to arts, failures and drop-outs.

Greater attention should be paid to two matters of importance on the subject of student in-takes:

(1) Too few Pacific Islanders from neighbouring countries are undertaking legal education in the Faculty. We have had talks last year for Fijian students to study law here. Such talks should be revived and special efforts made to attract students from other Islands with cultural similarities to the people of Papua New Guinea. Apart from official channels of communication, advertisements can be made in the local papers of those countries. A publicity campaign might have positive response.

(2) Attempts to get more female students to study law have been unsuccessful. During the 1974 academic year one of the senior female students visited and held discussions with female students in various secondary schools in the Highlands. Emphasis was placed on the Eight Point Plan with particular reference to the role female graduates-in-law can play. This exercise appears to have been unsuccessful, for only one Papua New Guinean female student enrolled for first year law in 1975.

If women are to participate equally with men in legal fields, the reluctance of qualified women to embark on legal education for a career in law has to be overcome and therefore the subject requires the special attention of the faculty and the university as a whole.

Other undergraduate students

There are thirteen students from other faculties in the university who are enrolled in the first semester for one or more law courses. These are mainly students studying for the Diplomas in Journalism and Police Studies.

The Department of Economics offers a course entitled "Commercial Law" as a requirement of the Diploma of Commerce. A member of the Faculty teaches this course as well as offers a series of lectures on Law and Medicine to final year medical students.

Students' Activities

A lively and vocal student body interested and participating in Faculty's affairs is a necessary aspect of training for leadership in and outside the university. Students also add a refreshing local dimension to the arguments. Students' activities in the Faculty are co-ordinated by the Law Students' Society founded in 1967. Three students' elected representatives are members of the Faculty Board and make

invaluable contributions to the deliberations. They attend and participate in departmental meetings.

There is an ongoing staff-student research project into the effectiveness of village courts. Recent attempts to involve students in teaching and research programmes in the Faculty were (1) a "brief" from the Lands Department for the drafting of the bill for the *Land Disputes (Settlement) Act, 1975* by the Legislative Drafting course class; and (2) the experiment started this semester, of appointing the best final year students as tutors to take tutorial classes in "legal writing", a first year component.

The impact of the Law Students' Society goes beyond the walls of the university. The legal aid programme is an important activity of that body. In the 1974 long vacation, twenty students undertook to research customary law with a view to providing data for major reforms. Fourteen manned legal aid schemes in their home areas. Both programmes received moral and financial support from the Department of Law.

By a 1974 amendment to the Post Graduate Legal Training Act, 1972, the Law Students' Society is given power to recommend a member of their choice to the Council of the Institute and the Students' body has had representation on various ad hoc committees set up by government in 1974 e.g. Committee on the use of Assessors in the Superior Courts and the Committee set up by the Chief Minister to examine the controversial issue of law students' right of audience in the local and district courts.

Individual students have had an impact on and off the University Campus. Currently both President and Vice President of the Students' Representative Council of the University are final year law students and a number of students have promoted development corporations in their home areas.

Finally, in recognition of the need for contact with other law students, particularly in other developing countries, efforts are made to involve students in relevant forums abroad. Four students left for Washington, DC on April 19, 1975, for a three-week visit to represent the University in the Jessup Moot Court Competition and a recent graduate represented the Faculty at a seminar on the "Role of Universities and Research centres in teaching - Dissemination and Wider Appreciation of Trade Law". The organisers paid the expenses of three of our students who went to Washington and the Legal Training Institute, that of the fourth. The Geneva trip was financed by the U.N. Organisation.

The attempt of Faculty to structure regular moot courts

by prescribing "Moot Courts" as a compulsory activity was unsuccessful in 1974. There are a number of reasons why the programme was unpopular and students voted against its continuation. It is quite likely that the lesson is that devices like mock trials, and moots which are performed in a simulated setting are best left to students' initiative through their society. Hopefully participation in 1975 competition would generate the necessary enthusiasm. There is as yet no tradition in the law school of moot court competition as an important activity.

