THE ROLE OF THE LAW SCHOOLS IN THE DEVELOPING NATIONS*

I. INTRODUCTION

The topic of this paper focuses attention on the role of the law schools in developing nations. However, before any meaningful discussion can be undertaken, it is necessary first of all to determine the role that law plays in society, to define the problems facing that society, and thereafter, the way in which the law and the lawyer can contribute, if at all, towards the solution of these problems. What are the problems facing developing nations to-day? What are the legal implications of these problems? Does law operate as a brake on progress or does it act as a stimulant of change?[1] What is to be the role of the lawyer in all this? These questions have first to be answered. Notwithstanding the roving commission to explore the problem of the function of law schools in developing nations in general, it is proposed in this paper to discuss the problem with particular reference to the developing nation the writer is familiar with, namely, the Republic of Singapore. However, many of the points made will be of general application to other developing nations.

II. LEGAL IMPLICATIONS OF PROBLEMS FACING SINGAPORE

It is the writer's thesis that law contributes towards all phases of a country's growth: social, political and economic, A close interaction exists between law and the social, political and economic order of a country. This may be seen by examining some of the more urgent problems facing Singapore to-day and the manner in which law has been harnessed to aid in the solution of these problems.

The Economic Problem

One of the most crucial problems facing Singapore to-day is the establishment of a viable economy. This tiny island Republic has no natural resources except for its strategic location. The economic problem has become critical with the accelerated British withdrawal from this region. The British pull-out not only poses defence problems but economic ones. It aggravates the unemployment problem

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1. See A.N. Allot, "Legal Development and Economic Growth in Africa" Chapter XI, Changing Law in Developing Countries (Ed. Anderson), p. 194.

by throwing thousands of displaced workers at the Naval Base into the ranks of the thousands of youths entering the employment market annually in the normal way. The progressive reduction in British military expenditure in Singapore and the eventual loss in expenditure furthermore threatens severe and protracted economic recession unless steps are taken to counteract this loss.

The strategy adopted to counteract recession, unemployment and to promote economic growth is industrialization. Towards this end, it is sought, *inter alia,* to attract foreign capital and the repatriation of private local capital. The emphasis is on the development of fairly large-scale, export-oriented industries since there is little scope for industrialization on an import-substitution basis because of the smallness of the home-market. This calls for foreign companies with ready-made international markets, or at least the experience and know-how to open up such markets. To implement this policy of attracting foreign investors, it has been necessary to establish *inter alia,* a climate of industrial peace and stability. Legislation has been enacted to help effectuate these economic measures. Thus collective bargaining is regulated[2] and more recently its scope reduced by rendering several items non-negotiable,[3] as well as by placing a ceiling on certain negotiable matters.[4] Presumably, these measures which restore so-called management rights are meant to create an industrial climate favourable to employers including foreign investors. Industrial arbitration has also been introduced which to a large extent has become a substitute for strikes,[5] or at least have contributed towards minimizing strikes. Longer working hours, less holiday and annual leave have also more recently been introduced[6] on the assumption that they will lead to an increase in productivity.

Furthermore, various incentives have been provided, favourable tax treatment, such as tax holidays and reduced taxation for pioneer industries and export-oriented industries; tax deduction on profit derived from expansion where the industry is approved as an expanding enterprise, so as to encourage industries to increase their productive capacity; tax concession on royalties, technical assistance fees and development contributions to encourage and speed the process of technological advancement; and tax concession on interest on foreign loans for productive equipment.[7]

2. Industrial Relations Ordinance, 1960 (No. 20 of 1960).
3. S. 17(2), Industrial Relations Ordinance, 1960 as amended; ss. 44 and 45, Employment Act, 1968 (No. 17 of 1968) the items made non-negotiable are promotions, transfers, vacancies, dismissals, allocation of duties, retrenchment and retirement benefits.
4. S. 46, Employment Act, 1968. This covers bonuses which should not exceed one month's wages.
5. S. 3(1) (b), Trade Disputes Ordinance (Cap. 153).
6. Part IV, Employment Act, 1968.
7. Economic Expansion Incentives (Relief from Income Tax) Act, 1967.

Another incentive offered foreign investors is the relaxation of immigration[8] and citizenship laws[9] to enable them more easily to acquire permanent residence, and eventually Singapore citizenship.

