

BOOK REVIEWS

LAWYERS FOR THE THIRD WORLD?

The Committee on Legal Education in the Developing Countries,
Legal Education in a Changing World, International Legal Center,
New York and Uppsala, 1975 pp.94.

By now everybody must have heard the one about the role of a lawyer in a developing country. An elaborate mythology of pieties and platitudes has been erected in conferences, seminars and journals, all designed to show that the role of lawyers in developing countries must be *different* -- different, that is, from the role of lawyers in industrialised western states. The sheer weight of words devoted to this cause has been sufficient to impose its own orthodoxy.

Like all orthodoxies, this one implies certain corollaries. Thus, if lawyers are to play their different role, legal education must be changed accordingly (fundamentally restructured, to use the jargon). And so begins another round of conferences, articles, etc. *Legal Education in a Changing World* is the most recent, and so far the most detailed, statement of this view. The book is a report prepared by an international committee of distinguished legal scholars and is, therefore, worthy of attention, if only in an attempt to refute some of its arguments and conclusions. Before attempting such a refutation, however, some general remarks about the role of lawyers in developing countries may be useful. These remarks are aimed at establishing a context within which legal education can be discussed.

First, and most important, it is fatuous, and in many cases dishonest, to lump together all the states of the third world under the rubric developing countries. Most of these countries are, at best, stagnating, while many are actually underdeveloping at an impressive rate. Unless one is very clear on this point, it is easy to be mystified by a great deal of the nonsense written about the third world today. Direct responsibility for the failure to develop rests with the national bourgeoisies which rule most of these states. Their greed, their ineptitude, and their oppressiveness appear to be limitless. Yet they all claim to be committed to development. Any analysis which takes the pronouncements of such leaders seriously, or which proceeds on the basis that it is dealing with "developing" countries, is of doubtful value.

Secondly, despite all the effort which has been directed to the subject, no one has managed to define with any degree of precision that the different role of a lawyer in a developing country is supposed to be. In discussions of this question little is provided beyond nostrums such as "lawyers must be involved in development in a meaningful way" or "lawyers must be creative". It should be evident that these are phrases devoid of analytical content. For example, to take the question of creativity, one could plausibly argue that *Shaw v. D.P.P.* was the most "creative" decision ever rendered by the House of Lords. One doubts, however, that *Shaw v. D.P.P.* represents the kind of thing being urged by the role-of-the-lawyer-in-developing-countries people. If this sort of discussion were merely idle it would not merit attention. It is important, however, to the extent that it tends to divert attention from what should be, in all countries, the central aspect of the lawyer's role.

The lawyer should be committed to the pursuit of justice. A bald statement like this is open to two obvious criticisms. First, the majority of lawyers in both the "developed" and "developing" countries evidently do not share this commitment. They have prostituted themselves to narrow commercial interests and to the defence of unjust regimes. Yet, the fact that lawyers are not performing their proper role does not inevitably lead one to the conclusion that the role itself is misconceived.

Secondly, the usefulness of justice as a concept can be attacked. Some would argue that the concept is meaningless. The point is, as Barrington Moore has noted, that there is so much palpable injustice in the world today that we may paralyse our ability to confront it by worrying overmuch about problems of definition. On the other hand, there is a widely held view in the third world that justice is somehow subversive of economic development. This view has become an obscenity in the mouths of political bandits who use it to justify ever more vicious repression of their subjects. The authors of the report appear to fall prey to this sort of mystification by arguing that a development-oriented approach is the only legitimate way to teach law. It is beyond doubt that anyone who receives an education in a third world country should be dedicated to achieving development and national liberation, and equipped in some way to participate in the process of their achievement. At another level, even bourgeois theoreticians like Rawls today recognise that justice has something to do with economics. However, none of this in any way requires that third world lawyers relax or amend their commitment, however fraudulent it may be elsewhere, to justice.

The simple answer to these criticisms is that if lawyers have not demonstrated a strong commitment to the pursuit of justice, then legal educators must find ways to revive and strengthen that commitment.

Legal Education in a Changing World begins with a survey of what the authors of the report believe to be the present situation. I will attempt to outline the main points of this descriptive survey and comment briefly on them.

Great stress is laid on the fact that third world societies are changing rapidly. In a sense this is true, but change is not, with a few exceptions, taking place in the direction imagined. To put it as simply as possible, things are getting worse, not better. Officials become more arrogant and more corrupt; the police more brutal and less subject to control. The misery inflicted on the mass of the people intensifies. Obviously, reality in the third world should be different. True development should be taking place. But it is not, and intellectuals who wish to see progressive change render their cause a serious disservice by taking refuge in fantasy. It is argued in *Legal Education in a Changing World* that persons involved in the field should devote more effort to "... empirical research, to learn more about the existing situation". How difficult it is to follow one's own prescriptions.