Placement Of Graduates

The first graduates of the Faculty completed their LL.B. degrees in 1971. Since then there have been 52 graduates: Twenty nine Papua New Guineans, two British Solomon Islanders and Twenty one other expatriates. The table immediately below sets out the job placements of the Papua New Guinean graduates:

Public Solicitors Office	5
Department of Law	2
Dept. of Foreign Affairs	2
Chief Minister's Office	3
Dept. of Central Planning	1
Bougainville Copper	1
Lands Department	1
NIDA	1
Graduate School (Overseas) ¹⁴	4
Village	1
Private Practice	1
Legal Training Institute	7

The fact that only one of the Papua New Guinean graduates is in private practice is a source of disappointment to the judges and practising lawyers in Papua New Guinea. It is, however, consistent with a pattern observable in Tanzania and Zambia for example, though inconsistent with the norm in

14 One in this category takes up an appointment as lecturer on 1 July, 1975. Two are Teaching Fellows in the Law Faculty.

developed common law countries and some developing countries e.g. Nigeria, Kenya, Guyana where a large percentage of the law graduates goes into private practice. In developing countries, the roles the lawyers are called to play depend largely on the government's concept of development of society. Tanzania's "Arusha Declaration", Zambia's "Humanism" and the "Eight Point Plan" of Papua New Guinea all espouse egalitarianism and the government's involvement in the transformation process. The lawyer, in the words of President Kaunda, "is perhaps better fitted than anyone else to work out solutions to the social and economic problems of society."¹⁵

In these societies,¹⁶ a young law graduate responds by choosing a career in a capacity in which he can contribute to the development of his country.

Graduate Programmes

University by-laws set out regulations for the LL.M. and Ph.D. degrees in law. There are two students currently registered in the LL.M.Q. programme, five in the LL.M. programme and two for the Ph.D. The Council has awarded only one LL.M. degree to date. In the present circumstances - lack of an adequate law library, the need to consolidate the LL.B. and extension programmes - there is no intention of mounting an elaborate ongoing programme of organised courses for graduate studies. The programmes as presently constituted cater at best for supervised readings and the supervision of original research.

The staff development policy of the Faculty is to send the teaching fellows abroad for the LL.M. degree. At the same time, however, one must concede the importance of Papua New Guineans pursuing graduate studies in their region, thus the Faculty's existing decision must be subject to periodic review.

15 Cited in Yash Ghai, "Legal Education in Anglo-phonetic Africa" (1972) - A Paper prepared for the June, 1972, meeting of the Committee on Legal Education in the Developing Countries.

16 The private legal profession in these countries is in expatriate hands; it is therefore arguable that it is inevitable that local graduates should find positions with government as they cannot compete with the entrenched expatriate bar. However, similar conditions prevail in Kenya, for example, yet most of the local graduates find their way into private practice. In Papua New Guinea the practising lawyers are anxious for local graduates to enter their firms.

C. The Library (Law Collection)

The law collection in the library is, by international standards, small. There are now only 10,000 volumes, consisting of 2000 text books and about 8000 reports and periodicals to serve a law student body of approximately 164. These have been collected without a capital grant ever having been made. These facts have been stressed by Miss O'Shea in her Report¹⁷ to the Faculty in 1972. Steps are now being taken to implement this Report.¹⁸

Despite this shortfall in quantity, efforts are now being made when ordering text books and periodicals to concentrate on obtaining materials which have the most relevance to Papua New Guinea. Thus some material relating to developing countries is ordered. We hold reports or periodicals from Nigeria, Malawi, Tanzania, Kenya, Zambia, the West Indies, India, Ghana and the African Law Reports (but only the *Laws* of a few of those countries). Emphasis is also placed on Papua New Guinea's neighbours. Reports and periodicals from the Solomon Islands, Nauru, the Phillipines, Hong Kong and Malaya are available. Efforts are being made to obtain more materials including their laws from the South Pacific region but difficulties are experienced in communicating with the government printers in these neighbouring countries.

Many of the above periodicals have been ordered only recently with the result that we hold only recent publications. A great deal of consolidation is needed. The consolidated laws of most of the abovementioned developing countries are still to be collected. These tasks will be carried out by the qualified law librarian.