Aside from the measures taken to attract foreign investments for the development of industries, steps have also been taken to strengthen the industrial base, *e.g.* the engineering and metal fabrication industries. To achieve, this, the skilled labour force at artisan and technician levels has to be enlarged to support the engineers and technologists. Towards this end, legislative measures have been introduced to obliterate the traditional prejudice against blue-collar workers and to channel the youths from white-collar jobs to blue-collar jobs.[10]

It is apparent from the above that law is one of the instruments for economic progress, translating economic measures into legal terms. However, it should be emphasized that it is not only the *consequence* of change but very much the *stimulant* of change in the context of Singapore.

Internal Security and Defence Problem

Another crucial problem which faces Singapore following the wake of independence and aggravated by the accelerated British pull-out is the preservation of its territorial integrity and the maintenance of internal peace and order. Singapore is a multi-racial and multi-cultural society with a people of immigrant stock. A pressing political problem is to foster a national identity so that the different communities may live in harmony. Law is again one of the several instruments resorted to for achieving this goal. Constitutional devices have to be thought of to help establish this political imperative.[11] In matters of defence, as in economic matters, the nation has to look towards collective arrangements with other nations. There is need to strive for greater regional co-operation. Here again, the law intrudes in the form of treaties and international agreements.

8. See Schedule to Immigration (Prohibition of Entry) Order (S. 148 of 1966). Foreign investors who deposit $250,000 with the Economic Development Board for the purpose of setting up an industry in Singapore are accorded permanent residence. This is specially attractive to Chinese investors from Indonesia, Hong Kong and Taiwan.

9. See Article 57(1)(c), Constitution of Singapore, whereby the Government may waive the residential qualifications required for citizenship by registration.

10. S. 38, Employment Act, 1968.

11. The Constitutional Commission appointed in January 1966 to formulate constitutional safeguards for minorities recommended the setting up of a Council of State with the function of advising the Government on general problems affecting the minorities and to draw the attention of Parliament to discriminatory legislation, both primary and subsidiary. This proposal has been adopted by the Government with certain modifications in the Constitution (Amendment) Bill, 1969 which has just been passed by Parliament at the proof-stage. Part IVA of the Bill provides for a Presidential Council which it is hoped would help allay the fears of the minorities.

III. THE ROLE OF THE LAWYER

It is apparent from the very brief and largely over-simplified account of some of the problems facing Singapore to-day, that law is applied to translate national policies into legal terms. It is both the consequence, but more importantly, a stimulant of national development in the political, economic and social fronts. In saying this, the writer is not suggesting that law is the prime instrument or ranks with the more important instruments for the achievement of these national goals. However, it is undeniably one of the instruments which can be effectively employed towards these ends. Thus commercial lawyers, corporation lawyers, tax lawyers and labour lawyers are needed to help achieve an "economic take-off"; constitutional lawyers to help achieve political stability in a multi-racial and multi-cultural society; to help devise viable substitutes for the Westminster model of parliamentary democracy, to help in the preservation of the rule of law by seeking means to minimize the curtailment of individual freedom which is a concomitant of increasing governmental intervention in every sphere of activities towards the achievement of national goals; international and comparative lawyers are needed to enable the country to move towards regional co-operation as well as co-operation in the wider international scene.

It would appear that lawyers do have a creative role to play. The promotion of economic growth and national security entails changes in the law. This will necessarily entail the lawyer. But the crux of the question is, what sort of lawyer, and what stage in the process should he be brought in for consultation? Is the function of the lawyer merely that of translating into legal form the policies already made by the economists and administrators, or should he be consulted at an earlier stage? It is highly desirable that the lawyer should play a larger role that that of a mere translator. He should be associated with the examination of the existing law and the exploration of new legal structures at an early stage of the policy-decision-making process. To take specific examples, in any discussion to attract foreign investors, an early collaboration with lawyers would be desirable for the purpose of providing expertise as to whether existing law acts as a brake on progress and if so, how the law may be reformed and harnessed to achieve the desired objective. Lawyers are required to investigate and advise on the legal structures required to encourage foreign investments. To encourage industrial peace and stability, it would be pertinent to consider what legal machinery should be devised to achieve this end.