The writers of the report are concerned with the fact that third world legal systems remain too much influenced by metropolitan models, with a resultant lack of attention to indigenous forms and values. They assume that indigenous approaches to social ordering, developed in a pre-capitalist economic system, can be of significance in dealing with the realities faced by a state attempting to bring about economic development.

But if development means anything at all it must entail the eclipse of traditional society. Tradition is an obstacle, not a path, to development. This should be obvious if we look, for example, at recent history in Africa. The maintenance of indigenous traditional social systems was the cornerstone of Lugard's indirect rule, as it is of Vorster's separate development. Lugard and Vorster recognised tradition as a key device for excluding the mass of the people from political and economic power. The most repressive leaders in Africa today are the most vociferous supporters of tradition. Mobutu and his Revolution of Authenticity provide perhaps the best example of an African politician consciously implementing the cultural tactics of colonialism in an independent state.

In the legal context, appeals to tradition are invariably used to justify the removal of substantive and procedural rights possessed by citizens. Perhaps the authors have forgotten that not so long ago Julius Nyerere was saying that the enemies of his country were the colonialists *and the traditionalists* (or do they believe that Banda's so-called traditional legal system is what developing countries really need?). Furthermore, the writers seem to assume that what is involved is an either/or question -- either a state has a metropolitan legal system, or it has an indigenous legal system. But history simply does not work that way, and, in any case, are third world lawyers really so devoid of imagination that their only choice is between atavism or imitation?

Present efforts at legal education in the third world are grandly and contemptuously dismissed. Law schools are claimed to be staffed by "teachers whose commitment to legal education and scholarship is part time and whose preparation for legal education in today's world may be limited"; the approach followed to the study of law is "very 'academic'"; research which examines law in its historical context is not carried out; there is no "indigenous legal literature"; nothing is studied but the doctrinal aspects of law; teaching methods rely on "the magisterial lecture" and exclude student participation. These comments are not merely arrogant and gratuitously insulting to dozens of serious and dedicated academics, they are also a grievous distortion of the truth. Between 1967 and 1975 I taught law in three different African universities. While there were, as in any field of endeavour, time-servers and incompetents among my colleagues at these institutions, the majority were sincerely concerned with developing precisely the approach to the study of law that the authors of the report claim to be lacking. In April 1975, I was an external examiner at the University of Dar es Salaam. I was exhilarated by the experience of observing and participating with colleagues who were struggling with the problems of analysing legal phenomena in a "developmental and socio-economic context". Now there is no doubt that the law faculty in Dar es Salaam is a progressive institution; but it is not unique.

My experience convinces me that many African law schools are making significant strides in similar directions. Indeed, legal education in Africa today generally proceeds from a better understanding of the dialectic between legal institutions and socio-economic formations than do its counterparts in North America or the United Kingdom. Still, major difficulties remain. Most of these difficulties are a result of the kind of political regimes which are found throughout the third world. Scholars are constantly thwarted by officials who frustrate and, if necessary, repress, progressive intellectual initiatives; often, it must be added,

in the name of traditional values. If a personal example may be forgiven, I attempted, in my most recent African post, to teach in a way "which critically examine(d) the social context, policy assumptions, actual administration and behavioural impact of laws". The Government of Kenya threw me in jail for my pains.

Having delivered itself of this grave diagnosis, what prescriptions does *Legal Education in a Changing World* offer? What this prestigious committee finally comes up with is a plea in favour of that most sacred of contemporary liberal cows: "relevant education". I have always been rather puzzled about relevant education. In the first place, I have never heard anyone argue in favour of *irrelevant* education. It is not clear why so much effort has been devoted to arguments in favour of an idea which is vague to the point of meaninglessness, and whose correctness is, in any case, apparently beyond doubt. On the other hand, if one pauses and actually attempts to give some meaning to relevant education, the position becomes rather less clear. Presumably, "relevant" must connote "relevant to existing society". This suggests that if education is to be relevant it must strive to create in students an acceptance of observable reality. This can be done either through mystifying that reality to the point where it appears to be inevitable and desirable, or by paralysing students' analytical abilities through some variation on the theme of Bantu education. If this is where relevant education actually leads, its value may well be open to doubt.