Australian, English, and New Zealand reports, periodicals and legislation are a stronger feature of the law collection. There are even multiple copies of some reports and laws of these countries. American material holdings are poor in that we have collections of parts of series only or series which are out-of-date or irrelevant. This is being remedied and the core of a basic American collection is now on order. So are laws and reports of Canadian jurisdiction.

17 We have already referred to the creation of a post of Law Librarian. This was the first recommendation of the Report.

18 The Budgets Advisory Committee has allocated K25,000 for spending on the collection of basic materials for the Law Library. The recurrent expenditure on the Law Library from the general library vote is about K30,000. Similar expenditures are expected for future years until the library reaches a fairly high standard.

Ordering policy is not systematic but is done on an ad hoc basis by a member of the teaching staff. This is not satisfactory. It is to be hoped that the qualified law librarian will rationalize the law collection (and ordering policy) and bring it up to the *minimum* holding figure of 50,000 volumes recommended by the AULSA Law Libraries Report.

The lay-out of the law collection is still far from satisfactory. Journals are inter-mixed with reports and the law text books are completely separated from the main collection. This situation can only be remedied by the time-consuming business of re-cataloguing many of the volumes. The poor lay-out is not helped by the fact that volumes are not returned to their proper place. It is not uncommon to find a text book in the middle of the law periodicals.

If the law-making and enforcement bodies are to be free to adopt those developments in the common law best suited to Papua New Guinea, as the independence constitution will guarantee, the law library is crucial in the realisation of this goal. It must support the acquisition of reports and other basic materials not only from the older common law countries but the developing ones as well. In the long term it is hoped that the law collection will become a separate law library with its own library staff.

D. Course Developments and Teaching Methods

The past three years have seen a substantial change in the direction and emphasis of courses taught in the Faculty. Originally the Faculty and the curriculum were conceived as an extension of Australian university law faculties. In addition, students were required to spend a semester working in a solicitor's office in Australia - a measure designed to socialise them in the Australian legal tradition.

Recently the direction has changed. The Faculty argues that in a rapidly developing society where the older received legal institutions might have become obsolete and rapid social changes constantly raise novel problems, the capacity for creative participation in the adaptation of law to new needs is of primary importance. Thus in addition to offering those courses which will prepare a lawyer in the skills needed in any aspect of his job, the Faculty has seen its obligation as preparing graduates with a wider view of the economic and social foundations of the law in a developing country. It is hoped to accomplish this through a number of means:

Development Studies - The Faculty has added two new courses in

the area of development studies. These are: "Law and National Development", an optional first year course, and "Law and Development", an optional fourth year course. These courses examine law in context by enquiring into social, political and economic factors within which the law operates. Most law students elect to take these courses.

In addition some of the traditional courses are redefined. The underlying element of the revision is to provide a framework relevant to Papua New Guinea within which basic lawyers' skills of analysis, synthesis and critical evaluation could be developed to a high degree. Thus the course on Associations goes beyond the study of Company Law in the Western mode of include Melanesian type institutions and forms of social organisation and decision-making. The Property course is substantially a course on policies.

Customary Law - Lecturers are attempting to bring customary law and procedure into existing courses where possible. In addition, a new first year course, "Customary Law and Land Tenure", has been designed to acquaint students with issues relating to traditional law in general and customary land holding. In particular, it focuses on new institutional models derived from a traditional base.

New Courses - The Faculty has developed a number of new courses to deal with changing needs in Papua New Guinea. Among these are: Legal Aspects of International Trade, Finance and Investment, Mining Law and Legislative Drafting.

Localisation of Teaching Materials - Many of the members of the Faculty have come to feel that existing Australian and English text and casebooks do not adequately reflect all of the legal problems in Papua New Guinea. Although all lecturers have attempted to integrate local materials into their courses, this has been easier in some courses (e.g. criminal law) than others (e.g. trusts, contracts) because of the varying amount of local cases, statutes and materials available.

To meet these inadequacies, a number of the members have developed their own teaching materials. The amount to which this is supplemented by existing texts and casebooks varies but at the present time the content of at least two-thirds of the courses is predominantly Papua New Guinea material dealing with local problem.