If the co-operation of lawyers is sought for something more ambitious than the translation of economic and political policies already decided on by others into legal terms, then a new breed of lawyers is required. He must not only have a knowledge of a single legal system but an appreciation of "sociolegal dynamics",[12] an appreciation of all the underlying social forces of which law is merely an expression.

12. A.N. Allot, "Legal Development and Economic Growth in Africa," Chapter XI. *Changing Law in Developing Countries,* (Ed. Anderson), at p. 208.

Aside from these functions, a lawyer should also maintain his more traditional role of continuously seeking to improve the administration of justice and to take the lead in public opinion.

IV. THE ROLE OF THE LAW SCHOOL

It is clear from the above discussion that the role of the lawyer in developing countries like that of his counterpart in highly industrialized countries is an expanding one. The range of problems that he will encounter will increasingly widen. He should thus be equipped to meet these challenges and more effectively participate in the task of "social engineering".

This should be the main task of the law school in a developing nation: to educate its students to take up the challenges which face every developing nation today. Aside from its teaching task, the law school also has a research and public service role.

The Teaching Task

First, the law school must seek to prepare law students for a wide range of possible careers in law,[13] — not only in practice, but in government, in commerce, in social services, and academic teaching. It is not feasible to provide specific training for each of these careers in law. Even in private practice, the task of the lawyer is not only concerned with litigation, but verges more and more on counselling *e.g.* advising business on policy and finances. In view of this, academic legal training should concentrate on inculcating certain qualities of mind instead of teaching myriads of rules. This, after all, is the true function of a university law school — to encourage all those who enter its portals to think and reason; to innovate and engage in definitive thinking; to be problem solvers. In the law school, this is sought to be achieved through the medium of law, which is a discipline which lends itself to the training of reasoning processes. Although the training would tend to emphasize legal reasoning, and applying reasoning to legal problems, ultimately, this could be applied to the solution of contemporary problems.

The qualities of mind which a law school should seek to inculcate have been listed as:[14]

> "1. *Fact consciousness.* An insistance upon getting the facts, checking their accuracy, and sloughing off the element of conclusion and opinion.
>
> 2. *A sense of relevance.* The capacity to recognize what is relevant to the issue at hand and to cut away irrelevant facts, opinions, and emotions which can cloud the issue.

13. In Singapore and Malaysia, the LL.B. degree is the standard route of entry into the legal profession. (The four-year LL.B. course is followed by a 3 month postgraduate practical course in law and 6 months pupillage). However, a fair proportion of students embark on other careers in law aside from private practice.

14. W.B. Leach, "Property Law Taught in Two Packages" 1 Jl. of L. Ed. 28, at pp. 30-31 (1948).

> 3. *Comprehensiveness,* The capacity to see all sides of a problem, all factors that bear upon it, and all possible ways of approaching it.
>
> 4. *Foresight.* The capacity to take the long view, to anticipate remote and collateral consequences, to look several moves ahead in the particular chess game that is being played. ..
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> 5. *Lingual sophistication.* An immunity to being fooled by words and catch-phrases; a refusal to accept verbal solution which merely conceal the problem.
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> 6. *Precision and persuasiveness of speech.* That mastery of the language which involves (a) the ability to state exactly what one means, no more, no less, and (b) the ability to reach other man with one's own thought, to create in their minds the picture that is in one's own.
>
> 7. And finally, pervading all the rest, and possibly the only one that is really basic: *self-discipline in habits of thoroughness,* an abhorrence of superficiality and approximation."

How are those qualities of mind to be attained? It is clear that mere exegesis of what the law is, is inadequate. The law school must seek to teach not only law as it is, but also how it came to be what it is, and what it ought to be. The university method should be critical; it should require a student to question the reasons for rules; it should stimulate him to think of better ways of achieving similar results. It should make him ask why and not merely how. As has been stated:[15]

> "A university law course should in my view be jurisprudential in the sense that law is studied for the *outside.*[16] It should be concerned not so much with a frozen map of the law as with ideas and reasoning which animate the law and steer it in this direction rather than in that; not so much with verbal rules as with the legal concepts which they express and with their social ends; and not so much with dogmatic reasoning as with reasoning in depth bearing in mind the social purpose of law. Basic questions, such as the concept of law, the nature of the judicial process, the relation of law and logic, should have pride of place in any law course conducted at a university, and by this I mean that they should be tackled seriously from the start. All too frequently serious treatment is avoided altogether or reserved for the handful of students who cannot be deterred from doing the optional subject of jurisprudence."