Relevant education, in the view of the writers of the report, demands yet another sanctified liberal goal, "educational planning". It is a basic dogma of the liberal faith that societies can be improved, indeed radically altered, through education. This dogma proceeds from the unhistorical assumption that a ruling class will permit the creation of an educational system which seeks to subvert its own cultural and intellectual hegemony. In practice, educational planning becomes yet another device through which national bourgeoisies seek to mystify the reality of their own narrow aspirations. The educational planners require that the mass of the people bear the financial burden of yet another bureaucratic establishment, while a multitude of foreign technical experts is set loose to try out its own half-witted pet schemes. The intellectual corruption of contemporary western mass education is replicated abroad. One is forced to repeat, in another context, a question already asked: Have the people who wrote *Legal Education in a Changing World* observed the reality of educational planning in third world states today?

The authors of the report, all apparently militant liberals, seriously misconceive the role of legal systems in third world states. In the majority of cases, these legal systems are, in the Leninist sense, pure. That is, the law is a straightforward and unadulterated instrument of oppression. I could not begin to describe the stupefied amazement which the following induced:

In the majority of countries within our review, law has been chosen as an instrument of change and development. In such countries a heavy burden is laid on the legal system. It is required to discharge a variety of different tasks: to innovate and facilitate complex transactions,

to define the rights of the citizens inter se, and between them and the institutions of government, to establish incentives for desirable activities and disincentives for undesirable ones, to provide procedures for participation in the affairs of the nation, to provide access to justice, to persuade, to cajole, to coerce. (p.37)

Leaving aside the point that few third world countries are engaged in anything which could reasonably be called development, to say that law, and especially law as conceptualised in this statement, has been chosen as an instrument of development is to come perilously close to outright dishonesty. In which countries, do the authors see a functioning legal system wherein the rights of citizens as against the state are defined in a manner which has an operational reality? Where have they observed the mass of the people participating in the affairs of the nation? Certainly some of the ideals they describe do exist, but it might be suggested that "disincentive" is too self-consciously discreet a term with which to characterize murder, torture, and preventive detention. In the passage quoted, the authors present us with the bourgeois-democratic view of the nature of law. Yet it is an interesting paradox that it is precisely this view of law which is so vigorously assailed in other parts of *Legal Education in a Changing World*. Consistency is not necessarily a virtue, but one may be permitted a certain degree of concern when confronted with such conceptual confusion. More to the point, much of the argument which has been presented elsewhere in the report will provide useful ammunition for despotic rulers who are eager to see the remaining shreds of legality in their own countries swept away.

When the report leaves the uncertain terrain of theory and comes to the more mundane mechanics of legal education, it presents some valuable observations. The discussion of methods of recruiting law students, problems of curriculum content, teaching methods and techniques of assessment is useful. The difficulties encountered in these areas are both universal and eternal, and while they cannot by their nature ever be resolved, the views of conscientious and experienced law teachers are always helpful. There is a stimulating, although unfortunately brief, discussion of what is meant by "local legal literature" and of some of the means by which its creation might be achieved. The case for law libraries is argued with vigour. The report devotes space to the question of paraprofessional legal education, an area which clearly merits all the attention it can get. Finally, there is a well articulated argument in favour of greater professionalism among law teachers.

There can be no doubt about the good intentions of the scholars who wrote *Legal Education in a Changing World*. The misery which afflicts the mass of humanity in the third world must be of profound concern to all people. Legal education cannot avoid confronting this reality. Legal education has shown a certain reluctance to do so. There is definitely a tendency for law to be taught in a contextual void with the sole purpose of imparting a fluency in the manipulation of doctrinal paradoxes. Legal education must move itself away from this incestuous approach and face the objective truth of underdevelopment. But in a task of such awesome magnitude good intentions are not enough. Indeed good intentions alone can be dangerous, for they may lead the scholar to forsake objective analysis and embrace views which, however attractive they may sound, will ultimately tend in directions opposite to those which he wishes to see followed.

Legal Education in a Changing World has grasped at a broad contemporary orthodoxy which combines western left-liberalism with third world radical nationalism. The authors have allowed themselves in their eagerness to become blinded to the reality of underdevelopment. They have translated a generalised orthodoxy into the context of legal education. Their prescriptions can only assist in strengthening the forces, above all corrupt third world national bourgeoisies, which seek to perpetuate underdevelopment. They offer little comfort to those who wish to see both development and justice in the third world.

Robert Martin, Associate Professor,
Faculty of Law
University of Western Ontario.