Considering the diversity of the training and background of Faculty members, it is not surprising that there is diversity in teaching methods used. The two that predo-

minate, are the lecture and "socratic" methods. Within each, however, there are significant variations. Faculty does not prescribe an ideal method. The only insistence is that large classes, particularly in the earlier years, should be streamed so as to reduce class sizes, and the tutorial system of problem discussions in small groups should supplement the method adopted.

Most courses have writing requirements and are examined by continuous assessment. For successful completion of some courses major essay papers are made an important requirement. These invariably emphasize original research.

The clinical method, started in 1974 with the introduction of the Legal Aid and Legislative Drafting Courses, is an important teaching device in the Faculty.

Like in other disciplines in the university there is an external consultant who reports to the Academic Board each year on the programmes of the faculty and the quality of work of students and staff. He visits the campus every other year and discusses with staff and students their courses, and also performs the function of an external examiner in some courses. The use of academics from outside the country as consultants and/or external examiners is a phenomenon in universities in developing countries, and remains a controversial subject. Though our academic board has recently discounted the notion of "international standard" as a *rationale* of the consultancy system, the political commitment to developing Melanesian type institutions would seem to argue even stronger against the use of consultants from a different environment who might be obstructive to experiments. The system is also expensive. The notion of external consultancy must remain a subject for periodical review.

E. Extension Programmes

Consultancy

Unpaid professional legal services by Faculty members and students have increasingly become a major activity of the Faculty in the nation. Such services range from advising on major legal appointments in government and the judiciary, participating on committees charged with recommending changes in the law and on Working Parties to draft legislation.¹⁹

19 Out of this collaboration three major pieces of land legislation were drafted in 1974 and are now Laws: *Land Groups Act, 1974; Land Redistribution Act 1974 and Land Trespass Act 1974.*

The Dean is *ex officio* a member of the Statute Law Revision Committee (established to help the speedy revision of the laws) and the Council of the Legal Training Institute.

One major activity of Faculty and staff during 1974 was the drafting of the Land Disputes (Settlement) Act by the Legislative Drafting class. The success of the programme was referred to by the external consultant in his 1974 Report and recently by the Minister for Lands.²⁰ With the establishment of the Law Reform Commission, staff and students will continue to render meaningful consultancy services to the nation.

Some Faculty members as an element of practical training in their courses give consultancy services to indigenous groups e.g. in setting up development corporations and other group enterprises. Faculty members continue to give legal advice to the university and one senior member holds a retainer as legal adviser to the university.

Legal Aid And Advice

Law students started a legal aid and advisory service to Port Moresby communities in 1972.²¹ In 1974 the Faculty recognised an obligation to encourage and guide the development of the various programmes. A well run clinical programme performs the necessary function of providing free legal services to the masses who cannot afford to pay for them and would not otherwise get legal representation. It is also the best vehicle for obtaining practical skills. However, its real importance lies in the fact that it provides a link between staff and students and the community. It is intended to produce a greater awareness in the people of their legal and other needs, but at the same time staff and students can learn from the people's experiences with and ideas about the law.

Legal aid was introduced in the law curriculum in 1974

20 Letter, Kavali to Professor James, dated 27 March, 1975.

21 Two student representatives had attended the Asia - South Pacific Law Students' Conference on "Legal Aid and the Law Student" held in Singapore on 7 to 14 July, 1971. In their Report they expressed enthusiasm for a legal aid programme as a means of sensitising the students to the social needs of their society.

and legislation now guarantees certified law students audience in Local and District courts. With fifty-nine students registering for Legal Aid this semester, an enthusiastic faculty member with long experience at the bar to act as consultant to the students, and a sympathetic government, clinical legal education is fast becoming an important activity of the Faculty.

One problem remains, that of extending the services to other areas of Papua New Guinea. It is hoped that the goodwill shown by the Secretary for Law who provided funds necessary to support the programme in rural areas during the 1974 long vacation, would be a basis for future planning in solving the problem. Another possibility is the utilization for this purpose of the year's break recommended by the Gris Committee.²² The fifteen minutes radio programme "People and the Law" currently run by the Law Students' Society²³ is a service for the people in the rural areas and is important in educating the nation on rights and obligations under the law.