It is important that law should be taught jurisprudentially right from the start rather than to leave the matter to a special course reserved for senior students. By then, it is too late, as students will have settled down to viewing law as a series of watertight conceptualistic compartments devoid of any social content. This will occur because many law schools still tend to organize their courses completely round traditional textbook topics. The courses tend to be based on arid legalistic concepts, doctrines or principles. The focus tends to be on developing past legal doctrine at the expense of "the functional approach of developing power to deal with future problems which cut across orthodox textbook boundaries."[17] The limitations of this approach become obvious when

15. R.A. Samek, "Legal Education and University Education; An Analysis with Special Reference to Australia" (1964) 8 J.S.P.T.L. 1 at p. 12.

16. J. Stone. *The Province and Function of Law,* at p. 25.

17. C.A. Wright, "The University Law Schools" 2 Jl. of L. Ed. 409 at p. 416 (1949-1950).

we consider that the function of a lawyer is not only to assist in the adjudication of past conflicts which have reached the legal controversy stage, but also to counsel future action to obviate legal controversy in the future.

The problem is not an easy one to solve. Legal concepts must be taught, but they must be taught as means to the solution of problems and not as ends in themselves. Should they be taught as such to students or should concepts be allowed to develop in relation to problems presented to students? Ideally, the latter would be desirable, but from the teaching point much more difficult because this is not a tried method of teaching, there are no readily available materials and hence experienced teachers are required to develop such an approach — a commodity in short supply in the developing nations. A start can, however, be made in the following way. In the foundation years a student could be exposed to basic concepts which may be organized on traditional textbook topics. However, there should be a course in the first year which should expose a student to some of the ideas which a later course in jurisprudence seeks to instil. After the basic groundwork has been done there should be opportunities to specialize. At this juncture, students should be encouraged to explore subjects outside the boundaries of earlier year. The subjects should be organized on a functional basis which cut across orthodox textbook boundaries. Furthermore, non-law content should be integrated with law subjects so as to prevent the study of law from being divorced from its social, economic and political environment. A student should be encouraged to broaden his horizons and develop his knowledge of the context of his subject. It is not necessary for the law school to undertake this task wholly by itself as the aid of other departments in the university might be sought with respect to the integration of relevant non-law subjects with legal subjects as well as the development of contextual courses. It seems highly desirable that some of these courses should be inter-disciplinary.

Inter-disciplinary studies where appropriate, have the advantage of training students preparing for various specialities, for collaborative study. This will promote the development of a technique of co-operative problem-solving which is utterly essential today, as the range and complexity of problems today are such that they cannot be solved by a single individual or groups of individuals trained in the same way, but by a group of persons severally trained in various skills and insights and educated in different bodies of knowledge. However, all these persons must be trained to employ methods of collaboration that will integrate the contributions of each of them into sound group decision.

Of equal importance as the content of the courses in the process of inculcating the values and techniques aimed at, is the teaching method adopted. There are a variety of teaching methods generally adopted and they may be classified as the lecture-cum-tutorial method, the socratic method, which may cover the case method, the seminar method, and the problem method. These methods mean different things to different teachers and whatever "the method", it tends to vary from person to person, and not infrequently its efficacy depends on what a teacher makes of it.

There are a number of general points which should be borne in mind.

First, the function of a university law school is to train a student to think and reason, to innovate and seek solutions to problems, mainly but not wholly legal problems. In view of this, the handling of problems should be the core of a lawyer's education. Teaching techniques should focus on problem-solving.

Secondly, the university method is a critical one. Teachers should probe and encourage students to probe the solutions of the past in order to discover what the next decision might or ought to be. However, this is not sufficient as such probing has tended to be largely a question of "working from within the body of the law itself with a view to internal consistency, rationalisation, or simplicity and accuracy."[19] Students should be encouraged to go further, to step outside the boundaries of law itself and examine the results achieved by existing law; to assess and re-assess the results in the light of the purposes of the law, and how best these purposes can be achieved.