Such programmes in addition to the periodic visits of the students to squatter settlements, are important activities of the Law Students' Society and must be supported.

Law Practice By Faculty Members

From the inception of the Faculty, members of the staff engaged in substantial part-time private practice.²⁴ Professor Weston frowned on private practice by faculty members,²⁵

22 See *infra* at 210.

23 Topics covered are:- Legal Aid; Courts' system; Human Rights Act; Family Law; Housing and Squatter Problems; Land and Forestry Laws; Defamation; Law Reform Commission.

24 In 1970, when Professor Nash left to take up his present appointment at Monash University, there were three senior lecturers and two lecturers on the Faculty, all of them were in part-time private practice.

25 This attitude to private practice seems not to have had the support of the students who voiced the view that academic salaries alone may not be a satisfactory inducement for good lawyers to remain in Papua New Guinea. They concluded that:

"The students' main worry is that the Faculty may cut off its nose to spite its face" - See *UPNG Law Students' News*, No. 1, 21 August, 1970.

therefore, by the time the present Dean was elected, the Faculty was split on this issue. The antagonists of part-time private practice by Faculty members were concerned with the conflict of interests that inevitably arises, and could point to the damage done to legal education in other developing countries when Faculty members have part-time private practice. The protagonists pointed to the advantages of demonstrating through practice what one purports to instruct in the classroom. The myth which developed in the minds of those outside the Faculty was that the antagonists of private practice were (and still are) against staff members "practising" law.

The conflict of interest is real. Expatriate teachers come out to Papua New Guinea with the specific purpose of teaching and are more than adequately compensated and ought not to get a double income.²⁶ This is not an arbitrary view and it was emphatically stated by the Chief Minister in his guidelines on the terms and conditions of the Director of the Legal Training Institute that he should not be permitted to supplement his income by private practice of law.

It is with pleasure that we can note that some Faculty members are using much of their spare time to give unpaid legal services in the legal aid and consultancy programmes. Practical skills when utilised in these programmes are for the benefit of the students and those members of the community who cannot afford to pay for legal services or are not allowed the free legal services of the Public Solicitor's

26 Professor Ghai, *op. cit.*, using the African experience, has argued:

"So long as most of the teachers were expatriates, who had come out for the specific purpose of teaching, had little local contact with the local commercial and industrial communities, were more than adequately compensated, teaching was a full time job."

He went on to argue that the danger of conflict presented itself on localisation of the staff. This is obviously not the experience in Papua New Guinea. Expatriate academics are certainly paid very high salaries in Papua New Guinea, but regarded private practice as a God given right. Their values can very easily be transmitted to their local colleagues.

Office because of its limited resources. Faculty is well aware of the importance of these activities for university outreach.

Community Legal Services - Reconsidered

The services referred to in this section should need no justification. But the fact remains that they do not form an aspect of traditional legal education. Because of conservatism the legal representation services offered by the Law Students' Society were criticised by some magistrates who also excluded students from appearance as representatives of clients in their courts. I have already mentioned legislation which had to be passed in order to guarantee law students the right of audience in the Local and District Courts. Magistrates in the Children's Courts have now in this spirit assured our students audience in their courts.

Nevertheless, the President of the Law Society in conversations with myself and the sub-dean, questioned the activities of staff members in rendering unpaid services under the legal aid programme. This matter he informed us will be a subject of discussion by the Law Society. It is an interesting fact that when the issue of part-time private practice was debated in the university, the Law Society did not come to the aid of those staff members who opposed private practice. On the contrary, members of the private bar briefed Faculty members, and still do, to appear in court for their clients.

The position of the Faculty is that whilst the mainstream courses in the LL.B. programme are the primary focus of commitment of resources, community legal service is in our judgment of great value. While participation in legal aid complements and enriches the knowledge of Faculty members in the practice of law in Papua New Guinea, legal aid is a legitimate aspect of a committed law school trying to reach the community which set it up. The Public Solicitor's service, because of demands on resources and shortage of staff, is effectively limited to providing free legal representation in the Supreme Court. Therefore, on occasions, the Public Solicitor refers to the Faculty matters arising in the Local and District Courts. In addition some members of the private bar have referred improvident clients who need legal representation to the Faculty.

In both America and Canada, the law schools are developing intensive clinical programmes as teaching devices and as legitimate alternatives to the much discredited "period in

chambers".²⁷ If western countries with an entrenched private bar and affluent populace can develop models of clinical services as an aspect of legal education, *a fortiori* a Faculty in a society which acclaims egalitarianism and espouses equalisation of services.

Other Extension Programmes

In addition to service courses offered within the University, Faculty members have participated in lecture series and programmes outside the university. Amongst these have been - Department of Foreign Affairs - As part of the diplomatic training course given by the Department of Foreign Affairs to prospective diplomats, members of the Law Faculty have since 1972 given a series of lectures each year on International Law.

Department of the Chief Minister - In 1974 the Faculty offered an optional fourth year course entitled "Legal Aspects of International Trade, Finance and Investment." A number of persons outside the university expressed interest in this course but were unable, because of work commitments, to attend lectures during the normal university hours. In response to these requests, members of the Faculty gave a parallel series of lectures once a week on this topic to members of the Department of the Chief Minister and Department of Finance.

Legal Training Institute and Department of Law - Mention has already been made of help given by Faculty members to the Legal Training Institute in teaching its programmes. One member of the Faculty is also currently offering a series of lectures on Professional Ethics to trainees of the Institute and new graduates working in the Department of Law.

Seminars and Teach-Ins - There is a commitment to provide forums for public debates on matters of national importance. This service is provided in collaboration with the Extension Office of the university. Important forums held in 1974 that have long term consequences are (1) the joint law students and trainees sponsored weekend seminar on "Lawyers' Involvement in the Eight Point Improvement Plan." This seminar raised

27 See G. Grossman, "Clinical Legal Education: History and Diagnosis" (1974) *Journ. of Leg. Educ.* 162; Long Range Academic Policy Study Group, Report (1974), Osgoode Hall Law School of York University.

a number of pressing issues about law reform and "the search for a legal system suited to the needs and customs of Papua New Guinea".²⁸ Subsequently, the Faculty in collaboration with the Department of Political and Administrative studies organised a series of teach-ins on the proposals of the Constitutional Planning Committee; and later, at the request of the Department of Law, sponsored a forum to discuss the two opposing views on the underlying laws of independent Papua New Guinea - a matter for inclusion in the Constitution.

Finally Faculty hosted a very successful public lecture²⁹ by Professor Aubrey Diamond of the English Law Commission who came out to advise the government on the establishment of the Law Reform Commission.

F. Research And Publications

Research and dissemination of knowledge are two of the historic functions of a university particularly in a law school in a developing country where the dominant institutions are imported and where there has been an inertia to develop from an indigenous base.

Since December 1970, the Faculty of Law has edited and published the Melanesian Law Journal. Originally published annually, the Journal now appears twice a year, in April and October. The Law Students' Society publishes the *Law School TokTok* which features current issues of the day.

In 1973, the Faculty embarked on an ambitious project to digest and publish publishable cases of the superior courts in Papua New Guinea and thus make the law more accessible to judges, the bar, the magistrates, administrators and students. Regular digests will fill an important void because of the absence of regular and up-to-date law reports. The digests of 1973 cases are completed and have now been published.³⁰ It is hoped that eventually current monthly

28 For a discussion of issues discussed at the seminar, see *The National Times of Australia*, April 15-20, 1974, 24.

29 Published by Extension Studies, UPNG under the Title "Law Reform" (mimeographed, 1974).

30 Papua New Guinea Law (1973).

digests will materialise.

The digest service also aims at providing a complete up-to-date list of all Papua New Guinea cases under subject headings, and bound volumes of all supreme court cases for law libraries and key institutions concerned with the administration of law. These services will undoubtedly contribute to the development of local legal doctrines and increase the quality of judicial and administrative decision making.