Finally, it has been pointed out that students should be encouraged to undertake collaborative study so as to be able to participate in co-operative problem-solving eventually, the lawyer providing the necessary law ingredient to any problem.

The Research Task

Law schools have an important research role which should be directed towards (a) the production of materials for teaching purposes and (b) the study of law, its development and application to the solution of current problems encountered in the adjustment of human relations.

(a) Production of materials for teaching purposes

The need to direct research to teaching is of critical importance in the law schools in developing nations, more than in industrialized nations. The reason is that there is a dearth of textbooks, casebooks and other teaching materials which are locally-oriented. Although, the common law forms the basis of the legal system in Singapore and Malaysia, text-books and casebooks produced for use in common law jurisdictions in more developed nations are inadequate, if not inapplicable, in the large areas governed by statutes and customary law. These have yet to be systemmatically investigated. Furthermore, if law is to be taught as a "seemless garment" and not as watertight conceptualistic compartments, materials will have to be developed. Again, if collaborative studies on an inter-disciplinary level are to become a reality, research has to be organized towards that end.

Furthermore, research has also to be directed towards the preparation of basic research tools. The law school in Singapore is presently undertaking two projects in this direction. It is compiling a union cata-

18. *Op. cit.*, at p. 423.

logue of law holdings in Singapore which will help researchers, teachers and legal practitioners in Singapore. Secondly, and more importantly, it is preparing an index of all primary and subsidiary legislation in Singapore up till December, 1969. This will be a tremendous contribution to the legal profession.

(b) Research directed towards the development and application of law to the solution of current problem

Research carried under the previous head also falls within this category. They are not mutually exclusive except that the focus is different. The focus in this case should be on (i) the improvement of law as an instrument of social justice and (ii) the utilization of law as an instrument for the solution of current problems of the nation which may or may not involve any element of social justice.

(i) Research into law as an instrument of social justice

Research of this nature is directed towards law reform in the traditional sense. The investigation involves an examination into how law serves the purposes of justice and whether it fails or falls short of it's purpose; if so, how the situation can be remedied.

At a lower level, investigation should be made to determine whether there are any gaps, anachronisms or inconsistencies in the law; whether rules should be re-shaped or abrogated. Attention should also be drawn to any badly working rules and pitfalls and suggestions made as to remedial legislation which would fit into the general body of law and not create new difficulties in trying to eliminate old ones.

(ii) Research into current problems

This is "social engineering" of a kind. Investigations should be made into various current problems in society so as to determine how law can be harnessed towards their solution. These would have to be in collaboration with persons from other disciplines — the sociologist, the economist, the political scientist and the anthropologist, to name but a few. Current problems ranging from race relations and minority rights to private taxis and credit facilities can only be solved by a full study of the problem from every perspective, with the legal participants in such a collaborative project providing the necessary law ingredient. The outcome of such research projects should be submitted to the Government of the day for positive action.

It can be seen from the above that the research task goes beyond "library" research which tends to be solitary researches conducted in the library focusing on the systematization of the common law. This had led to reforms and improvements in the law but surely this is not enough. There should be more organized research towards the gathering of knowledge in the social sciences outside the library to provide the necessary base for the solution of many of the problems confronting developing nations today.

Public Service Role

The third function of the law school is its public service role. The research task insofar as it is directed towards the improvement of justice and the solution of current problems is one of public service.

More specifically, the law school should also be a resource pool upon which the public services could draw. Law teachers should act as consultants in legal matters both in the private and public sectors. In the law school in Singapore, law teachers have been seconded to the public services as ambassadors and legal consultants. The law school has also set up a Law Revision Committee with the function of helping to update existing legislation which in many areas is in a chaotic state partly due to the separation of Singapore from Malaysia; to comment on new legislation to help avoid gaps and inconsistencies in the law, and finally, to undertake reform of existing law where it is called for. It is the belief that there is need for a permanent body of persons to continuously survey the law and the administration of justice. These are contributions which law schools can and should make.

Finally, law schools should seek to maintain a closer association with practising members of the profession. It should organize lectures, forums and symposiums to encourage serious discussion of the law and enable practising members of the profession to keep abreast of the latest legal developments, as well as to continue as the leaders of public opinion.

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