A continuing staff/student research project which gets financial support from the Research Committee is that on "Popular Justice in Papua New Guinea" with particular reference to the establishment and effectiveness of Village Courts. Faculty also plans an independence publication on legal developments in Papua New Guinea. This will be contributed to by both staff and students.

It is not intended to list in this Paper publications of individual Faculty members as the Research Report of the university is the proper place for such. It should be noted, however, that the university in recognising the importance of research supports such activities in various ways (1) by paying its Faculty full-time salaries, but imposing teaching loads which do not amount to full-time year-round commitments; (2) by granting leaves including study leave, to its academic staff; (3) by directly paying for certain expenses of research, including the salaries of part-time student research assistants and other supporting staff.

Conclusions

Goals Of Legal Education

Legal education as originally conceived and developed between 1967-70 was dedicated to the creation of a strong indigenous legal profession modelling itself on that of Australia in the belief that this was the best guarantee that the rule of law will prevail.³¹ As part of his programme a

31 A. Paliwala, P. Bayne and J. Zorn, (1973), "Law And Development Strategies in Papua New Guinea", Paper delivered at the AULSA Conference, Port Moresby, 1973; "PNG Searches for a legal system suited to its needs and customs", *The National Times of Australia*, April 15-20, 1974.

law student was required to spend some months in a solicitor's office in Australia. According to Professor Nash, this experience enabled him to see "how the law which he learnt is applied in practice in a developed community and there he was intended to absorb something of the atmosphere, ideals and traditions of an independent and close knit profession."

Professor Nash, continuing on the problems of legal education, sets out some important assumptions on which legal education was founded:

"[The Lawyer] does not belong in village society. His practice and his usefulness are necessarily in the towns and larger communities".³²

"In many cases [the students'] 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 ... to isolate the educated member from the rest of his community."³³

The Faculty decisively challenged these assumptions in the (early) seventies. In varying degrees, staff saw their role as inculcating in their students a commitment to the principles implicit in the Eight Point Plan: rural development, increasing equality of legal services and self-reliance. This involved in practical terms, curricular changes, changes in course contents and in values. These changes have not been without bitter opposition.

I have already referred to criticisms of the Community Legal Services. In 1973, Mr. Lalor, then Director of the Legal Training Institute, in his Statutory Report to the Council (subsequently presented to the House of Assembly) drew attention to the "changed nature of the law course now being given at the university." He observed:

32. G. Nash "Problems of Legal Education in Papua New Guinea" B.J. Brown (ed) *Fashion of Law in New Guinea* (1969) 221.

33 *Ibid* at 226.

"the course has been changed from one which was designed to produce the lawyers required by this country to one with a specifically non professional orientation."

He concluded:

"In my view, the approach must have serious consequences."³⁴

The main disagreement with these statements is as to the nature of lawyers the country requires. Mr. Lalor, like Professor Nash, had false assumptions of the goals of legal education in a developing country. The former, writing in 1965 perceived a divided profession, barristers and solicitors, and the development of a strong private bar. He suggested that in time when income levels in the indigenous sector rise "the present legal aid system³⁵ should merge into a growing private profession as practitioners become available."³⁶

These early educators disregarded the views expressed by a sub-committee of the Law Council of Australia which was set up in the early sixties to consider legal education in Papua New Guinea. In its Report to the Commission for Higher Education, it had cautioned against the assumption that the programme in the Law School here should be the same as that offered in Australia. It observed that a programme of legal education can only serve the interests of Papua New Guineans if it reflected the local academic, social and political context.

"The Working Party on the Future of the University", in its Report to the Vice Chancellor³⁷ pointed to the need to

34 Director of the Legal Training Institute, *Report* (1973).

35 The legal aid system referred to is that established in the Public Solicitor's Office. The Faculty prior to 1970 would have been against the establishment of a legal aid programme. Rather, most members of staff were engaged in part-time private practice.

36 W.A. Lalor, "The Role of the Law in a Developing Country" in International Commission of Jurists, *The Rule of Law in an Emerging Society* (1965).

37 October 1973 (mimeographed).

train lawyers for services in government and as administrators rather than for private practice. These trends are borne out in the section of this Paper entitled "placement of graduates". The Gris Committee reviewed the role of university education in Papua New Guinea and emphasised the necessity to provide suitably trained and motivated graduates to work at grass roots level as catalysts for rural improvement.³⁸

Both the Gris Report and that of Professor Bown on Extension Studies,³⁹ emphasise the need for greater university outreach to the community and call for the orientation of staff and students towards understanding and rendering service to the community. The Faculty has endorsed this role of the university as a means of achieving the goals of decentralisation, equalisation of opportunity and self-reliance. These are principles central to the *Eight Point Plan*. The Faculty's contribution is effectively in terms of consolidating its existing programmes discussed above under Section E as "Extension Programmes".

The Gris Report and The Future

The Gris Report has recommended that University education be composed of two "modules" with a break of a year between. For example, assuming that the law student has had two successful years at one of the Senior High Schools or has obtained a Certificate on satisfactory completion of the preliminary year studies, he will qualify for registration for a diploma in law. Then upon completion he will be eligible to be registered for a bachelor's degree in law. Each "module" will form a self contained unit and will sequentially represent a significant increase in learning. The compulsory break between the diploma and degree allows for a period of work which could contribute to the students developing more personal maturity and give them an opportunity to apply theoretical knowledge in appropriate practical situations and practical experience to theory.⁴⁰

38 Committee of Enquiry into University Development, *Report* (1974) The Report is referred to in this article as the *Gris Report*.

39 L. Bown. *Preliminary Report on University Extension And The Inter-Action of Universities and Community* (1975) (mimeographed).

40 *Gris Report*, *ibid.*, at 20.

Four Faculties in the University, including the Law Faculty, responded affirmatively to the recommendations. The other two, Medicine and Agriculture,⁴¹ which found the modular concept inappropriate to their *existing structures* were requested to restructure their programmes in order to implement the modular concept. The Law Faculty recommended an initial study module of 2½ years to be divided between a period of 2 years of general professional legal studies comprising courses imparting skills common to all levels of legal careers, and a ½ year of training aimed at preparing the students for their initial work requirement.⁴²

The detailed syllabus is yet to be agreed upon and would be determined largely by the types of work the diplomates would be required to perform.⁴³ But the following inter-related qualities should be enumerated:

- a. *Analytic skills*: The capacity to analyze legal materials, i.e. to read and understand statutes, cases and other legal materials (interpretation); the capacity to analyze a problem, i.e. to separate the material facts from the immaterial facts, to survey the problem from many perspectives, to apply relevant legal principles, policies and rules to those facts.
- b. *Research skills*: The capacity to find the relevant law by the use of the library and to find other information which is needed.
- c. *Communicative skills*: The capacity to listen, to argue and to write effectively.

41 The Medical and Agriculture students at present spend their first year taking general Science subjects in the Science Faculty. Both Faculties thought that they could not train diplomates in two years.

42 While students should be allowed to appear in Magistrates' Courts after completing their initial 2½ years, admission to the National Courts and the Supreme Court should be limited to those who have completed their LL.B. degree.

43 To this end questionnaires have been sent out to more than fifty potential employers. However, it is also recognised that some diplomates might prefer to work with their local group corporations.

d. *Drafting skills*

e. *Knowledge of traditional concepts and principles*

There is, however, one underlying quality which must pervade the training, i.e. an understanding of the role of law in society. It is essential that students of law do not acquire a narrow technical approach to legal materials. This would be incompatible with our broad view of the lawyer's role in society. The desired attitude might be engendered through a specialised "perspective course" such as "Law and National Development" or an appropriate Arts course.

After completing a work period of one year⁴⁴ a student would be entitled to return to the University to complete his LL.B. degree. The degree programme should, we believe, allow an opportunity for an advanced level of expertise in one or more fields of law. To this end the curriculum should allow optional offerings in or outside the Faculty; the latter as far as is compatible with the field of expertise chosen.

44 The Faculty recommended that the break after 2½ years should not be compulsory for those students who are married, or part-time or who have previous work experience.